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New Mexico Register

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

Volume XXIX - Issue 2 - January 30, 2018

New Mexico Register

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January 30, 2018

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Notices of Rulemaking and Proposed Rules

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
FORESTRY DIVISION

NOTICE OF PUBLIC HEARING AND RULEMAKING

The New Mexico Energy, Minerals and Natural Resources Department (EMNRD), Forestry Division is commencing a public comment period and will hold a public hearing in the matter of the proposed repeal of 19.20.2 NMAC, Tree Harvesting and Forest Regeneration at 9:15 a.m. on Wednesday, March 21, 2018 in Porter Hall, Wendell Chino Building, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505.

Prior to 2002, the Forestry Division issued timber harvest permits for non-municipal and non-federal lands pursuant to 19.20.2 NMAC, Tree Harvesting and Forest Regeneration. The Forestry Division is proposing to repeal 19.20.2 NMAC because it was replaced by 19.20.4 NMAC, Commercial Timber Harvesting Requirements, in 2002. All harvest permits the Forestry Division issued pursuant to 19.20.2 NMAC and were ongoing in 2002 have since expired and 19.20.2 NMAC no longer applies to timber harvesting activities. 19.20.4 NMAC covers timber harvesting activities the Forestry Division has permitted since January 1, 2002.

No technical information served as the basis for the proposed repeal.

Copies of the proposed rule repeal are available from EMNRD, Forestry Division, 1220 S. St. Francis Drive, Santa Fe, NM 87505; at http://www.emnrd.state.nm.us/SFD; or by contacting Marlene Salvidrez at marlene.salvidrez@state.nm.us or (505) 476-3329.

All interested persons may participate in the hearing, and will be given an opportunity to submit relevant evidence, data, views, and arguments, orally or in writing.

Those wishing to comment on the proposed rules may make oral comments or submit written comments at the hearing or may submit written comments by March 21, 2018 by 5:00 p.m. by mail or email. Please mail written comments to Marlene Salvidrez, EMNRD, Forestry Division, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505 or submit comments by email to marlene.salvidrez@state.nm.us.

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Marlene Salvidrez at (505) 476-3329 or the New Mexico Relay Network at 1-800-659-1779 one week prior to the hearing. Public documents can be provided in various accessible formats. Please contact Marlene Salvidrez at (505) 476-3329, if a summary or other type of accessible format is needed.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

NOTICE OF RULEMAKING

The Human Services Department (the Department), Medical Assistance Division (MAD), is amending the following rule that is part of the New Mexico Administrative Code (NMAC): 8.200.410.11 NMAC - Medicaid Eligibility - General Recipient Rules

The Human Services Department (Department) has filed an emergency rule at 8.200.410.11 NMAC to prevent the possibility of an unintended change to eligibility for certain New Mexico residents. The emergency rules will reinstate language related to Medicaid citizenship and immigration requirements as described below.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: January 30, 2018
Adoption Date: Proposed and filed as January 18, 2018
Technical Citations: 42 CFR 435.4, 435.406, 435.956, 8 USC Section 1641, SHO# 10-006

Summary of Revisions:

- Language was reinstated at Paragraph (4) of Subsection A of Section 8.200.410.11 NMAC to include non-citizens lawfully admitted for permanent residence or who are permanently residing in the United States under Color of Law (PRUCOL).
- Language was reinstated at Subparagraph (l) of Paragraph (1) of Subsection B of Section 8.200.410.11 NMAC to exempt battered non-citizens from the five-year bar.
- Language was reinstated at Subparagraph (a) of Paragraph (2) of Subsection B of Section 8.200.410.11 NMAC to clarify that a qualified non-citizen includes a non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act.
- Language was reinstated at Subparagraph (i) of Paragraph (2) of Subsection B of Section 8.200.410.11 NMAC to include battered women and non-citizen children of battered parents in the definition of a qualified non-citizen.
- Language was reinstated at Subparagraph (a) of Paragraph (3) of Subsection B of Section 8.200.410.11 NMAC to clarify that children under age 21 and pregnant women are considered lawfully present if they are qualified non-citizens.
- The word “aliens” was changed to “non-citizens” at

Subparagraph (i) of Subparagraph (d) of Paragraph (3) of Subsection B of Section 8.200.410.11 NMAC for consistency throughout the rule.

- Language was reinstated at Subparagraph (h) of Paragraph (3) of Subsection B of Section 8.200.410.11 NMAC to clarify that children under age 21 and pregnant women are considered lawfully present if they are non-citizens who are lawfully present in the Commonwealth of the Northern Mariana Islands under 48 USC Section 1806(e).

These regulations will be contained in 8.200.410.11 NMAC of the Medical Assistance Division Program Manual. The register and proposed rule language are available on the HSD website at: http://www.hsd.state.nm.us/LookingForInformation/registers.aspx. If you do not have Internet access, a copy of the register and rule may be requested by contacting MAD at 505-827-6252.

The rule effective date is January 18, 2018. The change to the rule is temporary. The Department will repromulgate this section of the rule in full within six months of the final effective date and publication.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF TERMINATION OF PROPOSED RULEMAKING

The New Mexico Public Education Department (PED) gives notice to terminate the public rule hearing scheduled on February 19, 2018 from 9:00 a.m. to 12:00 p.m., in accordance with Subsection C of Section 14-4-5 NMSA 1978. The proposed repeal and replace of 6.41.4 NMAC, as previously published in the New Mexico Register, the Albuquerque Journal, the Sunshine Portal and on the PED website on January 16, 2018 is being terminated.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

New Public Notice of Rule Hearing. The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on **March 5, 2018**, from 9:00 a.m. to 11:00 a.m. (MDT). The purpose of the public hearing is to receive public input on the proposed repeal and replace of 6.41.4 NMAC - Standards for Providing Transportation to Eligible Students. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to speak will be given three (3) minutes to make a statement concerning the rule changes on record. Written comment will also be accepted at the hearing.

Rule Information. The purpose of this proposed rule change is to update standards for the transportation of eligible students and to establish standards for the safe use of Sport Utility Vehicles (SUVs) for to-and-from transportation. Based on public comment and input, PED is proposing an updated version of the repeal and replace of 6.41.4 NMAC.

The statutory authorizations include the following:
Section 22-2-1 NMSA 1978 grants the authority of the secretary to adopt, promulgate, and enforce rules.
Section 22-2-2 NMSA 1978 grants the Public Education Department the authority to properly and uniformly enforce the provisions of the Public School Code.
Section 22-8-26 NMSA 1978 grants the authority to use money in the transportation distribution of the public school fund to make payments to each school district or state-chartered charter school for the to-and-from transportation costs of students.
Section 22-10A-5 NMSA 1978 grants the authority to conduct background checks on district employees.
Section 22-16-2 NMSA 1978 grants the authority to establish standards and procedures for school bus transportation.
Section 22-16-4 NMSA 1978 grants the authority to transport students to and from school using an SUV.
Section 9-24-8 NMSA 1978 grants the authority of the secretary to make and adopt reasonable and procedural rules as may be necessary to carry out the duties of the department and its division.
Section 1111g(1)(E) of ESEA grants the authority to ensure the educational stability of children in foster care.
Section 1111g(1)(F) of ESEA grants the authority to provide support to local educational agencies in the identification, enrollment, attendance, and school stability of homeless children and youths.
Section 1112c(5)(B) of ESEA grants the authority to develop and implement clear written procedures governing how transportation to maintain children in foster care in their school of origin when in their best interest will be provided, arranged, and funded for the duration of the time in foster care.
Section 722g(J)(iii) of the McKinney-Vento Act grants the authority to adopt policies and practices to ensure that transportation is provided, at the request of the parent or guardian (or in the case of an unaccompanied youth, the liaison), to and from the school of origin.

Rulemaking History. On September 29, 2017, the PED adopted 6.41.4.14 NMAC, Using Sport Utility Vehicles (SUVs) for to-and-from Transportation pursuant to the requirements in Section 14-4-5.6 NMSA 1978, State Rules Act, Emergency Rule.

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

Public Comment. Interested parties may provide comment on the proposed repeal and replacement of this state rule at the public hearing

or may submit written comments, or both, to Jamie Gonzales, Policy Division, New Mexico Public Education Department, Room 101, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, or by electronic mail at rule.feedback@state.nm.us, or fax to (505) 827-6681. All written comments must be received no later than 5:00 p.m. (MDT) on the date of the public hearing. The PED encourages the early submission of written comments. The public comment period is from January 30, 2018 to March 5, 2018 at 5:00 p.m. (MDT).

Copies of the proposed rules may be accessed through the New Mexico Public Education Department's website under the "Rule Notification" link at http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/ or may be obtained from Jamie Gonzales by contacting her at (505) 827-7889 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Jamie Gonzales at (505) 827-7889 as soon as possible before the date set for the public hearing. The PED requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

SUPERINTENDENT OF INSURANCE

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance ("Superintendent"), and the New Mexico Office of Superintendent of Insurance ("OSI"), pursuant to the New Mexico Insurance Code, Section 59A-1-1 *et seq.* NMSA 1978 ("Insurance Code"), proposes to promulgate a new rule pertaining to health care provider network plans, network adequacy, and provider directories, to be codified in the New Mexico Administrative Code, 13.10.30 NMAC - Health Insurance – Network Access Plans, Network Adequacy and Provider Directories.

The purpose of this rule is to set forth requirements for developing, maintaining, and reporting provider health care networks that adequately serve the subscribers of health benefits plans. The proposed rule also provides for waivers or exceptions to network requirements for remote and less populated areas of the state, based on unavailability of providers in such areas. The rule also contains requirements for updating and publication of current provider directories that are made available to subscribers, interested members of the public, OSI, and others.

Statutory authority for promulgation of this rule is found at Sections 59A-1-18, 59A-2-8, 59A-2-9, 59A-4-3, 59A-7-3, 59A-16-3 through 59A-16-5, 59A-18-2, 59A-18-16.2, 59A-22-1 et seq., 59A-22A-1 et seq., 59A-23-3, 59A-23-7.12, 59A-42A-1 et seq., 59A-46-7 through 59A-46-10, 59A-46-35, 59A-46-50.3, 59A-47-24, and 59A-57-4 NMSA 1978.

The proposed rule may be found on the OSI website at http://www.osi.state.nm.us/, under the "Rulemaking" tab and is incorporated by reference into this NOPR. A copy of the full text of the proposed rule is available by electronic download from the OSI website or the New Mexico Sunshine portal, or by requesting a copy in person at the NM Office of Superintendent of Insurance, 1120 Paseo de Peralta, Santa Fe, NM 87501.

The Superintendent will hold a public comment hearing beginning at **10:00 a.m. on Tuesday, April 17, 2018**, at the Office of Superintendent of Insurance, Fourth Floor Hearing Room, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico. Deputy Superintendent Robert Doucette will be the designated hearing examiner in this case.

OSI staff, all insurers, licensees, insurance business entities, other persons transacting insurance business in New Mexico, and the members of the public are encouraged to provide comments or file any written proposals or comments according to the criteria and schedule set forth as follows: (a) oral comments will be accepted at the public hearing from any interested parties; (b) written statements, proposals or comments may be submitted for the record, in lieu of providing oral testimony at the hearing are due no later than 4:00 p.m. on **Friday April 6, 2018.**

Written responses may be submitted for the record following the hearing and are due no later than **4:00 pm on Friday, April 19, 2018.**

The Superintendent will consider all oral comments, and will review all timely submitted written comments and responses. The record shall be closed at **4:00 p.m. on Friday, April 27, 2018**.

Any person with a disability requiring special assistance in order to participate in a hearing should contact Melissa Martinez, at 505-476-0333 at least 48 hours prior to the commencement of the hearing.

Written comments, proposals, or responsive comments may be submitted via email to mariano.romero@state.nm.us or may be filed by sending original copies to:
OSI Records & Docketing, NM Office of Superintendent of Insurance
Attention: Mariano Romero, Room 331
1120 Paseo de Peralta, P.O. Box 1689, Santa Fe, NM 87504-1689
Docket No. 18-00002-RULE-LH

Only signed statements, proposals or comments will be accepted. Scanned or facsimile signatures or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, OSI reserves the right to require that original signatures be

provided to verify the electronic or facsimile signature. All filings must be received between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday except on state holidays. Any filings after 4:30 will be filed to the docket the next business day.

DONE AND ORDERED this 30th day of January, 2018.
S/JOHN G. FRANCHINI

SUPERINDENDENT OF INSURANCE

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance ("Superintendent"), and the New Mexico Office of Superintendent of Insurance ("OSI"), pursuant to the New Mexico Insurance Code, Section 59A-1-1 *et seq.* NMSA 1978 ("Insurance Code"), proposes to promulgate a new rule providing common definitions for health insurance regulations and other matters, to be codified in the New Mexico Administrative Code, 13.10.29 NMAC - Health Insurance - Definitions.

The purpose of the proposed new rule is to provide a common set of definitions for terms specific to health insurance that can eventually replace inconsistent definitions that have been offered over time in various sections of the New Mexico Administrative Code. It has come to the attention of the Superintendent that inconsistent use of terms may cause confusion for the public, the insurance industry, and staff of the New Mexico Office of Superintendent of Insurance ("OSI").

Statutory authority for promulgation of this rule is found at Sections 59A-2-8, 59A-2-9, 59A-7-3, 59A-18-2, 59A-18-13.2, 59A-18-13.3, 59A-18-16.2, 59A-22-1 et seq., 59A-23-2, 59A-23-3, and 59A-46-1, *et seq.* NMSA 1978.

The proposed rule may be found on the OSI website at http://www.osi.state.nm.us/, under the "Rulemaking" tab and is incorporated by reference into this NOPR. A copy of the full text of the proposed rule is available by electronic download from the OSI website or the New Mexico Sunshine portal, or by requesting a copy in person at the NM Office of Superintendent of Insurance, 1120 Paseo de Peralta, Santa Fe, NM 87501.

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OSI staff, all insurers, licensees, insurance business entities, other persons transacting insurance business in New Mexico, and the members of the public are encouraged to provide comments or file any written proposals or comments according to the criteria and schedule set forth as follows: (a) oral comments will be accepted at the public hearing from any interested parties; (b) written statements, proposals or comments may be submitted for the record, in lieu of providing oral testimony at the hearing are due no later than 4:00 p.m. on **Friday April 6, 2018.**

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Attention: Mariano Romero, Room 331
1120 Paseo de Peralta, P.O. Box 1689, Santa Fe, NM 87504-1689
Docket No. 18-00003-RULE-LH

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DONE AND ORDERED this 30th day of January, 2018.
S/JOHN G. FRANCHINI

End of Notices of Rulemaking and Proposed Rules

Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

ADMINISTRATIVE HEARING OFFICE

TITLE 22: COURTS
CHAPTER 600: ADMINISTRATIVE HEARINGS OFFICE
PART 1: GENERAL ADMINISTRATIVE HEARING RULES AND PROCEDURES

22.600.1.1 ISSUING AGENCY: Administrative hearings office, Wendell Chino Building, 1220 South St. Francis Drive, P.O. Box 6400, Santa Fe, New Mexico 87502.
[22.600.1.1 NMAC - N, 2/1/2018]

22.600.1.2 SCOPE: This part applies to all proceedings, cases, and hearing before the administrative hearings office and all parties that appear before the administrative hearings office, unless a more specific statutory or regulatory provision applies to the specific hearing type being conducted.
[22.600.1.2 NMAC - N, 2/1/2018]

22.600.1.3 STATUTORY AUTHORITY: Paragraph (1) of Subsection A of 7-1B-5 NMSA 1978.
[22.600.1.3 NMAC - N, 2/1/2018]

22.600.1.4 DURATION: Permanent.
[22.600.1.4 NMAC - N, 2/1/2018]

22.600.1.5 EFFECTIVE DATE: February 1, 2018, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[22.600.1.5 NMAC - N, 2/1/2018]

22.600.1.6 OBJECTIVE: The objective of this part is to provide general hearing practice rules for hearings before the administrative hearings office.
[22.600.1.6 NMAC - N, 2/1/2018]

22.600.1.7 DEFINITIONS: The following terms apply to:

A. "Administrative hearings office" is the agency established under Section 7-1B-1 NMSA 1978.

B. "Administrative hearings office facility" is an office facility owned or leased by the administrative hearings office.

C. "Business day" means Monday through Friday, excluding Saturday, Sunday, or a state-recognized holiday as specified by Section 12-5-2 NMSA 1978, except for President's Day, which by practice of the state personnel office is awarded on the day after Thanksgiving. For the purposes of determining the timeliness of an electronic filing, a business day commences at 12:00 am and concludes at 11:59 p.m.

D. "Chief hearing officer" is the appointed head of the administrative hearings office under the Administrative Hearings Office Act, Section 7-1B-3 NMSA 1978, or the chief hearing officer's designee during the absence of the chief hearing officer, or the acting, interim chief hearing officer pending appointment of that position.

E. "Hearing" means an on the record, adjudicatory proceeding between two parties before an assigned hearing officer of the administrative hearings office.

F. "Hearing location" is the administrative hearings office facility or another state, county, municipal, or private office location where the administrative hearings office has arranged space to conduct a scheduled hearing or hearings.

G. "Hearing officer" is the attorney assigned by the chief hearing officer or designee of the chief hearing officer to serve as a neutral decision maker in any adjudicatory proceeding before the administrative hearings office. The person assigned as hearing officer must be licensed to practice law in New Mexico or eligible for temporary licensure to practice in New Mexico as determined by the New Mexico supreme court. The hearing officer may be a classified employee in the state personnel system with the administrative hearings office either as an attorney or administrative law judge, may be under contract with the administrative hearings office as a contract attorney, administrative law judge, or judge, or may be an attorney, administrative law judge, or judge serving in a voluntary capacity for the administrative hearings office.

H. "MVD" is the motor vehicle division of the New Mexico taxation and revenue department.

I. "Order" means any directive, command, determination of a disputed issue, or ruling on a disputed issue, by the administrative hearings office directed to the parties involved in a proceeding before the administrative hearings office.

J. "Party" means the named person, entity, or agency in an action before the administrative hearings office.

K. "Pleading" means any written request, motion, or proposed action filed by a party with the administrative hearings office.

L. "Request for hearing" means a formal written request from a party to be heard on a particular matter where the administrative hearings office has statutory authority to conduct an adjudicatory proceeding.

M. "Sua Sponte" means any order of the chief hearing officer or the assigned hearing officer

made without prompting of the parties.

N. **"TRD"** is the New Mexico taxation and revenue department.

[22.600.1.7 NMAC - N, 2/1/2018]

22.600.1.8 APPLICABILITY OF THESE RULES: These rules provide general practice rules for all proceedings before the administrative hearings office. However, if a more specific regulatory provision applies to the hearing type at issue, that more specific regulation controls over these general rules. For example, the specific rules addressing tax protest hearings would apply over any conflicting provision contained in these rules.

[22.600.1.8 NMAC - N, 2/1/2018]

22.600.1.9 STANDING ORDERS: The chief hearing officer may issue, or withdraw, standing orders addressing general practice issues and filing protocols for the handling of cases before the administrative hearings office. Such standing orders will be displayed publicly at administrative hearings office facilities, any administrative hearings office website, and in any applicable information provided with a notice of hearing. The parties appearing before the administrative hearings office are expected to comply with standing orders addressing general practice protocols and procedures.

[22.600.1.9 NMAC - N, 2/1/2018]

22.600.1.10 REQUESTING A HEARING BEFORE THE ADMINISTRATIVE HEARINGS OFFICE:

A. Any party seeking a hearing before the administrative hearings office shall file a written request for a hearing with a brief summary identifying the nature of the dispute, the applicable statute or rule in dispute in the matter, and identifying the jurisdictional basis for the administrative hearings office to adjudicate the matter. Such request for hearing must include the triggering proposed action of TRD or MVD (or other state agency), such as a denial, suspension, or withdrawal letter, as well as the person or entity's written protest or request for hearing challenging that action/inaction. The request for hearing must also include the address of record of the party challenging the state's action either as included in that person's request for hearing or contained in the agency's official records. If the administrative hearings office has developed a specific form to request a hearing in a particular subject matter, the parties are required to use that form.

B. The administrative hearings office may reject any request for hearing in which the administrative hearings office lacks jurisdiction to adjudicate the matter, the matter is moot, or where the request for hearing is defective, not on the appropriate form, lacking required supporting documents, or is otherwise deficient. If the request for hearing is defective for any reason, the requesting party may correct any deficiency and resubmit the request for hearing.

C. Upon receipt of a request for hearing containing the relevant information specified in subparagraph (A) and for which the administrative hearings office has jurisdiction to adjudicate the matter, the chief hearing officer or designee shall assign a hearing officer to preside in the matter based on the knowledge, expertise, experience, efficiency, and staffing needs of the office. The chief hearing officer may reassign the matter to another hearing officer if the management of the office or other circumstances so require it.

[22.600.1.10 NMAC - N, 2/1/2018]

22.600.1.11 REPRESENTATION AT HEARING, FORMAL ENTRY OF APPEARANCE/ SUBSTITUTION OF COUNSEL, AND WITHDRAWAL FROM REPRESENTATION:

A. Unless otherwise expressly authorized by statute, only the person challenging the action or a bona fide employee if the party is an entity or business, or an attorney licensed or authorized to practice law in New Mexico may represent the person at hearing. In tax protest hearings, any person expressly authorized by statute to represent a taxpayer in a tax protest proceeding may represent the taxpayer before the administrative hearings office. Any attorney not licensed to practice law in New Mexico must comply with applicable New Mexico supreme court pro hac vice rules in order to represent the person, business, or entity at any substantive hearing in the matter.

B. Any attorney wishing to represent a party must file a formal written entry of appearance directly with the administrative hearings office listing his or her mailing address, a fax number (if any), and a valid email address. Any attorney wishing to substitute in for a previous attorney must file a substitution of counsel containing the same information required in the initial entry of appearance. Upon withdrawal of representation, consistent with the rules of professional conduct, the attorney shall give reasonable notice of the date and time of the scheduled hearing to the party and allow time for the party to retain other counsel, if needed. Prior to the hearing, counsel should file a written notice of withdrawal from representation with the administrative hearings office indicating when counsel notified the driver of the date and time of the license revocation hearing.

C. A hearing officer may deny a request for withdrawal of representation only when withdrawal would have a clear, materially adverse effect on the party's interests and impede the conduct of a full, fair, and efficient hearing.

[22.600.1.11 NMAC - N, 2/1/2018]

22.600.1.12 FILING OF PLEADINGS:

A. All pleadings may be filed with the administrative hearings office through mail, facsimile, or electronic mail as specified in the relevant notice of hearing, with a copy of such pleading contemporaneously provided to the

opposing party through the same method of service of the filing. The moving party shall include an attestation, or equivalent statement or information, that they provided a copy of the pleading to the opposing party.

B. All motions, except motions made on the record during the hearing or a continuance request made in a genuine unforeseen emergency circumstance (such as an unexpected accident, force majeure, or major medical emergency occurring in such close proximity to the date of the scheduled hearing that a written motion could not be completed), shall be in writing and shall state with particularity the grounds and the relief sought.

C. Before submission of any motion, request for relief, request for continuance, the requesting party should make reasonable efforts to consult with the opposing party about that party's position on the motion unless the nature of the pleading is such that it can be reasonably assumed the opposing party would oppose the requested relief. The party shall state the position of the opposing party in the pleading.

D. Unless a different deadline applies under an applicable order of the assigned hearing officer, the opposing party has 14 days to file a written response to a pleading. If any deadline falls on a Saturday, Sunday, or state-recognized holiday, the deadline falls on the next business day. The assigned hearing officer may require a shorter response deadline, especially for time-sensitive or basic motions like continuance requests. Failure to file a response in opposition may be presumed to be consent to the relief sought, although the hearing officer is not required to make such a default ruling on the motion if the relief would be contrary to the hearing officer's view of the facts or law on the issues.

E. Absent express permission of the assigned hearing officer with good cause shown, no pleading filed in a hearing involving the motor vehicle code or the implied consent act shall exceed 10 pages, not including the certificate of service, of double-spaced (except for block quotations), 12-point font. Absent express permission of the assigned hearing officer with good cause shown, no pleading, including motions and attached memorandums of support, filed in a hearing involving the tax administration act or property tax code shall exceed 20 pages, not including the certificate of service, of double-spaced (except for block quotations), 12-point font. Similarly, with exception of motions for summary judgment or submission of stipulated facts or a proposed order, attachments to any other pleading shall not exceed the length of the pleading absent express permission of the assigned hearing officer. Only relevant excerpts of a motion exhibit shall be attached, with the pertinent portions highlighted, underlined, or otherwise emphasized.

F. All pleadings shall be captioned in a format consistent with the caption included in the notice of hearing issued by the administrative hearings office, including using the specific case number, if any, listed in that notice. Generally, that caption shall be centered, in all capital letters, and in bold font, as shown below:

STATE OF NEW MEXICO
ADMINISTRATIVE HEARINGS OFFICE
(GENERAL TITLE OF APPLICABLE STATUTE CONTROLLING HEARING)

G. In the event of a procedural defect or other error with the manner, method, or content of a submitted pleading, the administrative hearings office may communicate such error to the filing party and withhold filing of the pleading until the moving party remedies the procedural defect. Examples of a procedural defect include, but are not limited to, failure to attest service to the opposing party, failure to comply with the page limitations, failure to seek the opposing party's position, failure to use the form or follow the specific filing method required by the administrative hearings office for the type of case at issue, or failure to comply with a standing order governing the practice before the administrative hearings office.

H. Pleadings will be marked as filed on the business day that the administrative hearings office receives the pleading. Any pleading submitted electronically to the administrative hearings office after 11:59 pm on a business day will not be marked as filed until the next business day.

[22.600.1.12 NMAC - N, 1/1/2018]

22.600.1.13 PREHEARING CONFERENCES, STATUS CONFERENCES, AND STATUS CHECKS:

A. The hearing officer may direct representatives for all parties to meet together or with the hearing officer present for a prehearing conference to consider any or all of the following:

(1) simplify, clarify, narrow or resolve the pending 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 conducted by the hearing officer will be electronically recorded.

C. The hearing officer may enter in the record a written order that recites the results of the conference conducted by the hearing officer. 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.

D. The hearing officer may require the parties to submit a written report of any conference ordered to be conducted between the parties updating the status of the proceeding in light of the conference.

E. The hearing officer may conduct a status conference upon the request of either party or on the hearing officer's own initiative, at which time the hearing officer may require the parties, attorneys, or authorized representatives, to provide information regarding the status of a proceeding.

F. As part of basic docket management and to ensure efficient use of staff resources, the chief hearing officer, or a designee of the chief hearing officer other than the assigned hearing officer on the case, at any point in the proceeding may check with the parties about the status of any matters pending before the administrative hearings office.
[22.600.1.13 NMAC - N, 2/1/2018]

22.600.1.14 HEARING LOCATION, TIME AND PLACE, NOTICE OF HEARING:

A. Except for hearings under the Implied Consent Act or other hearings statutorily required to occur in a different location, all hearings before the administrative hearings office will occur in Santa Fe or, at the discretion of the chief hearing officer, at another administrative hearings office facility in the state. The parties may express a mutual preference for location of the hearing in their request for hearing for the chief hearing officer's consideration. In selecting the location of the hearing other than a setting in Santa Fe, in addition to complying with any mandated, applicable statutory hearing location, the chief hearing officer shall consider and give weight to the location and wishes of the respective parties, witnesses, and representative in the proceeding, the duty station of the assigned hearing officer with expertise in the matter, and the scheduling and staffing needs of the administrative hearings office. If setting a hearing in a location other than Santa Fe would cause an unreasonable, undue burden to either party, that party may file a written objection to the setting of the hearing at a location other than Santa Fe within 10 days of issuance of the notice of hearing, articulating the reasons supporting the objection. The chief hearing officer or designee will promptly review the objection and, upon a showing of an unreasonable, undue burden, may move the hearing to Santa Fe or another more reasonable location and reassign the matter to another hearing officer if necessary.

B. The administrative hearings office will notify the parties to the hearing by mail of the date, time and, place scheduled for the hearing at least seven days before the scheduled 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 by the party to TRD, MVD, or other state entity, or to the address provided by the party's attorney in the entry of appearance.
[22.600.1.14 NMAC - N, 2/1/2018]

22.600.1.15 TELEPHONIC, VIDEOCONFERENCE, AND OTHER EQUIVALENT ELECTRONIC METHOD HEARINGS:

A. If not otherwise prohibited by statute, rule, or court ruling, the hearing officer may conduct the hearing in person or by telephone, videoconference, or other equivalent electronic method.

B. If the hearing is to be conducted by telephone, videoconference or other equivalent electronic method, the notice shall so inform the parties. Either party may file a written objection to conducting the hearing by telephone, videoconference, or other equivalent electronic method within 10 days of the notice of hearing. Failure to timely object to the conduct of a telephone, videoconference, or other equivalent electronic method hearing constitutes consent to the hearing proceeding in that manner and waiver of any other applicable statutory in county hearing requirement.

C. Upon receipt of a timely objection, the hearing officer shall consider the applicable legal requirements, the location of the parties and witnesses, the complexity of the particular matter, the availability of necessary electronic equipment for conduct of a full and fair hearing by telephone, videoconference, or other equivalent electronic method, and the basis of the objection in determining whether the hearing should occur at a specific location rather than via telephone, videoconference, or other equivalent electronic method.

D. Provided that the requesting party has not previously demanded an in-person hearing or otherwise objected to conducting the matter via telephone, videoconference, or other equivalent electronic methods, any party may request to appear directly or have a witness on their behalf appear via telephone, videoconference, or alternative electronic means by filing a request at least three business days before the scheduled hearing. The filing of a request to appear via telephone, videoconference, or other alternative electronic method shall be deemed as a total and complete waiver of any in-person, in-county hearing requirement and deemed as consent for all parties, all witnesses, and the hearing officer to appear via telephone, videoconference, or other equivalent electronic methods.

E. All parties appearing via telephone, videoconference, or other electronic method shall provide the administrative hearings office with a working email address or facsimile number for the exchange of all documentary evidence before or during the hearing.

F. Failure to follow the administrative hearings office's instructions for participating

in the hearing via telephone, videoconference, or other equivalent electronic method will be treated as a non-appearance at the hearing.

G. Any technical issues shall be promptly reported to the administrative hearings office according to the instructions included on the notice of hearing.

H. In the event that technical or other computer problems prevent a hearing by videoconference or other electronic method from occurring or otherwise interferes with maintaining or developing a complete record at the hearing, the parties agree and consent that the assigned hearing officer at their discretion may continue the matter to a different time before expiration of the statutory deadline, may order the parties to appear for an in-person hearing, or may conduct the remaining portion of the hearing via telephone.

I. If the assigned hearing officer determines during the course of the hearing, either sua sponte or upon argument of a party, that an in-person hearing is necessary to adequately complete the record, address credibility issues, or is otherwise necessary to ensure a full or fair hearing process, the hearing officer may recess a hearing occurring by telephone, videoconference, or other equivalent electronic method and reconvene the proceeding as an in-person hearing.

[22.600.1.15 NMAC - N, 2/1/2018]

22.600.1.16 CONTINUANCES:

A. At the request of a party, a witness, or upon the hearing officer's own determination, a hearing may be continued for good cause. The hearing officer shall consider only written continuance requests made at least three working days prior to the scheduled hearing absent extraordinary, unforeseen circumstances that the requesting party could not have known earlier. Employees of the administrative hearings office scheduling section or the chief hearing officer may grant or deny the request on behalf of the hearing officer. An order to grant or deny the request may be issued prior to the scheduled hearing or if there is insufficient time to issue an order prior to the scheduled hearing, the hearing officer may grant or deny the request on the record at the hearing. No continuance request may be granted unless there is adequate time to provide notice to the parties, subpoena witnesses and conduct the rescheduled hearing before expiration of any statutory jurisdictional deadline.

B. Within the jurisdictional time limits set by statute, the chief hearing officer may sua sponte continue any matter as necessary to address staffing needs, to ensure efficient and adequate use of state resources, and to manage the hearing docket. To this end, the chief hearing officer or designee may contact the parties to inquire about the status of a scheduled case.

C. No case shall be continued, even with a showing of good cause or an emergency circumstance, beyond any mandatory, applicable jurisdictional time limit on the case.

[22.600.1.16 NMAC - N, 1/1/2018]

22.600.1.17 ATTIRE AT HEARING: All attorneys and other authorized representatives must be attired in a dignified, professional manner at all times during the hearing. Witnesses shall dress in a respectful manner. No attire or dress so flamboyant, disheveled, inflammatory, obscene, offensive or revealing as to create a distraction to the orderly conduct of court proceedings will be permitted.

[22.600.1.17 NMAC - N, 2/1/2018]

22.600.1.18 BURDEN OF PROOF, PRESENTATION OF CASE, EVIDENCE:

A. Unless otherwise specified by statute, the burden of proof in an administrative proceeding before the administrative hearings office is the preponderance of evidence.

B. The party with the burden of proof in the case will ordinarily present their case first, followed by the opposing party, unless the hearing officer makes reasonable exceptions related to the availability of the witnesses and representatives or other scheduling concerns.

C. The hearing officer may require or allow opening statements as the circumstances justify. Opening statements are not ordinarily evidence, but without objection, may be adopted as evidence by sworn oath of the party-witness who made the opening statement.

D. All testimony must be given under oath and will be subject to questioning of the opposing party. The hearing officer may also ask questions of the witness as appropriate. At the hearing officer's discretion, redirect and recross may be allowed.

E. The parties may make closing arguments, either orally at the conclusion of the case or, upon order of the hearing officer, in writing after conclusion of the hearing. The hearing officer may also require the parties to submit further briefing on any issue in the case, and to submit proposed findings of fact and conclusions of law. No decision-writing deadline commences until the parties have submitted any ordered post-hearing briefing.

F. The New Mexico rules of evidence and civil procedure shall not apply in any matter before the administrative hearings office unless otherwise expressly and specifically required by statute, regulation, or order of the hearing officer. Relevant and material evidence shall be admissible. Irrelevant, immaterial, unreliable, or unduly repetitious evidence may be excluded. The hearing officer shall consider and give appropriate weight to all relevant and material evidence admitted in rendering a final decision on the merits of a matter.

G. Hearsay evidence may be admitted in the proceeding.

H. The hearing officer may take administrative notice of facts not subject to reasonable dispute that are generally known within the community, capable of accurate and ready determination by resort to sources whose accuracy cannot be

reasonably disputed, or as provided by an applicable statute. Administrative notice may be taken at any stage in the proceeding whether or not requested by the parties. A party is entitled to respond as to the propriety of taking administrative notice which shall include the opportunity to refute a noticed fact.

I. Parties objecting to evidence shall timely and briefly state the grounds for the objection. Rulings on evidentiary objections may be addressed on the record at the time of the objection, reserved for ruling in a subsequent written order, or noted as a continuing, ongoing objection for which ruling is reserved to later in the proceeding.

J. Any party wishing to submit a video or audio recording into the record must provide a complete tangible, playable copy that can be retained by the administrative hearings office as part of the administrative record.

K. In general, documentary evidence should be no larger than 8.5 inches by 11 inches unless expressly allowed by the hearing officer. The hearing officer may admit documentary exhibits presented at hearing which exceeds 8.5 inches by 11 inches or which cannot be folded, provided the proponent of such exhibits provide the administrative hearings office with a copy of the exhibit reduced to 8.5 inches by 11 inches. After the hearing at which the exhibit was admitted, the reduced copy shall be substituted for the larger exhibit and made part of the record of the hearing. The administrative hearings office may permit the proponent of a large exhibit to make arrangements to obtain a reduced copy, provided that a failure by the proponent to provide a reduced copy shall be deemed a withdrawal of the exhibit.

L. In lieu of the introduction of tangible objects as exhibits, the hearing officer may require the moving party to submit a photograph, video, or other appropriate substitute such as a verbal description of the pertinent characteristics of the object for the record.

[22.600.1.18 NMAC - N, 2/1/2018]

22.600.1.19 WITNESSES, EXPERT WITNESSES, AND INVOCATION OF THE RULE:

A. Any person having relevant, material knowledge related to one of the issues in a hearing may testify as a witness under oath in the matter. Upon affirming the oath, the witness may be questioned by both parties and by the hearing officer.

B. Unless a more specific provision applies, witnesses are ordinarily expected to appear in the same manner or by the same method as the parties in a proceeding, absent express preapproval of the assigned hearing officer allowing an appearance by a different method. For example, if the hearing is scheduled to be conducted in person in a specific place, the witnesses are also ordinarily expected to appear in person at that same place; however, if the matter is set to occur by telephone or videoconference, then the witnesses may ordinarily appear by telephone of videoconference.

C. The current or previously assigned hearing officer in a matter shall not be called and shall not be a witness in the proceeding.

D. If either party intends to call and treat a particular witness as an expert witness in the proceeding, the party must provide a written designation at least seven days before the scheduled hearing, or with sufficient time before completion of discovery deadline specified in a scheduling order to allow for deposition, to the opposing party and the administrative hearings office, identifying the purported expert, the scope of that expert's purported testimony relative to the proceeding, the expert's credentials, and listing of any materials the expert reviewed as part of reaching his or her expert opinion. The opposing party may file a response in opposition before the hearing or challenge the designation of the witness as an expert during the course of the hearing.

E. At the hearing, either party can invoke the exclusionary rule, excluding all witnesses other than the real party in interest, their representative, one main case agent, and any designated expert witness from the proceeding until the time of their testimony. If the rule has been invoked, the witnesses shall not discuss their testimony with each other until the conclusion of the proceeding. When the rule has been invoked, any witness who remains in the hearing after conclusion of their testimony may not be recalled as a witness in the proceeding, except that any witness may observe the testimony of an expert witness and be recalled to provide any subsequent rebuttal testimony.

[22.600.1.19 NMAC - N, 2/1/2018]

22.600.1.20 HEARING OFFICER POWERS AND RESPONSIBILITIES:

A. Hearings shall be presided over by a hearing officer designated by the chief hearing officer of the administrative hearings office.

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 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 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 hearing;

(11) to cause a complete record of hearings to be made;

(12) to make and issue decisions and orders; and

(13) to reprimand, or with warning in extreme instances exclude from the hearing, any person for engaging in a continuing pattern of indecorous, obstinate, recalcitrant, obstreperous, unethical, unprofessional or improper conduct that interferes with the conduct of a fair and orderly hearing or development of a complete record.

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 taxation and revenue department or the department of finance and administration or the other state agency involved in the proceeding.

D. In the performance of these adjudicative functions, the hearing officer is prohibited from engaging in any improper ex parte communications about the substantive issues with any party on any matter, as addressed in regulation 22.600.2.16 NMAC. An improper ex parte communication occurs when the hearing officer discusses the substance of a case without the opposing party being present, except that it is not an improper ex parte communication for the hearing officer to go on the record with only one party when the other party has failed to appear at a scheduled hearing.

[22.600.1.20 NMAC - N, 2/1/2018]

22.600.1.21 CLOSED/PUBLIC HEARING, SEALED RECORDS, AND DELIBERATIVE NOTES OF HEARING OFFICER:

A. Except for hearings occurring pursuant to the Implied Consent Act, upon request of the party challenging the state action, or unless otherwise provided in an applicable statute or regulation pertinent to the hearing at issue, all hearings are closed to the public. The party challenging the state action may submit a written request to open the hearing to the public, which shall be granted if authorized by statute or regulation.

B. If the hearing is open to the public either under the Implied Consent Act, upon request of the party challenging the state action, or other applicable statute or regulation, members of the public and the media may attend the hearing so long as they do not interrupt, interfere, or impede the orderly, fair, and efficient hearing process. With prior consent of the chief hearing officer and the assigned hearing officer, media members may record the proceeding at a fixed location in the hearing room. The hearing officer may direct any member of the public, including attending media members, to leave the proceeding if they engage in any conduct that interferes with the hearing officer's ability to maintain order, develop the record, and provide a fair and efficient hearing process.

C. Upon request of either party, and upon a showing of good cause, the hearing officer may seal a particular exhibit, document, or portions of a witness' testimony from public disclosure if such items contain statutorily-protected confidential information, privileged information, or otherwise contain private identification information of a party or third party that is immaterial to a substantive issue in the proceeding or if its materiality is substantially outweighed by the prejudice of public release of the information. Upon issuance of an order sealing such documents or exhibits, these records will remain under seal throughout the proceeding and shall be returned to the submitting party at the conclusion of the appeal period or the appeal. The opposing party shall be entitled to promptly review these documents in preparing for the hearing, and may rely on those documents during the hearing as necessary to ensure a fair hearing process, but shall not maintain its own copy of the sealed document after conclusion of the hearing nor reveal, discuss, or disclose the contents of these sealed documents to any other party outside of the hearing process.

D. The hearing officer's notes taken during the course of the hearing, any written discussions with another hearing officer related to the deliberative, decision-making process, and any draft orders or draft decisions are confidential as part of the deliberative process and are not subject to public disclosure.

[22.600.1.21 NMAC - N, 2/1/2018]

22.600.1.22 SUBPOENAS: Any request for issuance of subpoenas in matters before the administrative hearings office shall be guided by Rule 45 of the rules of civil procedure for the district courts of New Mexico, except where provisions of that rule conflict with the limited powers of the administrative hearings office. Any subpoena issued shall be in the name of the chief hearing officer of the administrative hearings office. The party requesting the subpoena shall prepare a proposed subpoena using a form approved by the administrative hearings office, submit the proposed subpoena to the administrative hearings office for approval and to the opposing party, and to timely and reasonably serve the subpoena on the person or entity subject to the subpoena. Unless good cause is shown for a shorter period, a subpoena shall provide at least 10 days notice before compelled attendance at a hearing or deposition, and at least 10 days notice before compelled production of materials. All returns or certificates of service on served subpoenas shall be filed with the administrative hearings office, copied to the opposing party, and shall be made part of the record of the proceeding.

[22.600.1.22 NMAC - N, 2/1/2018]

22.600.1.23 LANGUAGE INTERPRETERS: In matters before the administrative hearings office, a

party needing language interpreter services for translation of one language into another is responsible for arranging such service for the hearing. While the person serving as an interpreter need not be a court-certified interpreter in order to provide interpretation at a hearing, any person serving as an interpreter in a matter before the administrative hearings office must affirm the interpreter's oath applicable in courts across this state. Upon reasonable notice of the party to the administrative hearings office, any interpreter required to be provided under the American with Disabilities Act shall be provided for by the administrative hearings office.
[22.600.1.23 NMAC - N, 1/1/2018]

22.600.1.24 FAILURE TO APPEAR:

A. If a person or entity challenging the state action fails to appear, either in person or through a permissible representative, to a duly noticed hearing, the person or entity waives his, her, or their right to protest or challenge that proposed state action, the matter shall go on the record for the limited purpose of addressing notice and non-appearance, and a final judgment and order against them shall be entered based on the waiver of the hearing by failing to appear.

B. In considering the non-appearance and whether the person received appropriate notice necessitating issuance of the judgment, the hearing officer may consider the contents of the administrative file, information conveyed to or known by administrative hearings office staff, information related to mailing, including mail tracking, returned receipt information, and notes written on returned envelopes of the United States postal service or other mail tracking services, and arguments offered by the present party, all of which may be addressed on the record of the hearing or in any subsequent order.

C. Oral rulings based on a party's failure to appear are not final until reduced to writing. The hearing officer may issue a different written order as new information arises after the hearing regarding whether the notice of hearing was properly sent to the correct address or otherwise properly served.
[22.600.1.24 NMAC - N, 2/1/2018]

22.600.1.25 RECONSIDERATIONS:

A. A party may file a motion for reconsideration no more than 15 days after the date on the final decision and order. The opposing party may file a response no more than 15 days after the motion for reconsideration was filed. Motions for reconsideration that are not filed within this deadline may be denied automatically. A timely filed motion for reconsideration should be decided based on the merits whether or not a response is filed.

B. The prevailing party shall not file a motion for reconsideration. However, if a requested action is granted in part and denied in part, either party may file a motion for reconsideration.

C. Motions for reconsideration shall not endeavor to present new evidence previously available, or discoverable through reasonable diligence, to the parties before the hearing. Motions for reconsideration shall not reargue the weight of evidence already ruled upon and shall not reiterate legal arguments already ruled upon. However, a motion for reconsideration may address gross factual or legal errors/ omissions in the final decision and order.
[22.600.1.25 NMAC - N, 2/1/2018]

22.600.1.26 APPEALS:
Each decision and order issued by the administrative hearings office shall include information about the appeal process for the type of case at issue. Once the appeal is filed in the appropriate court, the appealing party shall provide a court-endorsed copy of the appeal to the administrative hearings office so that the administrative hearings office can prepare and submit the record proper. Other than preparing and filling the record proper, the administrative hearings office is not the formal party to the appeal and does not provide any position on any motions or pleadings submitted on appeal.
[22.600.1.26 NMAC - N, 2/1/2018]

22.600.1.27 REQUESTING COPIES OF EXHIBITS, AUDIO, OR THE ADMINISTRATIVE RECORD: Either party may request copies of exhibits, documents, records in the administrative file, or a copy of the audio recording of the proceeding by submitting a written request to the administrative hearings office. The administrative hearings office may charge a reasonable fee for copies made, consistent with its fee schedule under the Inspection of Public Records Act. The administrative hearings office may also require the requesting party to submit a computer storage device, such as a compact disc, dvd disc, blu-ray disc, or usb drive, or other tangible device for copying of any audio or video recording that is part of the administrative record.
[22.600.1.27 NMAC - N, 2/1/2018]

22.600.1.28 HEARINGS FOR OTHER STATE AGENCIES:
From time to time, the administrative hearings office may enter into agreements with other state agencies to provide hearing officers for the conduct of administrative hearings involving that agency. Those hearings shall be conducted independent of the supervision and direction of the other state agency. The statutes, rules, and case law governing the conduct of those hearings before other agencies shall apply to those cases heard by agreement, except that the hearing officer shall still be bound by the code of conduct for administrative hearings contained in this chapter, 22.600.2 NMAC.
[22.600.1.28 NMAC - N, 2/1/2018]

HISTORY of 22.600.1 NMAC:
[RESERVED]

ADMINISTRATIVE HEARING OFFICE

TITLE 22: COURTS
CHAPTER 600: ADMINISTRATIVE HEARINGS OFFICE
PART 2: CODE OF CONDUCT FOR ADMINISTRATIVE HEARINGS

22.600.2.1 ISSUING AGENCY: Administrative Hearings Office, Wendell Chino Building, 1220 South St. Francis Drive, P.O. Box 6400, Santa Fe, NM 87502.
[22.600.2.1 NMAC - N, 2/1/2018]

22.600.2.2 SCOPE: This part applies to all proceedings before the administrative hearings office and all parties that appear before the administrative hearings office, unless a more specific statutory or regulatory provision applies to the specific hearing type being conducted.
[22.600.2.2 NMAC - N, 2/1/2018]

22.600.2.3 STATUTORY AUTHORITY: Paragraph (1) of Subsection A of 7-1.B-5 NMSA 1978.
[22.600.2.3 NMAC - N, 2/1/2018]

22.600.2.4 DURATION: Permanent.
[22.600.2.4 NMAC - N, 2/1/2018]

22.600.2.5 EFFECTIVE DATE: February 1, 2018, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[22.600.2.5 NMAC - N, 2/1/2018]

22.600.2.6 OBJECTIVE: The objective of this part is to establish a code of conduct for the administrative hearings office hearing officers and those appearing before the administrative hearings office.
[22.600.2.6 NMAC - N, 2/1/2018]

22.600.2.7 DEFINITIONS: The following terms apply to:

A. "Administrative hearings office" is the agency established under Section 7-1B-1 NMSA 1978.

B. "Chief hearing officer" is the appointed head of the administrative hearings office under the Administrative Hearings Office Act, Section 7-1B-3 NMSA 1978, or the chief hearing officer's designee during the absence of the chief hearing officer, or the acting, interim chief hearing officer pending appointment of that position.

C. "Hearing officer" is the attorney assigned by the chief hearing officer or designee of the chief hearing officer to serve as a neutral decision maker in any adjudicatory proceeding before the administrative hearings office. The person assigned as hearing officer must be licensed to practice law in New Mexico or eligible for temporary licensure to practice in New Mexico as determined by the New Mexico supreme court. The hearing officer may be a classified employee in the state personnel system with the administrative hearings office, either as an attorney or administrative law judge, may be under contract with the administrative hearings office as a contract attorney, administrative law judge, or judge, or may be an attorney, administrative law judge, or judge serving in a voluntary capacity for the administrative hearings office.

D. "Party" shall include the real parties of interest and their representatives, including bona fide employees, attorneys, certified public accountants, enrolled agents, agency staff, agency attorneys, or other representatives authorized by the Administrative Hearings Office Act to appear on behalf of a party.

E. "Third degree of relationship" include the following persons, by blood or marriage: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece.
[22.600.2.7 NMAC - N, 1/1/2018]

22.600.2.8 APPLICABILITY OF THESE RULES: These rules apply to hearing officers conducting and adjudicating administrative hearings for the administrative hearings office, and parties appearing before the administrative hearings office.
[22.600.2.8 NMAC - N, 2/1/2018]

22.600.2.9 HEARING OFFICERS SHALL PROMOTE PUBLIC CONFIDENCE IN THE INTEGRITY AND FAIRNESS OF THE HEARING PROCESS: A hearing officer shall act in a manner that promotes public confidence in the fairness, integrity, and impartiality of the hearing process. A hearing officer shall not abuse the public trust granted to the hearing officer in adjudicating hearings to advance the personal, professional, or economic interest of the hearing officer, family, friends, or current or former business associates nor shall the hearing officer knowingly permit others to do the same on his or her behalf.
[22.600.2.9 NMAC - N, 2/1/2018]

22.600.2.10 AVOIDING IMPROPRIETY AND THE APPEARANCE THEREOF: A hearing officer shall avoid impropriety. A hearing officer shall also avoid the reasonable appearance of impropriety. A reasonable appearance of impropriety occurs whenever a reasonable person would have serious doubts about whether the hearing officer could be fair given the circumstances. If the hearing officer, initially unaware of any potential issue, becomes aware of any potential appearance of impropriety during the course of the hearing, the hearing officer shall promptly disclose on the record the potential appearance of impropriety to the parties, allow the parties to appropriately respond or object, and then make a formal determination as to whether the hearing officer can continue to proceed in the hearing without violating this provision. The hearing officer may consult with other hearings officers and the chief hearing officer about any potential appearance of impropriety issues as part of the process of determining whether the assigned hearing officer can continuing presiding over the matter. The rule of necessity may require a hearing officer to proceed in

the matter if there is no other hearing officer available to conduct the matter before expiration of a mandatory, jurisdictional deadline.
[22.600.2.10 NMAC - N, 2/1/2018]

22.600.2.11 HEARING OFFICER COMPETENCY: Hearing officers should perform their duties diligently and competently. Hearing officers should know, and have the capacity to apply the applicable substantive and procedural law at issue in the hearing, including standards governing due process and evidence. Hearing officers should have the capacity to properly weigh evidence and assess the credibility of witnesses whether present in person for the hearing or appearing remotely via telephone, videoconference, or other equivalent electronic means. Hearing officers shall possess the writing skills necessary to craft legally competent and readable documents, including citation to legal authority and hearing record as necessary or appropriate. Hearing officers should be skilled in conducting hearings efficiently, fairly, developing an appropriate record, and maintaining good order during the proceeding. Hearing officer should regularly participate in, attend, or conduct continuing education and appropriate legal community outreach/service to improve their competency, to stay current in the knowledge of the law and the hearing process, and to remain engaged in the broader legal community.
[22.600.2.11 NMAC - N, 2/1/2018]

22.600.2.12 INDEPENDENCE: In deciding matters, a hearing officer shall be faithful to their reasonable understanding of controlling law. A hearing officer shall not be swayed by partisan interests, public clamor, or fear of criticism. Hearing officers shall not permit family, social, political, financial, or other personal interests or relationships to influence their conduct or judgment. A hearing officer shall not convey nor permit others to convey the impression that any person or organization is in a position to improperly influence the hearing officer. This provision is not intended to prevent a hearing officer from consulting and discussing a pending matter with other hearing officers or a supervising hearing officer within the administrative hearings office.
[22.600.2.12 NMAC - N, 2/1/2018]

22.600.2.13 ORDER AND DECORUM OF PROCEEEDING:

A. A hearing officer should require order and decorum in official proceedings. Hearing officers should promote the dignity and decorum of the administrative hearing process. Hearing officers should exercise their lawful authority in any proceeding to ensure that all persons involved conduct themselves with proper decorum.

B. Attorneys, certified public accountants, enrolled agents and other authorized representatives appearing before the hearing officer should treat the tribunal with appropriate professionalism, dignity and respect, including showing candor to the tribunal, in line with their own obligations for professional and ethical conduct. Failure to do so may result in reporting the representative to the appropriate governing body and other appropriate remedies needed to ensure an orderly hearing process, including in extreme circumstances, excluding the representative from further representation.
[22.600.2.13 NMAC - N, 2/1/2018]

22.600.2.14 HEARINGS TO BE CONDUCTED WITH IMPARTIALITY: Hearing officers should always strive to conduct proceedings before them in an impartial, fair, and respectful manner. This requires a hearing officer to treat all persons involved in the proceeding, including the appealing or petitioning parties and their representatives, the agency, agency staff or representatives, witnesses, interpreters, interveners, observers, and any other person who appears before the hearing officer with appropriate respect. It is not a violation of this provision for hearing officers: to reasonably ask questions during the proceeding; to reasonably state what they believe the legal analysis applicable to the case requires in order to ensure an orderly, relevant, and efficient presentation of the case; to reasonably press a party on their legal position during the course of the proceeding in order to test the contours of an issue; to reasonably encourage resolution or narrowing of the issues in a case; and to take other reasonable actions necessary to ensure the conduct of an orderly hearing, or gain control of a hearing if a party violates the decorum of the proceeding, such as but not limited to reprimanding a participant for continuing inappropriate, disrespectful, or disruptive conduct.
[22.600.2.14 NMAC - N, 2/1/2018]

22.600.2.15 HEARINGS TO BE CONDUCTED WITHOUT BIAS, PREJUDICE, OR HARASSMENT: A hearing officer shall not, by words or conduct, show any bias or prejudice, or harass any party or person present at a hearing, based on race, religion, color, national origin, ethnicity, ancestry, sex, sexual orientation, gender identity, marital status, socioeconomic status, political affiliation, age, physical or mental disability or serious medical condition. To the extent reasonably possible, a hearing officer shall not permit or allow others involved in the hearing process, including the hearing officer's staff or representatives of the parties, to engage in such bias, prejudice, or harassment. A hearing officer and others may make legitimate and respectful reference to, and discuss, the listed factors when they are relevant to an issue in the proceeding.
[22.600.2.15 NMAC - N, 2/1/2018]

22.600.2.16 EX PARTE COMMUNICATIONS:

A. A hearing officer on an assigned case may not engage in any prohibited ex parte communications about the substantive issues with either party on any matter before the administrative hearings office. A prohibited ex parte communication occurs when the

hearing officer discusses the substance of a case without the opposing party being present, except that it is not a prohibited ex parte communication for the hearing officer to go on the record with only one party when the other party has failed to appear at a scheduled hearing.

B. Where circumstances require it, ex parte communications for procedural, administrative, or emergency purposes that does not address the substantive matters or issues on the merits are permitted if the hearing officer reasonably believes that no party will gain an advantage as a result of the non-substantive ex parte communication and the hearing officer makes provisions to promptly notify all parties of the substance of the ex parte communication.

C. As part of the deliberative process, a hearing officer may consult with other hearing officers, except those who have previously been disqualified from the matter, and support personnel of the administrative hearings office about a pending matter. Such communication does not amount to a prohibited ex parte communication.

D. In the event a hearing officer receives an unsolicited ex parte communication, such as but not limited to the receipt of an email or a facsimile, the hearing officer receiving the unsolicited communication shall promptly forward a copy of the communication to the opposing party and admonish the sending party to comply with the ex parte communication prohibition in all future communications. An unsolicited ex parte communication does not constitute a prohibited ex parte communication unless the assigned hearing officer deems that the communication caused a genuine advantage to the non-complying, submitting party.

E. The chief hearing officer or designated staff, may make inquiries about the status of a scheduled case or cases, or the conduct of a case or cases that have already occurred, with either or both parties as part of the management of the docket, staff, and state resources. This communication does not amount to prohibited ex parte communication.

F. With consent of the parties, the hearing officer may confer separately with the parties or their representatives in an effort to mediate or settle pending matters. With consent, such communication does not amount to a prohibited ex parte communication.

G. Absent providing administrative notice to the parties with an opportunity for the parties to respond or object, or receiving prior consent from the parties to do so, a hearing officer shall not investigate facts that are reasonably in dispute in a matter independently of what has been presented on the record. This does not preclude a hearing officer from researching the applicable law relevant to the facts presented regardless of whether such legal authority was cited by either party. Nor does it preclude the hearing officer from taking administrative notice of facts that cannot reasonably be disputed.

H. A hearing officer may engage in ex parte communications when expressly authorized by law to do so.

I. So long as no confidential or privileged information about the case or the identities of the parties is disclosed, a hearing officer may consult with other hearing officers, other staff, ethics advisory committees, outside counsel, judges who will not serve in an appellate capacity in the matter, mentors, or other legal experts concerning the hearing officer's obligations and compliance with provisions of this code without disclosing such communication to any person or party.

[22.600.2.16 NMAC - N, 2/1/2018]

22.600.2.17 PUBLIC STATEMENTS ON PENDING MATTERS AND HEARING OFFICER INVOLVEMENT IN PUBLIC EVENTS/ ORGANIZATIONS:

A. A hearing officer shall not make any public statement about a pending matter that might reasonably be expected to affect the outcome or impair the fairness of proceedings in a pending matter, or make pledges, promises or commitments that are inconsistent with the impartial performance of the hearing officer's adjudicatory duties.

B. A hearing officer shall not publicly comment on any case in which the hearing officer presided over other than, upon inquiry, refer to any publically available final decision and order, if any, issued in the matter.

C. A hearing officer may make public statements to explain tribunal procedures and confirm basic status and scheduling details for a hearing that is statutorily open to the public.

D. While a hearing officer may not publically advocate for or against the formulation of any particular substantive tax policy or statute, a hearing officer may provide general information in a public forum, including before the Legislature, about the policies, practices, procedures of the office, and the possible effects of proposed change of statutes on the efficiency of the hearing process, hearing procedures, and the resource needs of the office.

E. A hearing officer is encouraged to participate in legal forums, trainings, educational or academic settings, bar association, judicial association, or other public community events where the hearing officer's knowledge of the issues, law, and procedures may be useful to the legal system, the public understanding about the hearing process, and the administration of justice, or where other participants at the event may provide similar insight to the hearing officer.

F. Consistent with other controlling state statutes, rules, regulations, and policies, and with consent of the chief hearing officer, a hearing officer may voluntarily serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice, so long

as such service would not create an appearance of impropriety, a potential conflict of interest, or otherwise reasonably interfere with the hearing officer's ability to fairly, impartially, and efficiently adjudicate cases in the subject matters that regularly are heard before the administrative hearings office.
[22.600.2.17 NMAC - N, 2/1/2018]

22.600.2.18 PERSONAL CONDUCT:

A. Hearing officers shall not participate in outside activities that will interfere with the hearing officer's official duties or participate in activities that will lead to frequent disqualification of the hearing officer. The hearing officer should refrain from conduct and not participate in activities, or belong to organizations, that would appear to a reasonable person to undermine the hearing officer's independence, integrity, impartiality, or judgment. A hearing officer should not hold membership in any organization that practices invidious discrimination on the basis of race, religion, color, national origin, ethnicity, ancestry, sex, sexual orientation, gender, gender identity, marital status, socioeconomic status, political affiliation, age, physical or mental disability, or serious medical condition.

B. The hearing officer must be knowledgeable about and comply with all statutes, ordinances, regulations, and policies governing conduct of public employees.

C. A hearing officer shall not accept any gifts, loans, bequests, benefits, donations, or things of value if acceptance is prohibited by law or would appear to a reasonable person to undermine the hearing officer's integrity or impartiality in performance of hearing officer duties, or if the source is a party or other person, including a lawyer, who has or is likely to come before the hearing officer.

D. A hearing officer shall not request or receive an honorarium or payment for a speech, presentation, training, educational activity, or other event related to the hearing officer's duties except for reasonable reimbursement for meals, lodging, and actual travel expenses incurred for such activity.
[22.600.2.18 NMAC - N, 2/1/2018]

22.600.2.19 CONFIDENTIALITY: A hearing officer shall not intentionally disclose or use nonpublic information acquired by virtue of his or her position for any purpose unrelated to the hearing officer's duties or in violation of the law. A hearing officer shall be knowledgeable about and shall comply with all laws and regulations governing confidentiality of information before the agency and tribunal.
[22.600.2.19 NMAC - N, 2/1/2018]

22.600.2.20 COMPLIANCE WITH ETHICAL RULES: A hearing officer shall strive to comply with these rules and, to the extent they are not in direct conflict with these rules or other statutory authority applicable to the administrative hearings office, any other relevant administrative rules, codes of conduct, or policies regarding ethics, professionalism, or conduct. Hearing officers should work to ensure that their own staff and others appearing in a proceeding before them also comply with these rules and other applicable rules governing conduct. Hearing officers have a duty to report a clear violation of a known ethical, professional or conduct standard they observe to the appropriate authority, including the governing bodies that regulate attorneys, certified public accountants, and enrolled agents that appear at hearings as representatives.
[22.600.2.20 NMAC - N, 2/1/2018]

22.600.2.21 DUTY TO HEAR ASSIGNED CASES AND RECUSALS:

A. A hearing officer has a professional responsibility to hear and decide cases assigned to them, including difficult, time consuming, controversial, or high profile matters, and adjudicate all assigned cases unless there are clear grounds under this code or other applicable standards or law requiring disqualification.

B. A hearing officer shall recuse himself or herself in any proceeding in which the hearing officer's impartiality might reasonably be questioned, including:

(1) The hearing officer has a personal preference for, or bias or prejudice against a party or a party's lawyer, or has direct personal knowledge of facts that are in dispute in the proceeding.

(2) The hearing officer knows that the hearing officer, the hearing officer's spouse or domestic partner, or person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person, or a member of the hearing officer's staff is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person has more than a de minimis interest that could substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The hearing officer knows that he or she, individually or as fiduciary, or the hearing officer's spouse, domestic partner, parent, or child, or any other person residing in the hearing officer's household, has more than a de minimis economic interest in the subject matter in controversy or is a party to the proceeding. Because tax controversies can involve companies and business with a substantial public consumer, retail, or general services presence in commerce, the mere fact that the assigned hearing officer, or their immediate family residing in their household, may be an occasional customer of a company or consumer of a company's products is not necessarily grounds for recusal unless the hearing officer has more than a de minimis economic interest beyond being an average consumer, shopper, or user of the goods and services of

the company or the circumstances are sufficient to raise reasonable questions about the hearing officer's impartiality.

C. In consultation with the chief hearing officer about the reasons and necessity for recusal, a hearing officer may recuse himself or herself from the case through notice of recusal, or through the chief hearing officer's issuance of a notice of reassignment, without further explanation to the parties in the proceeding about the basis of the recusal. The recused hearing officer shall play no further role in the proceeding and reasonable steps should be taken to exclude the recused hearing officer from any further contact, review, or substantive discussions about the proceeding. A hearing officer's own decision to recuse himself or herself from a proceeding should not be construed as an admission of a conflict of interest, misconduct, impropriety, violation of this code or other relevant ethical or professional code, or as an admission that the hearing officer cannot be impartial in a particular matter.

D. A hearing officer may disclose on the record the basis of the hearing officer's prospective recusal and may ask the parties and their lawyers to consider whether to waive the potential issue necessitating the recusal. If, following this disclosure, the parties and lawyers agree for the record that the hearing officer should not be recused, the hearing officer may continue to participate in the matter.

E. The rule of necessity may require a hearing officer to proceed in a case where they otherwise might wish to recuse themselves if, after reasonable efforts to secure a continuance or reassignment of the matter to another hearing officer, there are no other competent hearing officers available to timely hear the matter before expiration of a mandatory jurisdictional deadline. If the hearing officer is relying on the rule of necessity to proceed, that determination must be disclosed on the record.

[22.600.2.21 NMAC - N, 2/1/2018]

22.600.2.22 COMPLAINT PROCEDURE AND DISQUALIFICATION:

A. A party may make an informal, verbal complaint of a violation of this code with the chief hearing officer. Such complaints will be investigated internally and informally by the chief hearing officer as part of the management of personnel of the office. If the complaint is justified, the chief hearing officer may implement informal actions designed to educate or correct the hearings officer's conduct, mitigate the violation, or take other justified actions under the circumstances.

B. Whenever any party believes the hearing officer for any reason should be formally disqualified because there is a substantial doubt as to whether the hearing officer can conduct the matter fairly, such party may file with the chief hearing officer a formal written motion for disqualification of the assigned hearing officer, along with supporting affidavits or exhibits 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 disqualification is sought.

(1) Upon receipt of a formal motion for disqualification, the chief hearing officer may:

(a) summarily dismiss the motion if it is clear that the complaint fails to state grounds that raise a reasonable doubt as to the hearing officer's ability to provide a fair and impartial hearing, is frivolous in that it either has the primary purpose of seeking to delay the proceeding or is an attempt to relitigate an unfavorable ruling that is better addressed as part of the traditional appellate process; or

(b) conduct further investigation either directly or through another agency or entity as circumstances justify; or

(c) in order to ensure an efficient hearing process in light of a mandatory jurisdictional deadline, reassign the case to another hearing officer pending further investigation. Such reassignment for efficiency of hearing process pending further investigation does not constitute a finding that the motion for disqualification has any validity, only a recognition of the practical jurisdictional deadlines applicable in a matter.

(2) If further investigation is merited, the hearing officer shall have 10 days from service of the motion to accede or to reply to the allegations. The noncomplaining other party may also choose to file a response within 10 days. If the hearing officer does not recuse himself or herself within that time, the chief hearing officer shall promptly review the complaint, the responses, and the results of any investigation to determine whether or not the hearing officer shall be disqualified. The chief hearing officer's determination shall be reduced to writing in the form of a letter or order and shall be included in the record of the proceeding. Subject to appellate review, the chief hearing officer's decision in response to a formal motion seeking disqualification shall be final.

C. If the hearing officer is disqualified, the chief hearing officer shall designate another person to act as hearing officer in the matter.

D. As a result of the motion for disqualification and any related investigation, the chief hearing officer may take other appropriate internal corrective or disciplinary personnel actions consistent with the State Personnel Act. Any such additional personnel action is confidential in accord with the controlling provisions of the State Personnel Act.

E. The complaining party's remedies for violations of this code are limited to disqualification of the hearing officer from the particular proceeding before the administrative hearings office. Nothing in this section creates an independent cause of action by either party outside of

this complaint procedure described herein, or an independent basis to seek discipline under either the code of judicial conduct or the rules of professional conduct.
[22.600.2.22 NMAC - N, 2/1/2018]

HISTORY of 22.600.2 NMAC: [RESERVED]

ADMINISTRATIVE HEARING OFFICE

TITLE 22: COURTS
CHAPTER 600: ADMINISTRATIVE HEARINGS OFFICE
PART 3: HEARINGS UNDER THE TAX ADMINISTRATION ACT

22.600.3.1 ISSUING AGENCY: Administrative Hearings Office, Wendell Chino Building, 1220 South St. Francis Drive, P.O. Box 6400, Santa Fe, NM 87502.
[22.600.3.1 NMAC - N, 2/1/2018]

22.600.3.2 SCOPE: This part applies to the taxation and revenue department and all taxpayers, their agents and representatives protesting an action of the taxation and revenue department under Section 7-1-24 NMSA 1978 of the Tax Administration Act and seeking a hearing under Section 7-1B-8 NMSA 1978 of the Administrative Hearings Office Act.
[22.600.3.2 NMAC - N, 2/1/2018]

22.600.3.3 STATUTORY AUTHORITY: Paragraph (1) of Subsection A of 7-1.B-5 NMSA 1978.
[22.600.3.3 NMAC - N, 2/1/2018]

22.600.3.4 DURATION: Permanent.
[22.600.3.4 NMAC - N, 2/1/2018]

22.600.3.5 EFFECTIVE DATE: February 1, 2018, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[22.600.3.5 NMAC - N, 2/1/2018]

22.600.3.6 OBJECTIVE: The objective of this part is to provide procedural rules and guidance, about the tax protest hearing process before the administrative hearings office under the provisions of the Tax Administration Act and the Administrative Hearings Office Act.
[22.600.3.6 NMAC - N, 2/1/2018]

22.600.3.7 DEFINITIONS: As used in 22.600.3 NMAC:

A. "Administrative hearings office" is the agency established under Section 7-1B-1 NMSA 1978.

B. "Bona fide employee" means any legitimate employee, owner, or member of any board of directors or other governing body of a company, business, or otherwise recognized entity. A bona fide employee is not a person hired for the limited purpose, scope, or duration of representing a taxpayer before the administrative hearings office during the protest proceeding.

C. "Chief hearing officer" is the appointed head of the administrative hearings office under the Administrative Hearings Office Act, Section 7-1B-3 NMSA 1978, or the chief hearing officer's designee during the absence of the chief hearing officer, or the acting, interim chief hearing officer pending appointment of that position.

D. "Hearing" is in on-the-record proceeding before the hearing officer addressing the procedural, evidentiary, or substantive issues of the protest. A hearing includes a merits hearing, a scheduling hearing, or a motion's hearing.

E. "Merits Hearing" is the formal, administrative hearing focused on the adjudication of the disputed issues under protest.

F. "Scheduling Hearing" is a hearing where the parties appear to discuss the issues involved in the protest, to discuss the need for a discovery and motions practice before the merits hearing, to discuss how much time the parties need to ensure compliance with the statutory fair hearing requirements under Paragraph (2) of Subsection D of Section 7-1B-6 NMSA 1978, and to select a merits hearing date and time. The scheduling hearing is part of the record of the proceeding.

G. "Taxpayer" for the limited purposes of this rule is the generic party name of the individual, person, entity association, business, corporation, partnership or other recognized entity protesting against TRD in the proceeding before the administrative hearings office. This definition shall not be construed in any manner to change, clarify, or expound the statutory definition of taxpayer contained under the Tax Administration Act.

H. "TRD" is the New Mexico taxation and revenue department.
[22.600.3.7 NMAC - N, 2/1/2018]

22.600.3.8 REQUESTS FOR HEARING, SCHEDULING OF MERITS HEARINGS, SCHEDULING HEARINGS, AND SCHEDULING ORDERS:

A. Pursuant to Subsection A of Section 7-1B-8 NMSA 1978, TRD shall file a request for hearing with the administrative hearings office within 45 days of its receipt and acknowledgement of a valid protest on a form and in a manner specified by the chief hearing officer. A copy of the request for hearing shall be provided to the opposing party.

B. The request for hearing shall include (if available) at a minimum a copy of TRD's initiating document, action, or inaction that led to the protest, a copy of the taxpayer's protest letter, TRD's acknowledgement letter, any taxpayer information authorization filed with TRD allowing someone other than the named taxpayer (or bona fide employee of the taxpayer) to represent the taxpayer before TRD, and the address of record of the taxpayer with TRD. The administrative hearings office may require additional information on any request for hearing or referral and may require the parties to submit such request on a form developed by the administrative

hearings office.

C. The party requesting the hearing shall specify whether they believe the matter will be ripe for a merits hearing within 90-days of TRD's receipt of a valid protest or whether under Paragraph (2) of Subsection D of Section 7-1B-6 NMSA 1978, the parties need additional time to complete discovery, prepare motions, and to ensure both sides have ample and fair opportunity to present their respective cases.

D. Upon receipt of the hearing request, the chief hearing officer or designee thereof shall review the matter to assess the complexity of the case, the potential discovery required, the potential need for motions practice before conducting the merits hearing, the tax hearing docket, and the preference of the party that filed the hearing request to determine whether the matter should be set promptly for a merits hearing or set for a scheduling hearing within 90 days of TRD's acknowledged receipt of the protest.

E. Absent a timely objection before or at the time of the scheduling hearing, conducting a scheduling hearing within 90 days of TRD's acknowledged receipt of a valid protest satisfies the 90 day hearing requirement contained under Subsection A of Section 7-1B-8 NMSA 1978 while allowing sufficient and meaningful time for completion of the statutory requirements contained under Paragraph (2) of Subsection D of Section 7-1B-6 NMSA 1978. Upon completion of the scheduling hearing, the hearing officer will issue a scheduling order and notice of administrative hearing or other form of notice or order as the circumstances require.

F. Upon objection to conducting a scheduling hearing, the administrative hearings office may set the matter for a merits hearing on expedited basis with a minimum of seven days notice unless the parties consent to a lesser period for notice. All other notices will be sent at least 14 days before the scheduled hearing unless the parties consent to a lesser period for notice.

G. Upon receipt of the notice of scheduling hearing, the parties may consult with each other and agree to a proposed scheduling order, in a format specified by the administrative hearings office, articulating discovery and motions deadlines, length of the potential hearing, a proposed month or months of merits hearing, and an express waiver of the 90-day hearing requirement of Subsection A of Section 7-1B-8 NMSA 1978. If the assigned hearing officer accepts or substantially adopts the proposed scheduling order, the scheduling hearing will be vacated.

H. At the sole discretion of the chief hearing officer, a series of cases involving similar substantive issues or involving small controversies may be scheduled to be heard individually as part of a trailing docket commencing at the beginning of the day, to be heard at some indefinite point during that day after the time of commencement of the docket. If the protest is to be heard as part of a trailing docket:

(1) All parties and their representatives in a case set on a trailing docket shall report at the time and place specified in the notice of hearing for commencement of the trailing docket in a method and manner specified by the administrative hearings office.

(2) Failure to report at the commencement of a trailing docket shall be deemed a non-appearance for the purposes of Section 7-1-16 NMSA 1978.

(3) After the reporting time for the trailing docket, the assigned hearing officer or hearing officers for the conduct of the trailing docket will determine the order of the cases to be heard that day, considering the appearance or nonappearance of the various parties on that day's docket, the complexity of the cases, the number and availability of witnesses, and if possible, accommodating any scheduling conflicts of the parties on that date.

(4) Upon receipt of notice of hearing set on a trailing docket, a party may file a written objection at least seven days before the scheduled hearing citing good cause as to why the matter should be given a unique setting rather than heard as part of a trailing docket, which the chief hearing officer or the assigned hearing officer may review and determine whether the case should be continued to a specific date with a firm time of commencement of the proceeding.

I. All notices of hearing, including notice of scheduling hearing, notice of administrative hearing, and scheduling order shall be mailed via regular, first class mail to the taxpayer's address of record or the address of taxpayer's representative of record, as well as TRD either through interdepartmental mail or first class mail. Additionally, if the parties provide an email address on the protest letter, entry of appearance, or other subsequent communication, a copy of the notice may be emailed to the party. Notice may be given orally on the record of any proceeding where all parties are present and all parties agree to the proposed hearing date.

[22.600.3.8 NMAC - N, 2/1/2018]

22.600.3.9 LOCATION OF HEARINGS: Merits hearings are held in Santa Fe. At the sole discretion of the chief hearing officer, and considering the location of the respective parties, their representatives, the assigned hearing officer, the resources of the administrative hearings office, and the docket, a hearing may be set at the administrative hearings office's Albuquerque office. If setting a hearing at the Albuquerque office would cause an unreasonable, undue burden to either party, the party may file a written objection to the hearing location within 10 days of issuance of the notice of hearing, articulating the reasons supporting the objection. The chief hearing officer or designee will promptly review the objection and upon a showing of an unreasonable, undue burden, will order the hearing to occur in Santa Fe. Such changes in hearing location may require the

reassignment of the case to another hearing officer as determined necessary by the chief hearing officer. [22.600.3.9 NMAC - N, 2/1/2018]

22.600.3.10 VIDEO-CONFERENCE HEARINGS, TELEPHONIC HEARINGS, AND TELEPHONIC TESTIMONY:

A. Scheduling hearings and other preliminary, preconference, motions, or prehearing motions hearings may be conducted via telephone, or videoconference or equivalent electronic method without consent or waiver of either party.

B. If both TRD and the taxpayer agree, they may petition the assigned hearing officer at least seven days before the scheduled merits hearing to conduct the merits hearing via secure videoconference pursuant to Subsection B of Section 7-1B-8 NMSA 1978. The hearing officer may grant or deny the request after considering whether a complete and accurate record can be made and a fair hearing can be conducted in the matter via secure videoconference. Even if the initial request is granted, the hearing officer always retains the discretion at any point in the proceeding to order the personal appearance of the parties and witnesses if in the hearing officer's determination resolution of the disputed facts, evidence, credibility of a witness, question of law, or development of a complete and accurate record requires it.

C. The administrative hearings office may also schedule a merits hearing as a videoconference hearing with consent of the parties, which shall be deemed to have been granted absent either party filing a written objection within 14 days of notice a videoconference merits hearing.

D. If a hearing is scheduled to be conducted via videoconference:

(1) all parties, witnesses, and the hearing officer will appear via videoconference service specified by the administrative hearings office. The administrative hearings office shall take reasonable precautions to ensure that the videoconference is secure and confidential. However, by requesting or consenting to a videoconference hearing, the parties shall be deemed to understand that the administrative hearings office may contract, license or utilize a third-party service provider to facilitate videoconferencing and that all electronic communications are vulnerable to security breaches beyond the reasonable control or knowledge of the administrative hearings office. If such electronic security breaches were to occur, they constitute unintentional, inadvertent disclosures and do not amount to a breach of statutory confidentiality requirements under relevant law by any party or the hearing officer appearing via videoconference. The parties shall also waive any claims against the administrative hearings office, its employees, agents or contractors, arising from any disclosure and shall be deemed to have assumed risk of disclosure by requesting or agreeing to appear via videoconference;

(2) the parties shall ensure that they have exchanged all exhibits with each other and provided the assigned hearing officer with an exhibit binder before commencement of the approved videoconference hearing;

(3) the parties also shall provide contact phone numbers where they will be available at the time of the hearing in case there are technical errors or other issues with conducting the videoconference;

(4) in the event that technical or other computer problems prevent the videoconference hearing from occurring or interfere with maintaining or developing a complete record at the hearing, the parties agree and consent upon their submission of a request to conduct the matter via videoconference that the assigned hearing officer at their discretion may continue the matter to a different time without regard to any other statutory deadline, may order the parties to appear for an in-person hearing, or may conduct the hearing via telephone;

(5) in the event of a videoconference hearing, the hearing record will only be the audio recording or transcription of the proceeding and will not include the video portion of the proceeding.

E. Telephonic appearances by the parties, (or their representatives) at a merits hearing are not generally permitted and will only be considered in the event of a genuine medical emergency/ hardship, in cases where there is no genuine dispute of fact and parties intend to simply make legal argument, or when a technical problem prevents the conduct of a scheduled videoconference hearing.

F. Telephonic testimony from third-party witnesses may only be permitted in the event that in person or videoconference testimony would create an undue hardship or expense to the third-party witness. In addition to potential undue hardship, the assigned hearing officer in deciding whether to permit the telephonic testimony will consider the nature and purpose of the purported testimony, potential credibility issues regarding the testimony, the potential weight of the testimony as it relates to the particular issues at protest, and whether the testimony is being offered in rebuttal. [22.600.3.10 NMAC - N, 2/1/2018]

22.600.3.11 APPEARANCES BY AUTHORIZED REPRESENTATIVES:

A. Taxpayers may appear at a hearing for themselves or may be represented by any person expressly authorized under the Tax Administration Act or the Administrative Hearings Office Act to represent a taxpayer before the administrative hearings office. Unless otherwise changed, amended or repealed, Subsection (B) of Section 7-1B-8 NMSA 1978 expressly authorizes a taxpayer to represent themselves, or be represented by a bona fide employee, an attorney, a certified public accountant, or in income tax cases under the Income Tax Act only, an enrolled agent. When

the taxpayer is two individuals who have been jointly assessed, such as a married couple who filed a joint personal income tax return, either individual may serve as the taxpayer's representative.

B. Any attorney representing a taxpayer before the administrative hearings office shall file an entry of appearance in the matter. If the attorney has prepared the protest letter on behalf of the taxpayer, the protest letter signed by the attorney constitutes a valid entry of appearance unless otherwise expressly limited by the taxpayer or the attorney. An attorney's entry of appearance constitutes a written authorization for representation of a taxpayer without need for the specific, separate, signed taxpayer authorization specified in subparagraph (C). Any attorney, including those employed as in-house counsel, representing taxpayers in the filing of any motion, conduct of motions hearing, or conduct of a merits hearing must be licensed in good standing to practice law in New Mexico or in compliance with the pro hac vice requirements found under Rule 24-106 NMRA.

C. A taxpayer shall file a signed, written authorization with the administrative hearings office designating any person, except an attorney, expressly authorized under the Tax Administration Act or the administrative hearings office to represent the taxpayer in a specific protest proceeding. When the taxpayer is an entity, the signature of any bona fide employee of the taxpayer shall be deemed to be the taxpayer's signature. The written authorization need not be a specific or technical form, but may be included as a statement in the protest designating an authorized representative, on a taxpayer information authorization form filed with TRD, or as a statement in a subsequent pleading filed with the administrative hearings office.

D. All written authorizations or entries of appearance should include the name, mailing address, phone number, and electronic mail address of the authorized representative. The taxpayer and any representative who has entered an appearance or written authorization to appear has an ongoing duty to inform the administrative hearings office and the opposing party of any change of mailing address, contact phone number, or contact email address.

E. After a written authorization or entry of appearance has been filed in a case, a change in a taxpayer's representation requires a new, signed written authorization from the taxpayer, an entry of appearance from an attorney if no attorney has previously represented the taxpayer, or a substitution of counsel and new entry of appearance in the event that a taxpayer has engaged a different attorney to represent the taxpayer in the protest.

F. Any person designated by the taxpayer in the protest letter, through a written authorization or entry of appearance shall be deemed to be an authorized representative of the taxpayer for the purposes of conducting the scheduling hearing(s) before the administrative hearings office. At the scheduling hearing, the taxpayer and their representative (if any) will be advised of the statutory right to and limitations of representation during the hearing process.

G. After the scheduling hearing and advisement of the statutory right to and limitations of representation during the hearing process, if the taxpayer's representative is not a person who is expressly authorized to represent the taxpayer before the administrative hearings office under the Tax Administration Act or the Administrative Hearings Office Act, that person may not serve as a representative of the taxpayer in the proceeding before the administrative hearings office. In that event, the taxpayer may be granted an additional opportunity before conduct of the hearing to arrange for appropriate representation. Any delay in the hearing process for this reason will be attributed to the taxpayer.

H. All parties shall have a responsibility of candor to the administrative hearings office and shall not knowingly make false statements to the hearing officer. The administrative hearings office is a tribunal for purposes of Rule 16-303 NMRA. An attorney, a certified public accountant, or an enrolled agent, or any other statutorily permitted representative of a taxpayer in a protest hearing shall abide by their respective controlling professional or ethical standards of conduct at all stages of the administrative proceeding before the administrative hearings office. In the event of an apparent breach of applicable standards of conduct, ethics or professionalism, in addition to reporting the breach to the appropriate disciplinary board, the assigned hearing officer may take other reasonable and appropriate measures within the hearing officer's statutory and regulatory authority necessary to maintain order and ensure a fair hearing process for all parties.

[22.600.3.11 NMAC - N, 2/1/2018]

22.600.3.12 TAX PROTEST HEARINGS CLOSED TO PUBLIC, FILE IS CONFIDENTIAL, AND SEALING OF RECORDS IN THE PROCEEDING:

A. Hearings are not open to the public except upon request of the taxpayer.

B. Pursuant to Section 7-1-8.3 NMSA 1978, all documents, exhibits, pleadings and materials contained in the administrative tax file and the record of the administrative hearing are confidential and may not be released to the public, except that the final decision and order without redaction and any evidentiary or procedural ruling made by the hearing officer with redaction of identifiable taxpayer information may be revealed.

C. Either party may ask for, and submit, a proposed order sealing particular records, documents, or exhibits that may contain confidential third-party

taxpayer information or as is required by relevant internal revenue service information sharing agreements or other applicable federal law. Upon issuance of an order sealing such documents of exhibits, those records will remain under seal throughout the proceeding and shall be returned to the submitting party at the conclusion of the appeal period or the appeal. The opposing party shall be entitled to promptly review those documents in preparing for the hearing, and may rely on those documents during the hearing as necessary to ensure a fair hearing process, but shall not maintain its own copy of the sealed document after conclusion of the hearing nor reveal, discuss, or disclose the contents of those sealed documents to any other party outside of the hearing process.

D. In the event of an appeal, the complete record of the proceeding, including any sealed records, will be provided to the relevant judicial body, as required under Section 7-1-8.4 NMSA 1978.

E. The hearing officer's notes taken during the course of the hearing, any written discussions with another hearing officer related to the deliberative process, and any draft orders or draft decisions are confidential as part of the deliberative process and are not subject to public disclosure under any recognized exception contained under Section 7-1-8.3 NMSA 1978. Only the hearing officer's final decision and order and other final procedural or evidentiary orders (with appropriate taxpayer information redacted) may be revealed to the public under Section 7-1-8.3 NMSA 1978.
[22.600.3.12 NMAC - N, 2/1/2018]

22.600.3.13 WITHDRAWAL OF PROTESTS:

A. A taxpayer electing to withdraw a protest pending before the administrative hearings office shall execute a written withdrawal of protest. The written withdrawal must include the taxpayer's signature or the signature of a bona fide employee of the taxpayer, even when the taxpayer has an authorized representative. The written withdrawal need not include the taxpayer's reasons for withdrawing the protest. The written withdrawal must include adequate information to properly identify the taxpayer and the file at protest, such as the administrative hearings office's case number, TRD's assessment letter i.d. number or the date the protest was filed. A written withdrawal form provided and approved by TRD is sufficient to adequately identify the taxpayer and the protest.

B. Upon receipt of a withdrawal of protest which does not satisfy the requirement stated herein, which appears irregular on its face, which fails to adequately address all issues pending in a protest, or which is indefinite, uncertain, or ambiguous, the administrative hearings office shall notify the parties, attorneys, or authorized representatives of the identified deficiency. The hearing officer may leave the matter on the calendar as scheduled, set a status conference to address the issues, or order the parties to submit a new withdrawal, if they are able to, addressing the issues.

C. A properly executed withdrawal of protest satisfying the requirements of this section shall result in the closing of the protest and the administrative file as of the date of filing. If a withdrawal of protest is insufficient for any reason, the hearing officer may enter an order closing a protest after notice and opportunity to be heard regarding any deficiencies in the withdrawal.
[22.600.3.13 NMAC - N, 2/1/2018]

22.600.3.14 SUMMARY DISPOSITIONS OF PROTESTS:

A. Where there is well-settled law addressing the issue identified on the face of the pleadings, or when it appears from the face of the pleadings in the administrative file that there is no genuine issue as to any material fact, the hearing officer may propose a summary disposition of the protest under the following procedure:

(1) the hearing officer shall provide to the parties, their attorneys, or authorized representatives a written proposed summary disposition based on a review of the administrative file;

(2) the parties, their attorneys, or authorized representatives shall be provided with no less than 15 days in which to respond to the proposed summary disposition;

(3) a response to a proposed summary disposition shall include the factual or legal basis in support of or in opposition to the proposed summary disposition;

(4) no reply to a response shall be allowed;

(5) the failure to respond to a proposed summary disposition may be deemed as concurrence in the proposed summary disposition;

(6) upon review of the responses to a proposed summary disposition, the hearing officer shall withdraw the proposed summary disposition and schedule the matter to be heard if either party makes a bona fide objection and argument, or enter a decision and order consistent with the proposed summary disposition if the parties consent, concede, fail to object or otherwise fail to meaningfully address the proposed summary disposition.
[22.600.3.14 NMAC - N, 2/1/2018]

22.600.3.15 FILING METHODS AND MOTIONS:

A. All pleadings may be filed with the administrative hearings office through mail, facsimile, or electronic mail as specified in the relevant notice of hearing, with a copy of such pleading contemporaneously provided to the opposing party through the same method of service of the filing. The moving party should include an attestation, or equivalent statement or information, that they provided a copy of the pleading to the opposing party.

B. A filing by facsimile shall include a cover sheet indicating the name of the matter, the name of the individual submitting the filing, the number of pages contained in the transmission, and a telephone number to contact in the event there are any errors with the transmission.

C. Documents filed by email or other electronic means shall not be submitted in an editable format unless specifically requested by the hearing officer. Absent specific instructions to do so, pleadings, motions or other papers shall not be submitted directly to the assigned hearing officer.

D. All motions, except motions made on the record during the hearing or a continuance request made in a genuine unforeseen emergency circumstance (such as an unexpected accident, force majeure, or major medical emergency occurring in such close proximity to the date of the scheduled hearing that a written motion could not be completed), shall be in writing and shall state with particularity the grounds and the relief sought.

E. Before submission of any motion, request for relief, or request for continuance, the requesting party should make reasonable efforts to consult with the opposing party about that party's position on the motion unless the nature of the pleading is such that it can be reasonably assumed the opposing party would oppose the requested relief. The party shall state the position of the opposing party in the pleading.

F. An unopposed motion may be accompanied by a stipulated order indicating approval by the parties, attorneys, or authorized representatives. Approval may be indicated by an original, photocopy, facsimile, or electronic signature of the individual providing approval, or by a statement indicating approval by other means such as by email. The hearing officer retains the authority to deny the relief requested in an unopposed or stipulated motion and may adopt, modify, or reject any stipulated order accompanying an unopposed motion.

G. Unless a different deadline applies under an applicable order of the assigned hearing officer, the opposing party has 14 days to file a written response to a pleading. If any deadline falls on a Saturday, Sunday, or state-recognized holiday, the deadline falls on the next business day. The assigned hearing officer may require a shorter response deadline, especially for time-sensitive or basic motions like continuance requests. Failure to file a response in opposition may be presumed to be consent to the relief sought, although the hearing officer is not required to make such a default ruling on the motion if the relief would be contrary to the hearing officer's view of the facts or law on the issues.

H. A party attaching one or more exhibits to a pleading, motion, or other paper shall designate the exhibit in a manner to specifically associate it with the pleading, motion, or other paper which it is intended to accompany. An appropriate designation for an exhibit to a motion will include an abbreviation for the type of motion, and an identifying letter for TRD or a number for the taxpayer. For example only, an exhibit to a motion for summary judgment presented by a taxpayer may be designated as "Taxpayer MSJ #1". An exhibit to a response to the motion filed by TRD may be designated as "Dept. Resp. MSJ A".

I. Absent express permission of the assigned hearing officer with good cause shown, no pleading, including motions and attached memorandums of support, filed in a hearing involving the tax administration act or property tax code shall exceed 20 pages, not including the certificate of service, of double-spaced (except for block quotations), 12-point font.
[22.600.3.15 NMAC - N, 2/1/2018]

22.600.3.16 DISCOVERY: New Mexico is a liberal discovery state and to that end the parties are expected to cooperate in good faith to accomplish adequate discovery by the time the formal hearing is held without a specific order or intervention of the hearing officer. Discovery need not be a formal, time-consuming, litigious, or burdensome process; instead, the parties should make a good-faith effort to achieve discovery through informal consultation, discussion, stipulations, and good-faith, efficient exchange of relevant materials. If adequate discovery is not achieved informally within a reasonable time prior to the time a formal hearing is scheduled or by the deadline contained in a scheduling order issued by the hearing officer, any party may apply to the hearing officer for an order requiring a more formalized discovery process, including requiring depositions, production of records or answers to interrogatories/ requests for admissions. The parties shall file only certificates of service regarding discovery requests and productions unless the hearing officer requires otherwise, such as when there is a motion to compel. Depositions may be taken orally or by written interrogatories and cross-interrogatories. Unless ordered otherwise by the hearing officer, responses to interrogatories, requests for production of documents and requests for admission shall be due thirty days after service on a party. Unless ordered otherwise by the hearing officer, any notice of deposition shall be served on all opposing parties at least 14 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.
[22.600.3.16 NMAC - N, 2/1/2018]

22.600.3.17 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, 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) issue an

order to show cause;

(3) 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;

(4) 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;

(5) 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;

(6) disregard the content of any document filed after the deadline for filing said document has passed;

(7) disregard the content of any document filed after the merits hearing has been conducted, unless the hearing officer has granted permission to file such document; or

(8) 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 remedy the failure to comply with the order or withheld testimony, documents or other evidence.

C. The failure to comply in good faith with the orders of the hearing officer may be taken into consideration regarding the reasonableness of administrative costs or the reasonableness of a party's position when there is a motion for costs and fees under Section 7-1-29.1 NMSA 1978.

D. In the event a third-party refuses to comply with a valid subpoena, the hearing officer may allow the party who requested the subpoena to make a proffer of evidence that the party believes would have been obtained had the third-party complied with the subpoena. The opposing party shall have the opportunity to refute the proffer, including by making a proffer of its own as to what it believes would have been shown if the third-party complied with the subpoena. The hearing officer may give the proffers whatever weight she/he deems reasonable in light of all of the evidence presented and with due consideration of the statutory presumption of correctness.

[22.600.3.17 NMAC - N, 2/1/2018]

22.600.3.18 PREHEARING CONFERENCES, STATUS CONFERENCES, AND STATUS CHECKS:

A. The hearing officer may direct the parties or their representatives to meet together or with the hearing officer present for a prehearing conference to consider any or all of the following:

(1) simplify, clarify, narrow or resolve the pending 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 of 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 conducted by the hearing officer will be recorded.

C. The hearing officer may enter in the record an order that recites the results of the conference conducted by the hearing officer. 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.

D. The hearing officer may require the parties to submit a written report of any conference ordered to be conducted between the parties updating the status of the proceeding in light of the conference.

E. The hearing officer may conduct a status conference upon the request of either party or on the hearing officer's own initiative, at which time the hearing officer may require the parties, attorneys, or authorized representatives, to provide information regarding the status of a protest in order that the administrative hearings office may arrange its docket to expedite the disposition of cases.

F. As part of basic docket management and to ensure efficient use of staff resources, the chief hearing officer, or a designee of the chief hearing officer other than the assigned hearing officer on the case, at any point in the proceeding may contact the parties and inquire about the status of any scheduled or pending case or cases.

[22.600.3.18 NMAC - N, 2/1/2018]

22.600.3.19 SUBPOENAS: Any request for issuance of subpoenas in matters before the administrative hearings office shall be guided by Rule 45 of the rules of civil procedure for the district courts of New Mexico, except where provisions of that rule conflict with the limited powers of the administrative hearings office. Any subpoena issued shall be in the name of the chief hearing officer of the administrative hearings office. The party requesting the subpoena shall prepare a proposed subpoena using a form approved by the administrative hearings office, submit the proposed subpoena to the administrative hearings office for approval and to the opposing party,

and to timely and reasonably serve the subpoena on the person or entity subject to the subpoena. Unless good cause is shown for a shorter period, a subpoena shall provide at least 10 days notice before compelled attendance at a hearing or deposition, and at least 10 days notice before compelled production of materials. All returns or certificates of service on served subpoenas shall be filed with the administrative hearings office, copied to the opposing party, and shall be made part of the record of the proceeding.
[22.600.3.19 NMAC - N, 2/1/2018]

22.600.3.20 REQUESTS FOR CONTINUANCES:

A. Either party may request that a scheduled hearing be continued until a different date and time by filing a written request for continuance. The request for continuance should include a description of the reason why the requesting party would like the matter rescheduled, the opposing party's position on the request unless the opposing party does not respond after reasonable efforts were made to contact them, how much additional time the moving party seeks before the matter is rescheduled, and any dates where the parties are unavailable for rescheduling the matter.

B. The hearing officer will generally only consider requests for a continuance made in writing at least seven days before the scheduled hearing and supported by good cause, absent extraordinary, unforeseen circumstances which the requesting party could not have known earlier than seven days before the hearing. Within seven days of the scheduled hearing, the hearing officer may reject a continuance request even if the opposing party has stipulated or does not oppose the request. Unless and until the parties are affirmatively informed by order or other communication of an administrative hearings office employee that the continuance request has been granted, the scheduled hearing remains on the calendar and the parties must appear at the hearing. Failure to appear at the scheduled time of the hearing shall be deemed a non-appearance for the purposes of Section 7-1-16 NMSA 1978.

C. As part of the continuance request, the moving party must waive the 90-day hearing requirement. In the absence of such express waiver, as a condition of granting the request, the hearing officer may deem that the 90-day hearing requirement was met and attribute any delay in the conduct of the hearing to the moving party.

D. The assigned hearing officer and the chief hearing officer or designee may continue or reschedule a scheduled hearing, or reassign a scheduled hearing to another hearing officer, as necessary to manage the tax docket and state resources in an efficient manner and account for changes in office staffing.
[22.600.3.20 NMAC - N, 2/1/2018]

22.600.3.21 FAILURE TO APPEAR:

A. A taxpayer's failure to appear at the scheduled time of the noticed protest hearing shall be deemed a non-appearance for the purposes of Section 7-1-16 NMSA 1978.

B. If a taxpayer has appeared but a representative of TRD fails to appear at a noticed hearing, the hearing officer may issue an order to show cause as to why the protest shall not be granted, may allow the taxpayer to present their case in the absence of TRD's representative and rule upon the protest, or take other appropriate actions within the hearing officer's power.

C. In considering the non-appearance and whether the person received appropriate notice, the hearing officer may consider the contents of the administrative file, information conveyed to or known by administrative hearings office staff, information related to mailing, including mail tracking, returned receipt information, and notes written on returned envelopes of the United States postal service or other mail tracking services, and arguments offered by the present party, all of which shall be addressed on the record of the hearing or in any subsequent order.

D. Oral rulings based on failure to appear are not final until reduced to writing. Such rulings may be changed in the written order as new information arises after the hearing related to whether the notice of hearing was properly sent to the correct address or otherwise properly served.
[22.600.3.21 NMAC - N, 2/1/2018]

22.600.3.22 HEARING OFFICER POWERS AND RESPONSIBILITIES:

A. Hearings in adjudicative proceedings shall be presided over by a hearing officer designated by the chief hearing officer of the administrative hearings office.

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 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 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;

(12) to make and issue decisions and orders; and

(13) to reprimand, or, with warning in extreme instances exclude from the hearing, any person for engaging in a continuing pattern of indecorous, obstinate, recalcitrant, obstreperous, unethical, unprofessional or improper conduct that interferes with the conduct of a fair and orderly hearing or development of a complete record.

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 taxation and revenue department or the department of finance and administration.

D. In the performance of these adjudicative functions, the hearing officer is prohibited from engaging in any improper ex parte communications about the substantive issues with any party on any matter, as addressed in regulation 22.600.2.16 NMAC. An improper ex parte communication occurs when the hearing officer discusses the substance of a case without the opposing party being present, except that it is not an improper ex parte communication for the hearing officer to go on the record with only one party when the other party has failed to appear at a scheduled hearing.

[22.600.3.22 NMAC - N, 2/1/2018]

22.600.3.23 EVIDENCE AT HEARING:

A. Every party shall have the right of notice, cross-examination, presentation of evidence, objection, motion, argument and all other rights essential to a fair hearing.

B. The taxpayer shall have the burden of proof, except as otherwise provided by law. Because the taxpayer must overcome the presumption of correctness or otherwise establish entitlement to the claim or relief sought during the protest, the taxpayer will ordinarily present their case first, followed by TRD, except as otherwise provided by law or unless the hearing officer makes reasonable, good cause exceptions related to the availability of the witnesses or other scheduling concerns.

C. The New Mexico rules of evidence and New Mexico rules of civil procedure shall not apply in any matter before the administrative hearings office unless otherwise expressly and specifically prescribed by statute, regulation, or order of the hearing officer. Relevant and material evidence shall be admissible. Irrelevant, immaterial, unreliable, or unduly repetitious evidence may be excluded. Immaterial or irrelevant portions of an otherwise admissible document shall be segregated or redacted and excluded so far as is practicable. The hearing officer shall consider and give appropriate weight to all relevant and material evidence admitted in rendering a final decision on the merits of a matter.

D. Reliable hearsay evidence is admissible during the protest proceeding.

E. 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.

F. 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 the admissibility of basic documents concerning the controversy, such as audit reports of TRD, assessments issued by TRD, returns and payments filed by taxpayer, 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.

G. The hearing officer may take administrative notice of facts not subject to reasonable dispute that are generally known within the community, capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably disputed, or as provided by an applicable statute. Administrative notice may be taken at any stage in the proceeding whether or not requested by the parties. A party is entitled to respond as to the propriety of taking administrative notice which shall include the opportunity to refute a noticed fact.

H. Parties objecting to evidence shall timely and briefly state the grounds for the objection. Rulings on evidentiary objections may be addressed on the record at the time of the objection, or reserved for ruling in a subsequent written order.

I. Formal exception to an adverse ruling is not required.

J. When an objection to admission of an exhibit or to a question propounded to a witness is sustained, the proponent may make a specific offer of what the representative expects to prove by introduction of the exhibit or 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, may be retained in the record so as to be available for consideration by any reviewing authority.

K. In general, documentary evidence should be no larger than 8.5 inches by 11 inches unless expressly allowed by the hearing officer. The hearing officer may admit a documentary exhibit presented at hearing which exceeds 8.5 inches by 11 inches or which cannot be folded, provided the

proponent of such exhibit provide the administrative hearings office a copy of the exhibit reduced to 8.5 inches by 11 inches. After the hearing at which the exhibit was admitted, the reduced copy shall be substituted for the larger exhibit and made part of the record of the hearing. The administrative hearings office may permit the proponent of a large exhibit to make arrangements to obtain a reduced copy, provided that a failure by the proponent to provide a reduced copy shall be construed as a withdrawal of the exhibit.

L. Objects introduced as exhibits shall be returned to the proponent at the conclusion of the hearing unless otherwise ordered by the hearing officer. In lieu of the object itself, the hearing officer may require the moving party to submit a photograph, video, or other appropriate substitute such as verbal description of the pertinent characteristics of the object for the record. If an object is retained for the record, it may be returned to the proponent no less than 45 days after a final decision and order is rendered on the merits of a protest provided that a party has not filed a notice of appeal.
[22.600.3.23 NMAC - N, 2/1/2018]

22.600.3.24 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 in writing at least seven days before the scheduled hearing. Unless otherwise ordered by the hearing officer, the party requesting recording by an alternate 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. In the event of a videoconference hearing, only the audio portion of the recording shall be maintained as part of the record.
[22.600.3.24 NMAC - N, 2/1/2018]

22.600.3.25 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 allow any party to 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. The hearing officer may adopt the proposed findings in part, in whole, or may make his or her own findings. The period for preparing the final decision and order shall not commence until after the final pleadings, including any ordered briefings, findings of fact, or conclusions of law, are filed.
[22.600.3.25 NMAC - N, 2/1/2018]

22.600.3.26 DATE OF MAILING OR DELIVERY:

A. Use of the phrase "date of mailing or delivery" in Subsection 7-1-25A NMSA 1978 authorizes the administrative hearings office to choose between mailing and hand-delivering the written decision and order of the hearing officer.

B. "Date of mailing" means the time that the hearing officer's decision and order enclosed in properly addressed envelope or wrapper was postmarked by the U.S. postal service. "Delivery" means time of hand delivery of the written decision and order to the party's business residence.
[22.600.3.26 NMAC - N, 2/1/2018]

22.600.3.27 APPEALS:

A. Appeals of a final tax decision and order of the administrative hearings office are taken by filing a timely notice of appeal directly with the New Mexico court of appeals in accord with the New Mexico rules of appellate procedure. Writing or otherwise communicating to the administrative hearings office a general intent to appeal a final decision is insufficient to perfect an appeal of the case.

B. Upon filing the required docketing statement with the New Mexico court of appeals, the appellant shall serve a copy of the docketing statement with the administrative hearings office. The administrative hearings office will then prepare and file the record proper with the New Mexico court of appeals in accord with the New Mexico rules of appellate procedure, providing a copy to the appellant and the other party.

C. The administrative hearings office, as the adjudicative body, is not a party to the appeal and all requests for positions related to motions in the appeal should be addressed to the opposing party or where appropriate, to the relevant appellate court.
[22.600.3.27 NMAC - N, 2/1/2018]

HISTORY of 22.600.3 NMAC: [RESERVED]

ADMINISTRATIVE HEARING OFFICE

TITLE 22: COURTS
CHAPTER 600: ADMINISTRATIVE HEARINGS OFFICE
PART 6: IMPLIED CONSENT ACT LICENSE REVOCATION HEARINGS

22.600.6.1 ISSUING AGENCY: Administrative hearings office, Wendell Chino Building, 1220 South St. Francis Drive, P.O. Box 6400, Santa Fe, NM 87502.
[22.600.6.1 NMAC - N, 2/1/2018]

22.600.6.2 SCOPE: This part applies to all persons holding a New Mexico driver's license or driving on New Mexico roadways, their attorneys, MVD, and any person attending an Implied Consent Act violation hearing.
[22.600.6.2 NMAC - N, 2/1/2018]

22.600.6.3 STATUTORY AUTHORITY: Paragraph (1) of Subsection A of 7-1.B-5 NMSA 1978.
[22.600.6.3 NMAC - N, 2/1/2018]

22.600.6.4 DURATION: Permanent.
[22.600.6.4 NMAC - N, 2/1/2018]

22.600.6.5 EFFECTIVE DATE: February 1, 2018, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[22.600.6.5 NMAC - N, 2/1/2018]

22.600.6.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the hearing provisions under the Implied Consent Act and the Administrative Hearings Office Act.
[22.600.6.6 NMAC - N, 2/1/2018]

22.600.6.7 DEFINITIONS: As used in 22.600.5 NMAC:

A. "Administrative hearings office" is the agency established under Section 7-1B-1 NMSA 1978.

B. "Administrative hearings office facility" is an office facility owned or leased by the administrative hearings office.

C. "Chief hearing officer" is the appointed head of the administrative hearings office under the Administrative Hearings Office Act, Section 7-1B-3 NMSA 1978, or the chief hearing officer's designee during the absence of the chief hearing officer, or the acting, interim chief hearing officer pending appointment of that position.

D. "Driver" means the person challenging the proposed revocation of the person's driving privileges for an alleged Implied Consent Act violation.

E. "Hearing location" means an administrative hearings office facility or another state, county, municipal, or private office location where the administrative hearings office has arranged space to conduct a scheduled hearing or hearings.

F. "Hearing officer" is the attorney assigned by the chief hearing officer or designee of the chief hearing officer to serve as a neutral decision maker in any adjudicatory proceeding before the administrative hearings office. The person assigned as hearing officer must be licensed to practice law in New Mexico or eligible for temporary licensure to practice in New Mexico as determined by the New Mexico supreme court. The hearing officer may be a classified employee in the state personnel system with the administrative hearings office either as an attorney or administrative law judge, may be under contract with the administrative hearings office as a contract attorney, administrative law judge, or judge, or may be an attorney, administrative law judge, or judge serving in a voluntary capacity for the administrative hearings office.

G. "MVD" is the motor vehicle division of the New Mexico taxation and revenue department.

H. "Revocation" means the termination of a person's driver's license, permit or privilege to drive a motor vehicle upon a highway in New Mexico.
[22.600.6.7 NMAC - N, 2/1/2018]

22.600.6.8 REQUEST FOR IMPLIED CONSENT ACT HEARING AND SUBMISSION OF REFERRAL TO THE ADMINISTRATIVE HEARINGS OFFICE FOR CONDUCT OF A HEARING:

A. Requests for hearing must be in writing, must be accompanied by the required fee or statement of indigency as required by MVD, must be made within ten days after receipt of notification of revocation as defined in Section 66-8-112 NMSA 1978, and must be submitted to MVD. Incomplete requests or requests received after this time will not be honored by MVD. Timeliness of the request shall be determined either by the date of actual delivery to MVD'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. The administrative hearings office, which is a separate and distinct agency from MVD, lacks authority under the statute to accept a request for hearing directly from a driver. While the administrative hearings office will make reasonable efforts to forward any hearing requests incorrectly submitted to it rather than MVD to MVD, the administrative hearings office will not be held liable for the driver's initial error in filing the request with the wrong entity in terms of timeliness of the request for hearing.

B. Upon receipt of a timely, complete request for hearing and review of a notice of revocation demonstrating a prima facie showing of an Implied Consent Act violation, MVD shall promptly transmit, submit or file a referral for hearing to the administrative hearings office in a method and manner required by the administrative hearings office. At a minimum, any referral for hearing by MVD should include the driver's request for hearing, the notice of revocation and any supporting documentation attached thereto by the law enforcement officer, any proof of mailing or service of the notice of revocation if issued by MVD rather than the law enforcement officer, a list of witnesses that MVD wishes to have subpoenaed to the hearing, an entry of appearance if any of an attorney or officer or agent appearing on behalf of MVD, the driver's address of record with MVD if different than what was listed on the driver's request for hearing, and any entry of appearance filed by an attorney on behalf of the driver. Administrative hearings office staff may reject any hearing referral received from MVD that does not include the minimum requested information until MVD provides the required information.

C. After initial submission of a referral for hearing with the administrative hearings office, MVD shall have a continuing duty to forward any additional information received on the case to the administrative hearings office for inclusion in the case file, including but not limited to, any subsequent entry of appearance received from an attorney on behalf of a driver, any supplemental evidence received such as the results of a chemical test from the scientific laboratory division or foundational information related to such results, and any requests for discovery filed by a driver or the driver's representative.

D. Upon receipt of a complete referral for hearing, the chief hearing officer or staff designated by the chief hearing officer will promptly assign the matter to a hearing officer to be promptly heard at the appropriate place before expiration of any mandatory statutory deadline.
[22.600.6.8 NMAC - N, 2/1/2018]

22.600.6.9 REPRESENTATION AT HEARING, FORMAL ENTRY OF APPEARANCE/ SUBSTITUTION OF COUNSEL, AND WITHDRAWAL FROM REPRESENTATION:

A. Unless otherwise expressly authorized by law, only the driver, or in the case of a minor under the age of 18 the driver's legal parent(s) or guardian(s), or an attorney licensed or authorized to practice law in New Mexico may represent the driver at hearing. Any attorney not licensed to practice law in New Mexico must comply with applicable New Mexico supreme court pro hac vice rules in order to represent the person at the hearing.

B. Any attorney wishing to represent a party shall file a formal written entry of appearance directly with the administrative hearings office listing that attorney's mailing address, fax number (if any), and a valid email address. Any attorney wishing to substitute in for a previous attorney must file a substitution of counsel containing the same information required in the initial entry of appearance. Upon filing a withdrawal of representation with the administrative hearings office, consistent with the Rules of Professional Conduct, the attorney shall give reasonable notice of the date and time of the scheduled hearing to the party and allow time for the party to retain other counsel, if needed.

C. If an attorney attempts to withdraw from the case at the scheduled hearing, a hearing officer may deny a request for withdrawal of representation if such request would necessitate a continuance or otherwise have a clear, materially adverse effect on the party's interests and impede the conduct of a full, fair, and efficient hearing.
[22.600.6.9 NMAC - N, 2/1/2018]

22.600.6.10 TIME AND PLACE OF IMPLIED CONSENT ACT HEARING - HEARINGS IN PERSON OR BY TELEPHONIC, VIDEOCONFERENCE, AND ELECTRONIC HEARINGS:

A. The administrative hearings office will notify the driver or driver's counsel by certified mail of the date, time and place scheduled for the hearing. This notice will be directed to the address listed on the request for a hearing or, if no return address is indicated, to the address last given by the driver to MVD pursuant to Section 66-5-22 NMSA 1978 or to the address provided by driver's counsel in the entry of appearance. Such notice of hearing will be sent a minimum of seven calendar days before the scheduled hearing consistent with Section 66-2-11 NMSA 1978. A driver, or their representative, has a continuing, ongoing obligation through final issuance of a decision and order resolving the case to provide the administrative hearings office with any change of address information.

B. The hearing shall be held in the county in which the offense for which the person was arrested took place unless driver or driver's designated representative either consents to or requests to appear by telephone, videoconference or other equivalent electronic method.

C. The hearing officer may conduct the hearing in person or with consent by telephone, videoconference or other equivalent electronic method. If the hearing is to be conducted by telephone, videoconference or other equivalent electronic method, the notice shall so inform the driver or the driver's representative and provide no less than ten days for the driver or the driver's representative to object to the hearing being conducted in that manner. Failure to timely object to the conduct of a telephone, videoconference, or other equivalent electronic method hearing within the time frame specified by the notice shall be deemed consent to the hearing proceeding in that manner and waiver of any other applicable statutory in county hearing requirement.

D. Provided that the driver or driver's representative has not previously demanded an in-person hearing or otherwise objected to conducting the matter via telephone, videoconference, or other equivalent electronic method, a driver, a driver's representative, MVD's attorney, or any MVD witness may request to appear via telephone, videoconference, or alternative electronic means by filing a request at least three business days before the scheduled hearing, absent an extraordinary, unforeseen circumstance. The driver's or driver's representative filing of a request to appear via telephone, videoconference, or other alternative electronic method shall be deemed as a total and complete waiver of the in-person, in-county hearing requirement and further deemed as consent for all parties, all witnesses, and the hearing officer to appear at the hearing via telephone, videoconference, or other equivalent electronic methods or no such request will be granted. The assigned hearing officer, the chief hearing officer, or designated scheduling unit employee may grant or deny the request after considering whether a complete and accurate record can be made and a fair hearing can be conducted in the matter via telephone, videoconference or other equivalent electronic method. Even if the initial request is granted, the assigned hearing officer always retains the discretion at any point in the proceeding to order the appearance of the parties or witnesses in person if, in the hearing officer's determination, resolution of the disputed facts, evidence, credibility of a witness, law, and or development of a complete and accurate record requires it.

E. All parties

appearing via telephone, videoconference, or other electronic method shall provide the administrative hearings office with a working email address or facsimile number for the exchange of all documentary evidence before or during the hearing. Any other tangible exhibit introduced into the record at a remote hearing will be submitted for the record in accord with the order of the presiding hearing officer.

G. Failure to follow the administrative hearings office's instructions for participating in the hearing via telephone, videoconference, or other equivalent electronic method will be treated as a non-appearance at the hearing.

H. Any technical issues shall be promptly reported to the administrative hearings officer in accord with the instructions included on the notice of hearing.

I. In the event that technical or other equipment problems prevent the telephone or videoconference hearing from occurring or otherwise interferes with maintaining or developing a complete record at the hearing, the parties agree and consent that the assigned hearing officer at their discretion may continue the matter to a different time before expiration of the statutory deadline, may order the parties to appear for an in-person hearing, or may conduct the hearing via another equivalent electronic method.
[22.600.6.10 NMAC - N, 2/1/2018]

22.600.6.11 CONTINUANCES: At the request of the driver or the driver's representative, MVD or MVD's agent, any law enforcement officers subpoenaed as witnesses, or upon the hearing officer's own motion, the hearing officer may for good cause continue the hearing. Continuance requests shall be submitted to the administrative hearings office in writing prior to the scheduled hearing or on the record at the scheduled hearing. The hearing officer shall consider only those requests made in writing at least three working days prior to the scheduled hearing absent extraordinary circumstances that the requesting party could not have known earlier. Employees of the administrative hearings office scheduling unit or the chief hearing officer may grant or deny the request on behalf of the hearing officer. An order to grant or deny the request may be issued prior to the scheduled hearing or if there is insufficient time to issue an order prior to the scheduled hearing, the hearing officer may grant or deny the request on the record at the hearing. Regardless of the cited good cause or emergency circumstance supporting the continuance, no continuance request may be granted unless there is adequate time to provide notice to the parties, subpoena witnesses and conduct the rescheduled hearing within 90 days of the notice of revocation.
[22.600.6.11 NMAC - N, 2/1/2018]

22.600.6.12 IMPLIED CONSENT HEARINGS - SUBPOENAS FOR WITNESSES AND DOCUMENTS -ISSUANCE - COSTS:

A. With at least 10 days written notice, the administrative hearings office will subpoena any witness for testimony at the hearing that MVD has identified in its referral of the case including all law enforcement personnel identified on the notice of revocation, or any subsequent submission by MVD, and any relevant witness requested by driver or driver's representative in writing. Such subpoenas shall be served by personal service as provided by NMRA 1-045(c), by email, by mail, or by certified mail.

B. The driver or the driver's representative may make written application to MVD requesting that a subpoena be issued to compel the production of specific books, papers or other records. Such written application shall set forth reasons supporting the issuance of the subpoena, including establishing the relevancy of the proposed testimony or documents sought. MVD shall issue a discovery order to its witnesses in the matter, which the administrative hearings office may subsequently enforce. The driver or the driver's representative shall be responsible for the service of any such subpoenas on MVD's witness, and following up with MVD in the event of noncompliance with the subpoena. 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. Failure to comply with a diligently served subpoena, and subsequent follow up letter from MVD about the necessity for compliance with the subpoena, may be grounds to rescind the proposed revocation regardless of the merits of the case.

C. Other than crafting a remedy in the particular case before it appropriate for the failure to comply with a valid and reasonably executed subpoena, the administrative hearings office has no other subpoena enforcement powers.
[22.600.6.12 NMAC - N, 2/1/2018]

22.600.6.13 IMPLIED CONSENT HEARINGS - POWERS AND DUTIES OF HEARING OFFICER:

A. 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 schedule, continue and reschedule hearings;

(3) to rule upon offers of proof and receive evidence;

(4) to require the filings of briefs on specific legal issues prior to or after the hearing;

(5) to consider and rule upon procedural and other motions and objections appropriate in proceeding;

(6) to insure

that all, and only, relevant and material issues are considered during the hearing;

(7) to require the production or inspection of relevant documents and other items;

(8) to participate, when appropriate, in the examination of witnesses;

(9) to maintain a complete administrative hearing record;

(10) to issue orders and a written decision based on the record; or

(11) to take such other action as may be necessary and appropriate, consistent with legal authority vested in the administrative hearings office, and with the rules, regulations, standing orders, and policies of the administrative hearings office.

B. The hearing officer shall have full power to regulate the course, conduct, and decorum of the hearing, including of the parties, their representatives, and the witnesses therein. This power includes the authority to reprimand, or with warning in extreme instances exclude from the hearing, any person engaging in a continuing pattern of indecorous, obstinate, recalcitrant, obstreperous, unethical, unprofessional or improper conduct that interferes with the conduct of a fair and orderly hearing or development of a complete record.

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 taxation and revenue department or the department of finance and administration.

D. In the performance of these adjudicative functions, the hearing officer is prohibited from engaging in any improper ex parte communications about the substantive issues with any party on any matter, as addressed in regulation 22.600.2.16 NMAC. An improper ex parte communication occurs when the hearing officer discusses the substance of a case without the opposing party being present, except that it is not an improper ex parte communication for the hearing officer to go on the record with only one party when the other party has failed to appear at a scheduled hearing.

[22.600.6.13 NMAC - N, 2/1/2018]

22.600.6.14 IMPLIED CONSENT HEARINGS - PARTIES TO THE HEARING - PARTIES' RIGHTS: The parties to the hearing shall be MVD and the driver. The driver may be represented by an authorized attorney at their own expense, who can appear on the driver's behalf. MVD may also be represented by an attorney that has entered an appearance on its behalf. MVD may also designate the law enforcement officer that served the notice of revocation as its case agent for the purposes of the exclusionary rule and for the limited purposes of presenting testimony, exhibits, and making basic evidentiary objections regarding relevancy by filing a written designation before the scheduled hearing. The parties directly, or through an authorized attorney, shall be entitled to call and examine witnesses, to introduce exhibits, to cross-examine witnesses, and to make closing arguments. Rebuttal evidence and argument may only be allowed at the discretion of the hearing officer.

[22.600.6.14 NMAC - N, 2/1/2018]

22.600.6.15 IMPLIED CONSENT HEARINGS - 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. Hearsay evidence may be admitted in the proceeding.

C. The hearing officer may take notice of judicially or administrative cognizable facts and of general technical or scientific facts and of other facts within the hearing officer's specialized knowledge and experience in conducting Implied Consent Act hearings and in the workings of the administrative hearings office.

D. The experience, technical competence, and specialized knowledge of the hearing officer may be utilized in the evaluation of the evidence.

E. Parties objecting to evidence shall timely and briefly state the grounds for the objection. Rulings on evidentiary objections may be addressed on the record at the time of the objection, reserved for ruling in a subsequent written order or decision, or noted as a continuing, ongoing objection for which ruling is reserved to later in the proceeding.

F. Any party wishing to submit a video or audio recording into the record must provide a complete tangible, playable copy that can be retained by the administrative hearings office as part of the administrative record.

G. Documentary evidence may be received in evidence in the form of copies or excerpts. In general, documentary evidence should be no larger than 8.5 inches by 11 inches unless expressly allowed by the hearing officer.

H. In lieu of the introduction of tangible objects as exhibits, the hearing officer may require the moving party to submit a photograph, video, or other appropriate substitute such as verbal description of the pertinent characteristics of the object for the record.

[22.600.6.15 NMAC - N, 2/1/2018]

22.600.6.16 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 authorized representative attorney, and notice was given to the driver or to the driver's representative of the date, time, and place of the hearing, and no continuance has been granted, the right to a hearing shall be forfeited and the revocation shall be sustained. In considering

the non-appearance and whether the person received appropriate notice, the hearing officer may consider the contents of the administrative file, information conveyed to or known by administrative hearings office staff, information related to mailing, including mail tracking, returned receipt information, and notes written on returned envelopes of the United States postal service or other mail tracking services, and arguments offered by the present party, all of which shall be addressed on the record of the hearing or in any subsequent order. Oral rulings of default for failure to appear are not final until reduced to writing. Such rulings may be changed by written order as new information arises after the hearing related to whether the notice of hearing was properly sent to the correct address, such as but not limited to a returned envelope from the postal service received after the hearing date. If a driver waives the right to a hearing or withdraws the request for hearing, the right to a hearing shall be forfeited and the revocation shall be sustained.
[22.600.6.16 NMAC - N, 2/1/2018]

22.600.6.17 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, as interpreted by case law. Whether or not the person had a previous revocation under the Implied Consent Act is an issue determined by MVD, by its own review of its official records.
[22.600.6.17 NMAC - N, 2/1/2018]

22.600.6.18 IMPLIED CONSENT HEARINGS - HEARINGS OPEN TO PUBLIC: The hearing, including any continuations, shall be open to the public, except that the assigned hearing officer may take any actions within the hearing officer's power necessary to ensure a fair and orderly hearing process, including ordering any person, group of people, or member of the media who interferes with the conduct of a fair and orderly hearing process to leave the proceeding.
[22.600.6.18 NMAC - N, 2/1/2018]

22.600.6.19 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 except where the driver has withdrawn the driver's request for hearing or waived the driver's right to a hearing by failing to appear at the hearing.
[22.600.6.19 NMAC - N, 2/1/2018]

22.600.6.20 IMPLIED CONSENT HEARINGS - RECORD OF THE HEARING: Hearings shall be electronically recorded unless the hearing officer requires recording by stenographic, mechanical or other means. Any party is permitted to make their own recording of the proceeding by providing notice to the tribunal and opposing party at beginning of the hearing of their intent to do so. However, unless designated to the contrary by the presiding hearing officer, the recording of the administrative hearings office is the official record of the proceeding. In the event of a videoconference hearing, only the audio recording portion of the proceeding shall be maintained as part of the record.
[22.600.6.20 NMAC - N, 2/1/2018]

22.600.6.21 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.
[22.600.6.21 NMAC - N, 2/1/2018]

HISTORY of 22.600.6 NMAC: [RESERVED]

ADMINISTRATIVE HEARING OFFICE

TITLE 22: COURTS
CHAPTER 600: ADMINISTRATIVE HEARINGS OFFICE
PART 9: PARENTAL RESPONSIBILITY ACT HEARINGS

22.600.9.1 ISSUING AGENCY: Administrative Hearings Office, Wendell Chino Building, 1220 South St. Francis Drive, P.O. Box 6400, Santa Fe, NM 87502.
[22.600.9.1 NMAC - N, 2/1/2018]

22.600.9.2 SCOPE: This part applies to all persons and parties subject to driver's license suspension action pursuant to the New Mexico Parental Responsibility Act.
[22.600.9.2 NMAC - N, 2/1/2018]

22.600.9.3 STATUTORY AUTHORITY: Paragraph (1) of Subsection A of 7-1.B-5 NMSA 1978.
[22.600.9.3 NMAC - N, 2/1/2018]

22.600.9.4 DURATION: Permanent.
[22.600.9.4 NMAC - N, 2/1/2018]

22.600.9.5 EFFECTIVE DATE: February 1, 2018, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[22.600.9.5 NMAC - N, 2/1/2018]

22.600.9.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the hearing provisions under the Parental Responsibility Act and the Administrative Hearings Office Act.
[22.600.9.6 NMAC - N, 2/1/2018]

22.600.9.7 DEFINITIONS: As used in 22.600.5 NMAC:

A. "Administrative

hearings office" is the agency established under Section 7-1B-1 NMSA 1978.

B. "Certificate of compliance" means a certified statement from HSD stating that a licensee is in compliance with a judgment and order for support or in compliance with a subpoena or warrant relating to paternity or child support proceedings.

C. "Chief hearing officer" is the appointed head of the administrative hearings office under the Administrative Hearings Office Act, Section 7-1B-3 NMSA 1978, or the chief hearing officer's designee during the absence of the chief hearing officer, or the acting, interim chief hearing officer pending appointment of that position.

D. "Hearing officer" is the attorney assigned by the chief hearing officer or designee of the chief hearing officer to serve as a neutral decision maker in any adjudicatory proceeding before the administrative hearings office. The person assigned as hearing officer must be licensed to practice law in New Mexico or eligible for temporary licensure to practice in New Mexico as determined by the New Mexico supreme court. The hearing officer may be a classified employee in the state personnel system with the administrative hearings office either as an attorney or administrative law judge, may be under contract with the administrative hearings office as a contract attorney, administrative law judge, or judge, or may be an attorney, administrative law judge, or judge serving in a voluntary capacity for the administrative hearings office.

E. "HSD" means the child support enforcement division of the New Mexico human services department.

F. "License" means an individual driver's license or a commercial driver's license.

G. "Licensee" means the person challenging the proposed suspension of their driving privileges for an alleged violation of the Parental Responsibility Act.

H. "MVD" is the motor vehicle division of the New Mexico taxation and revenue department.

I. "Notice of intent to suspend driver's license and right to a hearing" means a written statement that MVD intends to suspend or not renew a driver's license, the basis for the proposed suspension, and the process afforded a licensee by MVD or HSD.
[22.600.9.7 NMAC - N, 2/1/2018]

22.600.9.8 REQUEST FOR HEARING AND SUBMISSION OF REFERRAL TO THE ADMINISTRATIVE HEARINGS OFFICE FOR CONDUCT OF A HEARING:

A. Requests for hearing from a licensee must be submitted to MVD within 30 days from the date notice of intent to suspend driver's license and right to a hearing was mailed. The request may be mailed to parental responsibility hearings, P.O. Box 630, Santa Fe, New Mexico 87504-0630, or delivered in person to the legal services bureau, Joseph M. Montoya building, 1100 S. St. Francis Drive, Suite 1100, Santa Fe, New Mexico. Incomplete requests or requests received after this time will not be honored by MVD. Timeliness of the request shall be determined either by the date of actual delivery to MVD'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. The administrative hearings office, which is a separate and distinct agency from MVD, lacks authority under the statute to accept a request for hearing directly from a licensee. While the administrative hearings office will make reasonable efforts to forward any hearing requests incorrectly submitted to it rather than MVD, the administrative hearings officer will not be held liable for the licensee's initial error in filing the request with the wrong entity in terms of timeliness of the request for hearing.

B. Upon receipt of a timely, complete request for hearing, MVD shall promptly transmit, submit or file a referral for hearing to the administrative hearings office in a method and manner required by the administrative hearings office. At a minimum, any referral for hearing by MVD should include the notice of intent to suspend driver's license and right to a hearing, a copy of the controlling court order from HSD, licensee's request for hearing, the licensee's address of record with MVD if different than what was listed on the licensee's request for hearing, and any entry of appearance filed by an attorney on behalf of the licensee. Administrative hearings office staff may reject any hearing referral received from MVD that does not include the minimum requested information until MVD provides the required information.

C. After initial submission of a referral for hearing with the administrative hearings office, MVD shall have a continuing duty to forward any additional information received in the case to the administrative hearings office for inclusion in the case file, including but not limited to, any subsequent entry of appearance received from an attorney on behalf of a licensee, any supplemental evidence received, or any certificate of compliance issued in the case.

D. Upon receipt of a complete referral for hearing, the chief hearing officer or staff designated by the chief hearing officer will promptly assign the matter to a hearing officer to be heard.
[22.600.9.8 NMAC - N, 2/1/2018]

22.600.9.9 HEARINGS UNDER THE PARENTAL RESPONSIBILITY ACT:

A. The hearing shall be held within 90 days from the date of the referral of the case by MVD the administrative hearings office.

B. Because of the limited and simple issues involved in the proceeding, all license suspension hearings regarding the Parental Responsibility Act will be held by telephone unless the hearing officer, at their sole discretion, determines that an in-person hearing is required.

C. The administrative hearings office shall provide notice to the licensee and HSD of the hearing date and time.

(1) This notice will be directed to the address contained in the request for a hearing or, if no return address is indicated, to the address last given by the licensee to MVD pursuant to Section 66-5-22 NMSA 1978 or to the address provided by licensee's counsel in the entry of appearance. Such notice of hearing will be sent a minimum of seven calendar days before the scheduled hearing consistent with Section 66-2-11 NMSA 1978. A licensee, or their representative, has a continuing, ongoing obligation through final issuance of a decision and order resolving the case to provide the administrative hearings office with any change of address information.

(2) HSD shall designate one person to receive all notices of hearing pursuant to the Parental Responsibility Act. The notice shall be mailed to HSD at the address and to the attention of the person designated by HSD. HSD shall be responsible for ensuring the appearance of HSD's witnesses at the hearing. HSD shall immediately inform the administrative hearings office of any change in the designated person or address.

D. Only the licensee, or in the case of a minor under the age of 18, the licensee's legal parent(s) or guardian(s), or an attorney licensed or authorized to practice law in New Mexico may represent the licensee at hearing. In order to prevent the unauthorized practice of law, any attorney not licensed to practice law in New Mexico must comply with applicable New Mexico supreme court pro hac vice rules in order to represent the person at the hearing. Any attorney wishing to represent a party must file a formal written entry of appearance directly with the administrative hearings office listing their mailing address, a fax number (if any), and a valid email address. Any attorney wishing to substitute for a previous attorney must file a substitution of counsel containing the same information required in the initial entry of appearance. Upon withdrawal of representation, consistent with the rules of professional conduct, the attorney shall give reasonable notice of the date and time of the scheduled hearing to the party and allow time for the party to retain other counsel, if needed. A hearing officer may deny a request for withdrawal of representation only when withdrawal would have a clear, materially adverse effect on the party's interests and impede the conduct of a full, fair, and efficient hearing.

E. Hearings shall be closed to the public except upon request of the licensee.

F. At request of either party, or upon the hearing officer's own initiative, hearings may be postponed or continued at the discretion of the hearing officer and upon a showing of good cause. The hearing officer shall consider only those requests made in writing at least three working days prior to the scheduled hearing absent extraordinary circumstances that the requesting party could not have known earlier. Employees of the administrative hearings office scheduling unit or the chief hearing officer may grant or deny the request on behalf of the hearing officer.

G. In all hearings before the hearing officer, the technical rules of evidence shall not apply, but in ruling on the admissibility of evidence, the hearing officer may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt. Hearsay evidence may be considered and admitted into the record.

H. In hearings before the hearing officer, the rules of civil procedure for the district courts shall not apply, but the hearing shall be conducted so that both complaints and defenses are fairly presented. To this end, the hearing officer shall hear arguments, permit discovery, entertain and dispose of motions, or require written expositions of the case as the circumstances justify, and shall render a decision according to the law and the evidence presented and admitted.

I. The hearing officer shall make and preserve a record of the proceedings.

J. Failure of a licensee to appear shall be treated as an abandonment of the right to a hearing and shall result in the suspension of the licensee's driving privileges.

K. A certificate of compliance applicable to the order for support in dispute issued to the licensee within 30 days of the scheduled hearing shall be presumptive proof that the licensee is in compliance. HSD may present evidence to rebut the presumption.

L. The hearing officer, within 30 days of the hearing, shall issue a decision granting or denying the relief requested or granting such part thereof as seems appropriate and shall inform the party's of the right to and the requirements for perfection of, an appeal to the district court and of the consequences of a failure to appeal.

[22.600.9.9 NMAC - N, 2/1/2018]

22.600.9.10 ISSUES: The issues to be decided at the hearing are limited to whether:

A. the licensee is in compliance with a judgment and order for support;

B. the licensee is in compliance with a subpoena or warrants relating to paternity or child support proceedings; or

C. the licensee is the person whose name appears on the certified list sent to MVD from HSD.

[22.600.9.10 NMAC - N, 2/1/2018]

22.600.9.11 EVIDENCE AND PROOF:

A. In any hearing under this part, relevant evidence shall be limited to the following:

(1) a valid certificate of compliance, if one has been issued between the date of the notice and the hearing date;

(2) evidence of compliance or non-compliance with a judgment or order

of support, subpoena or warrant relating to paternity or child support proceedings;

(3) evidence that the licensee is not the same person as the person whose name appears on the certified list of obligors sent to MVD by HSD; and

(4) a copy of the relevant judgment or order of support, subpoena, or warranted to paternity or child support proceedings.

B. In lieu of a hearing, a licensee may present a valid certificate of compliance to any MVD field office, pay all applicable fees and have the license reinstated. The administrative hearings office, upon receiving a certificate of compliance from HSD pertaining to a licensee whose hearing is still pending, shall issue an order dismissing the suspension and vacating the hearing.
[22.600.9.11 NMAC - N, 2/1/2018]

22.600.9.12 ORDER: An order entered solely because the licensee is not in compliance with the judgment and order for support or not in compliance with a subpoena or a warrant relating to paternity or child support proceedings, shall provide that the license is to be reinstated upon presentation of a subsequent certificate of compliance to MVD and payment of applicable fees. MVD may order additional reasonable conditions necessary to compel compliance with MVD requirements for reapplication or reinstatement of lapsed licenses.
[22.600.9.12 NMAC - N, 2/1/2018]

22.600.9.13 APPEALS: All appeals shall be filed in accordance with Section 39-1-1.1 NMSA 1978 and Rule 1-074 of the rules of civil procedure for the district courts.
[22.600.9.13 NMAC - N, 2/1/2018]

HISTORY of 22.600.9 NMAC:
[RESERVED]

GAME AND FISH, DEPARTMENT OF

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 30 WILDLIFE ADMINISTRATION
PART 17 PROCEDURAL RULE FOR PUBLIC RULE HEARINGS

19.30.17.1 ISSUING DEPARTMENT: New Mexico Department of Game and Fish.
[19.30.17.1 NMAC - N, 01/30/2018]

19.30.17.2 SCOPE: The state game commission and the department of game and fish.
[19.30.17.2 NMAC - N, 01/30/2018]

19.30.17.3 STATUTORY AUTHORITY: Section 14-4-5.8 NMSA 1978, Sections 17-1-14 and 17-1-26 NMSA 1978.
[19.30.17.3 NMAC - N, 01/30/2018]

19.30.17.4 DURATION: Permanent.
[19.30.17.4 NMAC - N, 01/30/2018]

19.30.17.5 EFFECTIVE DATE: January 30, 2018, unless a later date is cited in the history note at the end of a section.
[19.30.17.5 NMAC - N, 01/30/2018]

19.30.17.6 OBJECTIVE: To provide procedural rules for public rule hearings for use by the state game commission and the department of game and fish consistent with the State Rules Act, and to facilitate public engagement with the administrative rulemaking process in a transparent, organized, and fair manner.
[19.30.17.6 NMAC - N, 01/30/2018]

19.30.17.7 DEFINITIONS: This rule adopts the definitions found in Section 14-4-2 NMSA 1978 and the listing in this section.

A. "Commission" shall mean the New Mexico state game commission.

B. "Department" shall mean the New Mexico department of game and fish.
[19.30.17.7 NMAC - N, 01/30/2018]

19.30.17.8 INITIATION OF THE RULEMAKING PROCESS: The rulemaking process for purposes of this rule is initiated when the department publicly posts a notice for a rule hearing pursuant to Section 14-4-5.2 NMSA 1978.
[19.30.17.8 NMAC - N, 01/30/2018]

19.30.17.9 RULEMAKING NOTICE:

A. The department shall provide to the public notice of the proposed rulemaking as required by Section 14-4-5.2 NMSA 1978.

B. If the commission changes the date of the public rule hearing or shortens the deadline for submitting comments as stated in the notice, the department shall provide notice to the public of the change as provided above.
[19.30.17.9 NMAC - N, 01/30/2018]

19.30.17.10 WRITTEN COMMENT PERIOD:

A. The commission shall allow for public comment on the proposed rule as defined by Section 14-4-5.3 NMSA 1978.

B. The commission may decide before, during, or after the public rule hearing to extend the comment period by providing public notice, to include:

(1) posting on the department website;

(2) making it available by posting notice in a publicly visible location in department's headquarters and regional offices;

(3) sending notice by electronic mail to persons who have participated in the rulemaking proceeding or made a written request for notice of rulemaking proceedings and provided an electronic mail address to the department; and

(4) sending notice by regular mail to persons who have participated in the rulemaking proceeding or made a written request for notice of rulemaking proceeding

and provided a postal address and specifically requested notice by regular mail.
[19.30.17.10 NMAC - N, 01/30/2018]

19.30.17.11 PUBLIC HEARING:

A. Prior to adopting a proposed rule, the commission must hold a public rule hearing. The purpose of the public rule hearing is to provide all interested persons a reasonable opportunity to submit data, views or arguments orally or in writing on the proposed rule. The commission, at its sole discretion, may determine whether more than one hearing is necessary.

B. The chair of the commission may act as the hearing officer or designate a representative or hearing officer to preside over its public rule hearing. The hearing officer may ask questions and provide comments for clarification purposes only.

C. At the start of the hearing, any pre-filed exhibits should be introduced and admitted into the rulemaking record. Pre-filed exhibits should include: copies of the public notices of the rulemaking, including any lists of individuals to whom notice was mailed or sent electronically; copies of the proposed rule in underline and strikethrough format; and copies of any written comment submitted during the comment period prior to the rule hearing. Any written comments or other documents introduced during the hearing should be admitted into the record after being marked as an exhibit.

D. Individuals from the public wishing to provide comment or submit information at the rule hearing must state their name and any relevant affiliation for the record and be recognized before presenting by the individual presiding over the hearing. Any individual who provides information or public comment at the hearing may be questioned by the hearing officer, or other members of the commission.

E. The rule hearing shall be conducted in a fair and equitable manner. The hearing officer may determine the manner in which the hearing is conducted, but the hearing should be conducted in a simple and organized manner that facilitates public comment and a clear rulemaking record. The rules of evidence do not apply to public rule hearings and the hearing officer may, in the interest of efficiency, exclude or limit comment that is deemed irrelevant, redundant, or unduly repetitious.

F. The commission must hold the hearing in a venue that reasonably accommodates all interested persons who wish to participate or observe, and appropriate audio equipment should be secured to ensure all persons in attendance can hear the proceeding and be heard when presenting comment. Reasonable efforts shall be made to accommodate the use of audio and video recording devices.
[19.30.17.11 NMAC - N, 01/30/2018]

19.30.17.12 RULEMAKING RECORD AND ADOPTION OF RULE:

A. Once the rulemaking process has been initiated, the department shall maintain a record of the rulemaking proceeding as required in Section 14-4-5.4 NMSA 1978, and any written comment, document, or other exhibit entered into the record during the rule hearing shall be labeled clearly.

B. The adoption of the proposed rule shall occur during a public meeting. The adoption date of the proposed rule shall be the date of the public meeting at which the vote occurred, unless the commission directs that a written order be issued, in which case the adoption date shall be the date the written order is signed. The commission may provide reasoning for the adopted rule through comments or discussion during its meeting, or by providing a statement of reasons in a written order.

C. The commission, through the department, shall provide a concise explanatory statement per Section 14-4-5.5 within 15 days after the date of adoption.
[19.30.17.12 NMAC - N, 01/30/2018]

19.30.17.13 FILING AND PUBLICATION; EFFECTIVE DATE: Once the commission has adopted a rule(s), the department shall follow the procedures for final adoption as defined in Section 14-4-5 NMSA 1978.
[19.30.17.13 NMAC - N, 01/30/2018]

19.30.17.14 EMERGENCY RULES: The commission and department shall comply with the rulemaking procedures herein and the State Rules Act unless the commission or department finds that an emergency situation exists. The commission and the department shall adhere to Section 14-4-5.6 NMSA 1978, if the need for an emergency rule is determined.
[19.30.17.14 NMAC - N, 01/30/2018]

HISTORY OF 19.30.17 NMAC: [RESERVED]

HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.102.500 NMAC, Sections 5, 8 and 9, effective 2/01/2018.

8.102.500.5 EFFECTIVE DATE: July 1, 2001, unless a later date is cited at the end of a section.
[8.102.500.5 NMAC - Rp 8.102.500.5 NMAC, 07/01/2001; A/E, 10/01/2017; A, 2/01/2018]

8.102.500.8 GENERAL REQUIREMENTS:

A. Need determination process: Eligibility for NMW, state funded qualified aliens and EWP cash assistance based on need requires a finding that:

(1) the benefit group's countable gross monthly income does not exceed the gross income limit for the size of the benefit group;

(2) the benefit group's countable net income after all allowable deductions does not equal

or exceed the standard of need for the size of the benefit group;

(3) the countable resources owned by and available to the benefit group do not exceed the $1,500 liquid and $2,000 non-liquid resource limits;

(4) the benefit group is eligible for a cash assistance payment after subtracting from the standard of need the benefit group's countable income, and any payment sanctions or recoupments.

B. Gross income limits: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October

(2) The gross income limit for the size of the benefit group is as follows:

(a) one person [~~$842~~] $854

(b) two persons [~~$1,135~~] $1,151

(c) three persons [~~$1,428~~] $1,447

(d) four persons [~~$1,721~~] $1,743

(e) five persons [~~$2,015~~] $2,039

(f) six persons [~~$2,308~~] $2,335

(g) seven persons [~~$2,602~~] $2,631

(h) eight persons [~~$2,897~~] $2,927

(i) add [~~$295~~] $296 for each additional person.

C. Eligibility for support services only: Subject to the availability of state and federal funds, a benefit group that is not receiving cash assistance but has countable gross income that is less than one hundred percent of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services. The gross income guidelines for the size of the benefit group are as follows:

(1) one person [~~$990~~] $1,005

(2) two persons [~~$1,335~~] $1,354

(3) three persons [~~$1,680~~] $1,702

(4) four persons [~~$2,025~~] $2,050

(5) five persons [~~$2,370~~] $2,399

(6) six persons [~~$2,715~~] $2,747

(7) seven persons [~~$3,061~~] $3,095

(8) eight persons [~~$3,408~~] $3,444

(9) add [~~$347~~] $349 for each additional person.

D. Standard of need:

(1) The standard of need is based on the number of participants included in the benefit group and allows for a financial standard and basic needs.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and the participant's share of benefit group supplies.

(3) The financial standard includes approximately $91 per month for each participant in the benefit group.

(4) The standard of need for the NMW, state funded qualified aliens, and EWP cash assistance benefit group is:

(a) one person $266

(b) two persons $357

(c) three persons $447

(d) four persons $539

(e) five persons $630

(f) six persons $721

(g) seven persons $812

(h) eight persons $922

(i) add $91 for each additional person.

E. Special needs:

(1) Special clothing allowance: A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(a) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.

(b) The clothing allowance shall be allowed for each school-age child who is included in the NMW, TBP, state funded qualified aliens, or EWP cash assistance benefit group, subject to the availability of state or federal funds.

(c) The clothing allowance is not allowed in determining eligibility for NMW, TBP, state funded qualified aliens, or EWP cash assistance.

(2) Layette: A one-time layette allowance of $25 is allowed upon the birth of a child who is included in the benefit group. The allowance shall be authorized by no later than the end of the month following the month in which the child is born.

(3) Special circumstance: Dependent upon the availability of funds and in accordance with the federal act, the HSD secretary, may establish a separate, non-recurring, cash assistance program that may waive certain New Mexico Works Act requirements due to a specific situation. This cash assistance program shall not exceed a four month time period, and is not intended to meet recurrent or ongoing needs.

F. Non-inclusion of legal guardian in benefit group: Based on the availability of state and federal funds, the department may limit the eligibility of a benefit group due to the fact that a legal guardian is not included in the benefit group.

[8.102.500.8 NMAC - Rp 8.102.500.8 NMAC, 07/01/2001; A, 10/01/2001; A, 10/01/2002; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005;

A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 11/15/2007; A, 01/01/2008; A/E, 10/01/2008; A, 08/01/2009; A, 08/14/2009; A/E, 10/01/2009; A, 10/30/2009; A, 01/01/2011; A, 01/01/2011; A, 07/29/2011; A/E, 10/01//2011; A/E, 10/01/2012; A/E, 10/01/2013; A/E, 10/01/2014; A, 10/01/2015; A, 10/01/2016; A/E, 10/01/2017; A, 2/01/2018]

8.102.500.9 PROSPECTIVE BUDGETING:

A. Eligibility for cash assistance programs shall be determined prospectively. The benefit group must meet all eligibility criteria in the month following the month of disposition. Eligibility and amount of payment shall be determined prospectively for each month in the certification period.

B. [~~Semiannual~~] Simplified reporting: A benefit group subject to [~~semiannual~~] simplified reporting shall be subject to income methodology as specified in Subsection [~~H~~] E of 8.102.120.11 NMAC.

C. Changes in benefit group composition: A person added to the benefit group shall have eligibility determined prospectively beginning in the month following the month the report is made.

D. Anticipating income: In determining the benefit group's eligibility and benefit amount, the income already received and any income the benefit group expects to receive during the certification period shall be used.

(1) Income anticipated during the certification period shall be counted only in the month it is expected to be received, unless the income is averaged.

(2) Actual income shall be calculated by using the income already received and any other income that can reasonably be anticipated in the calendar month.

(3) If the amount of income or date of receipt is uncertain, the portion of the income that is uncertain shall not be counted.

(4) In cases where the receipt of income is reasonably certain but the amount may fluctuate, the income shall be averaged.

(5) Averaging is used to determine a monthly calculation when there is fluctuating income within the weekly, biweekly, or monthly pay period and to achieve a uniform amount for projecting.

E. Income received less frequently than monthly: The amount of monthly gross income that is received less frequently than monthly is determined by dividing the total income by the number of months the income is intended to cover. This includes, but is not limited to, income from sharecropping, farming, and self-employment. It includes contract income as well as income for a tenured teacher who may not actually have a contract.

F. Contract income: A benefit group that derives its annual income in a period of less than one year shall have that income averaged over a 12-month period, provided that the income is not received on an hourly or piecework basis.

G. Using exact income: Exact income, rather than averaged income, shall be used if:

(1) the benefit group has chosen not to average income;

(2) income is from a source terminated in the month of application;

(3) employment began in the application month and the income represents only a partial month;

(4) income is received more frequently than weekly.

H. Income projection: Earned income shall be anticipated as described below.

(1) Earned income shall be anticipated based on income received when the following criteria are met:

(a) the applicant and the caseworker are reasonably certain the income amounts received are indicative of future income and expected to continue during the certification; and

(b) the anticipated income is based on income received from any consecutive 30-day period that includes 30 days prior to the date of application through the date of timely disposition of the application.

(2) When the applicant and the caseworker determine that the income received is not indicative of future income that will be received during the certification period, a longer period of time may be used if it will provide a more accurate indicator of anticipated income.

(3) Provided the applicant and the caseworker are reasonably certain the income amounts are indicative of future income, the anticipated income shall be used for the month of application and the remaining months of the certification period.

I. Unearned income:

(1) Unearned income shall be anticipated based on income received when the following criteria are met:

(a) the applicant and the caseworker are reasonably certain the income amounts received are indicative of future income and expected to continue during the certification; and

(b) the anticipated income is based on income received from any consecutive 30-day period that includes 30 days prior to the date of application through the date of timely disposition of the application.

(2) When the applicant and the caseworker determine that the income received is not indicative of future income that will be received during the certification period, a longer period of time may be used if it will provide a more accurate indicator of anticipated income.

(3) Provided the applicant and the caseworker are reasonably certain the income amounts are indicative of future income, the anticipated income shall be used for the month of application and the remaining months of the

certification period.

J. Use of conversion factors: Whenever a full month's income is anticipated and is received on a weekly or biweekly basis, the income shall be converted to monthly amount as follows:

(1) income received on a weekly basis is averaged and multiplied by 4.0;

(2) income received on a biweekly basis is averaged and multiplied by 2.0;

(3) averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in $.50 or more are rounded up; amounts resulting in $.49 or lower are rounded down.

[8.102.500.9 NMAC - Rp 8.102.500.9 NMAC, 07/01/2001; A 02/14/2002; A, 01/01/2004; A, 11/15/2007; A, 04/01/2010; A/E, 10/01/2017; A, 2/01/2018]

HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.106.500 NMAC, Section 8, effective 2/01/2018.

8.106.500.8 GA - GENERAL REQUIREMENTS:

A. Limited state funds may result in a suspension or reduction in general assistance benefits without eligibility and need considered.

B. Need determination process: Eligibility for the GA program based on need requires a finding that the:

(1) countable resources owned by and available to the benefit group do not exceed either the $1,500 liquid or $2,000 non-liquid resource limit;

(2) benefit group's countable gross earned and unearned income does not equal or exceed eighty-five percent of the federal poverty guideline for the size of the benefit group; and

(3) benefit group's countable net income does not equal or exceed the standard of need for the size of the benefit group.

C. GA payment determination: The benefit group's cash assistance payment is determined after subtracting from the standard of need the benefit group's countable income and any payment sanctions or recoupments.

D. Gross income test: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October

(2) The gross income limit for the size of the benefit group is as follows:

	(a)
one person	[~~$842~~] $854
	(b)
two persons	[~~$1,135~~] $1,151
	(c)
three persons	[~~$1,428~~] $1,447
	(d)
four persons	[~~$1,721~~] $1,743
	(e)
five persons	[~~$2,015~~] $2,039
	(f)
six persons	[~~$2,308~~] $2,335
	(g)
seven persons	[~~$2,602~~] $2,631
	(h)
eight persons	[~~$2,897~~] $2,927
	(i)

add [~~$295~~] $296 for each additional person.

E. Standard of need:

(1) As published monthly by the department, the standard of need is an amount provided to each GA cash assistance benefit group on a monthly basis and is based on availability of state funds, the number of individuals included in the benefit group, number of cases, number of applications processed and approved, application approval rate, number of case closures, IAR caseload number and expenditures, and number of pending applications.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and an individual benefit group member's share of supplies.

(3) Notice: The department shall issue prior public notice identifying any change(s) to the standard of need amounts for the next quarter, as discussed at 8.106.630.11 NMAC.

F. Net income test: The total countable earned and unearned income of the benefit group after all allowable deductions cannot equal or exceed the standard of need for the size of the GA benefit group. After the countable net income is determined it is rounded down prior to the comparison of the household's income to the standard of need to determine the households monthly benefit amount.

G. Special clothing allowance for school-age dependent children: A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(1) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.

(2) The clothing allowance shall be allowed for each school-age child who is included in the GA cash assistance benefit group, subject to the availability of state or federal funds.

(3) The clothing allowance is not counted in determining eligibility for GA cash assistance.

H. Supplemental issuance: A one-time supplemental issuance may be distributed to recipients of GA for disabled adults based on the sole discretion of the secretary of the human services department and the availability of state funds.

(1) The one time supplemental issuance may be no more than the standard GA payment made during the month the GA payment was issued.

(2) To be

eligible to receive the one time supplement, a GA application must be active and determined eligible no later than the last day of the month in the month the one time supplement is issued.

[8.106.500.8 NMAC - N, 07/01/2004; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 01/01/2008; A, 06/16/2008; A/E, 10/01/2008; A, 07/01/2009; A/E, 10/01/2009; A, 10/30/2009; A, 12/01/2009; A, 01/01/2011; A, 07/29/2011; A/E, 10/01/2011; A/E, 10/01/2012; A, 07/01/2013; A/E, 10/01/2013; A/E, 10/01/2014; A, 10/01/2015; A, 10/01/2016; A/E, 10/01/2017; A, 2/01/2018]

HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.139.500 NMAC, Sections 8 and 10, effective 2/01/2018.

8.139.500.8 BASIS OF ISSUANCE:

A. Income standards: Determination of need in [~~the food stamp program~~] SNAP is based on federal guidelines. Participation in the program is limited to households whose income is determined to be a substantial limiting factor in permitting them to obtain a nutritious diet. The net and gross income eligibility standards are based on the federal income poverty levels established in the Community Services Block Grant Act [42 USC 9902(2)].

B. Gross income standards: The gross income eligibility standards for the 48 contiguous states, District of Columbia, Guam and the Virgin islands is one hundred thirty percent of the federal income poverty levels for the 48 states and the District of Columbia. One hundred thirty percent of the annual income poverty guidelines is divided by 12 to determine monthly gross income standards, rounding the results upward as necessary. For households larger than eight, the increment in the federal income poverty guidelines is multiplied by one hundred thirty percent, divided by 12, and the results rounded upward if necessary.

C. Net income standards: The net income eligibility standards for the 48 contiguous states, District of Columbia, Guam and the Virgin islands are the federal income poverty levels for the 48 contiguous states and the District of Columbia. The annual income poverty guidelines are divided by 12 to determine monthly net income eligibility standards, (results rounded upward if necessary). For households larger than eight, the increment in the federal income poverty guidelines is divided by 12, and the results rounded upward if necessary.

D. Yearly adjustment: Income eligibility limits are revised each October 1st to reflect the annual adjustment to the federal income poverty guidelines for the 48 contiguous states and the District of Columbia and can be found at https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information

[~~E. Issuance table:~~ ~~The issuance table lists applicable income guidelines used to determine SNAP eligibility based on household size. Some amounts are increased to meet the needs of certain categorically eligible households. Some of the net income amounts listed are higher than the income limits for some household sizes. Households not categorically eligible for SNAP benefits must have income below the appropriate gross income limit for household size.~~

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Continued on the following page

~~Household Size~~	~~Maximum Gross Monthly Income Categorical Eligibility at 165% of Poverty~~	~~Maximum Gross Monthly Income At 130% of Poverty~~	~~Maximum Net Monthly Income At 100% of Poverty~~	~~Maximum SNAP Monthly Allotment~~
~~1~~	~~$1,634~~	~~$1,287~~	~~$990~~	~~$194~~
~~2~~	~~$2,203~~	~~$1,736~~	~~$1,335~~	~~$357~~
~~3~~	~~$2,772~~	~~$2,184~~	~~$1,680~~	~~$511~~
~~4~~	~~$3,342~~	~~$2,633~~	~~$2,025~~	~~$649~~
~~5~~	~~$3,911~~	~~$3,081~~	~~$2,370~~	~~$771~~
~~6~~	~~$4,480~~	~~$3,530~~	~~$2,715~~	~~$925~~
~~7~~	~~$5,051~~	~~$3,980~~	~~$3,061~~	~~$1,022~~
~~8~~	~~$5,623~~	~~$4,430~~	~~$3,408~~	~~$1,169~~
~~$ Each Additional Member~~	~~+$572~~	~~+$451~~	~~+$347~~	~~+$146~~]

[~~F.~~] E. Deductions and standards:

(1) Determination: Expense and standard deduction amounts are determined by federal guidelines and may be adjusted each year. Households eligible based on income and resource guidelines, and other relevant eligibility factors, are allowed certain deductions to determine countable income.

(2) Yearly adjustment: The expense and standard deductions may change each year. If federal guidelines mandate a change, it is effective each October 1st, and can be found at https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information and http://www.hsd.state.nm.us/LookingForInformation/Federal_Poverty_Level_Guidelines.aspx

[~~**(3) Expense deductions and standards table:**~~

~~Standard Deduction for Household Size of 1 through 3~~ ~~Standard Deduction for Household of 4~~ ~~Standard Deduction for Household Size of 5~~ ~~Standard Deduction for Household Size of 6 or more~~	~~$157~~ ~~$168~~ ~~$197~~ ~~$226~~
~~Earned Income Deduction (EID)~~	~~20%~~
~~Dependent Care Deduction~~	~~Actual Amount~~
~~Heating/Cooling Standard Utility Allowance (HCSUA)~~ ~~Limited Utility Allowance (LUA)~~ ~~Telephone Standard (TS)~~	~~$325~~ ~~$125~~ ~~$40~~
~~Excess Shelter Cost Deduction Limit for Non-Elderly/Non-Disabled Households~~	~~$517~~
~~Homeless Household Shelter Standard~~	~~$143~~
~~Minimum Allotment for Eligible One and Two-Person Households~~	~~$16~~]

[02/1/95, 10/01/95, 02/29/96, 10/01/96, 3/15/97, 01/15/98, 11/15/98, 12/15/99, 01/01/01, 03/01/01; 8.139.500.8 NMAC - Rn, 8 NMAC 3.FSP.501, 05/15/2001; A, 10/01/2001; A, 10/01/2002, A, 09/01/2003; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A/E, 10/01/2006; A/E, 10/01/2007; A/E, 10/01/2008; A/E, 04/01/2009; A/E, 10/01/2009; A, 10/30/2009; A, 04/01/2010; A/E, 10/01/2010; A/E, 10/01/2011; A/E, 10/01/2012; A/E, 10/01/2013; A/E, 10/01/2014; A, 04/16/2015; A, 10/01/2015; A, 10/01/2016; A/E, 10/01/2017; A, 2/01/2018]

8.139.500.10 DETERMINING INCOME:

A. Anticipating income: In determining a household's eligibility and SNAP benefit amount [~~the caseworker~~] ISD shall use income already received by the household during the certification period and any income the household and [~~the caseworker~~] ISD are reasonably certain shall be received during the remainder of the certification period.

(1) If the amount of income or date of receipt is uncertain, that portion of the household's income that is uncertain shall not be counted.

(2) If the exact amount of the income is not known, that portion of the income which can be anticipated with reasonable certainty shall be considered income.

(3) In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, a household may choose to average its income.

B. Income received during any past 30-day consecutive period that includes 30 days prior to the date of application through the date of timely disposition shall be used as an indicator of the income that is and shall be available to the household during the certification period.

(1) Past income is not used as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated during the certification period.

(2) If income fluctuates to the extent that a single four-week period does not provide an accurate indication of anticipated income, a longer period of past time can be used if it gives a more accurate indication of anticipated fluctuations in income.

(3) Income already received is not used and verification is obtained from the income source, if the household and [~~the caseworker~~] ISD decide that income already received by the household is not indicative of income expected to be received in future months.

C. Simplified reporting: A household filing an interim report form is subject to the income methodology specified at 8.139.500.9 NMAC.

D. Income anticipated during the certification period shall be counted only in the month it is expected to be received, unless the income is averaged.

E. Use of conversion factors: Whenever a full month's income is anticipated and is received on a weekly or biweekly basis, the income shall be converted to monthly amount as follows:

(1) income received on a weekly basis is averaged and multiplied by four;

(2) income received on a biweekly basis is averaged and multiplied by two;

(3) averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in $.50 or more are rounded up; amounts resulting in $.49 or lower are rounded down.

F. Held wages:

(1) Wages withheld at the request of an employee shall be considered income to a household in the month the wages would otherwise have been paid by the employer.

(2) Wages withheld by the employer as a general practice, even in violation of the law, shall not be counted as income to a household, unless the household anticipates that it will ask for and receive an advance.

(3) If a household anticipates asking for and receiving income from wages that were previously withheld by the employer as a general practice, the income shall be counted to determine eligibility.

G. Earned income:

(1) Earned income shall be anticipated based on income received when the following criteria are met:

(a) the applicant and [~~the caseworker~~] ISD are reasonably certain the income amounts received are indicative of future income and expected to continue during the certification period; and

(b) the anticipated income is based on income received from any consecutive past 30-day period that includes 30 days prior to the date of application through the date of timely disposition of the application.

(2) When the applicant and [~~the caseworker~~] ISD determine that the income received is not indicative of future income that will be received during the certification period, a longer period of time may be used if it will provide a more accurate indicator of anticipated income.

(3) Provided the applicant and [~~the caseworker~~] ISD are reasonably certain the income amounts are indicative of future income, the anticipated income shall be used for the month of application and the remaining months of the certification period.

H. Unearned income:

(1) Unearned income shall be anticipated based on income received when the following criteria are met:

(a) the applicant and [~~the caseworker~~] ISD are reasonably certain the income amounts received are indicative of future income and expected to continue during the certification; and

(b) the anticipated income is based on income received from any consecutive past 30-day period that includes 30 days prior to the date of application through the date of timely disposition of the application.

(2) When the applicant and [~~the caseworker~~] ISD determine that the income received is not indicative of future income that will be received during the certification period, a longer period of time may be used if it will provide a more accurate indicator of anticipated income.

(3) Provided the applicant and [~~the caseworker~~] ISD are reasonably certain the income amounts are indicative of future income, the anticipated income shall be used for the month of application and the remaining months of the certification period.

(4) Households receiving state or federal assistance payments, such as Title IV-A, GA, SSI or social security payments on a recurring monthly basis are not considered to have varied monthly income from these sources simply because mailing cycles may cause two payments to be received in one month.

I. Income received more frequently than weekly: The amount of monthly gross income paid more frequently than weekly (i.e., daily) is determined by adding

all the income received during the past four weeks. The gross income amount is used to anticipate income in the application month and the remainder of the certification period. Conversion factors shall not be applied to this income.

J. Income received less frequently than monthly: The amount of monthly gross income paid less frequently than monthly is determined by dividing the total income by the number of months it is intended to cover. [~~The caseworker~~] ISD shall carefully explain to the household how the monthly income was computed and what changes might result in a reportable change. Documentation shall be filed in the case record to establish clearly how the anticipated income was computed.

K. Use of conversion factors: Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the income shall be converted to monthly amount as follows:

(1) income received on a weekly basis is averaged and multiplied by four;

(2) income received on a biweekly basis is averaged and multiplied by two;

(3) averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in $.50 or more are rounded up; amounts resulting in $.49 or lower are rounded down.

L. Known changes in income for future months at application:

(1) At application or recertification, it shall be determined if any factors affecting income will change in future months. Such factors include a new income source, termination of income, or increases or decreases in income.

(2) Income is considered only when the amount of the income and the date it will be received are reasonably certain.

(3) In the event that a change is known for future months, benefits are computed by taking into account the change in income.

M. Averaging income over the certification period:

(1) All households may choose to have their income averaged. Income is usually not averaged for destitute households because averaging would result in assigning to the month of application income from future periods which is not available for its current food needs.

(2) To average income, [~~the caseworker~~] ISD uses a household's anticipation of income fluctuations over the certification period. The number of months used to arrive at the average income need not be the same as the number of months in the certification period.

(3) Contract income: Households which, by contract, derive their annual income in a period of less than one year shall have that income averaged over a 12-month period, provided that the income is not received on an hourly or piecework basis.

(a) Contract income includes income for school employees, farmers, self-employed households, and individuals who receive annual payments from the sale of real estate.

(b) These procedures do not include migrant or seasonal farm worker households.

(4) Educational monies: Households receiving scholarships, deferred educational loans, or other educational grants shall have such income, after exclusions, averaged over the period for which it is provided. All months which the income is intended to cover shall be used to average income, even if the income is received during the certification period. If the period has elapsed completely, the educational monies shall not be considered income.

N. Using exact income: Exact income, rather than averaged income, shall be used if:

(1) the household has chosen not to average income;

(2) income is from a source terminated in the application month;

(3) employment has just begun in the application month and the income represents only a partial month;

(4) in the month of application, the household qualifies for expedited service or is considered a destitute, migrant or seasonal farm worker household; or

(5) income is received more frequently than weekly, (i.e., daily).

[02/01/95, 11/01/95, 07/01/97, 06/01/99; 8.139.500.10 NMAC - Rn, 8 NMAC 3.FSP.502.7, 05/15/2001; A, 02/14/2002; A, 01/01/2004; A, 08/30/2007; A, 04/01/2010; A, 09/01/2017; A/E, 10/01/2017; A, 2/01/2018]

HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.139.510 NMAC, Sections 5 and 8, effective 2/01/2018.

8.139.510.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section.

[02/01/95; 8.139.510.5 NMAC - Rn, 8 NMAC 3.FSP.000.5, 05/15/2001; A/E, 10/01/2017; A, 2/01/2018]

8.139.510.8 RESOURCE ELIGIBILITY STANDARDS:

A. [~~The maximum allowable resources, including both liquid and non-liquid assets, of all members of a household cannot exceed:~~] The maximum allowable resources for a household, including both liquid and non-liquid assets are revised and adjusted each year in October and can be found at https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information

[~~**(1)** $2,250; or~~

~~**(2)** $3,250 for households consisting of or including a member who is elderly or disabled as defined at Paragraph (28) of~~

~~Subsection A of 8.139.100.7 NMAC.~~]

B. The value of a nonexempt resource is its equity value. Equity value is the fair market value less encumbrances. The value of stocks and bonds, such as U.S. savings bonds, is their cash value, not their face value.

C. It is a household's responsibility to report all resources held at the time of application and any anticipated to be received, or that are later received during the certification period, that might place the household's resources above the maximum allowed.

D. Categorically eligible households: Households that are categorically eligible do not need to meet the resource limits or provisions of this section.

E. Sponsored aliens: For households containing sponsored aliens, a prorated amount of the countable resources of an alien's sponsor and sponsor's spouse (if living with the sponsor) are deemed to be those of the sponsored alien, in accordance with sponsored alien provisions in 8.139.420.9 NMAC.

F. Non-household members: The resources of non-household members, defined in 8.139.400.10 NMAC shall not be considered available to the household.

G. Resources of ineligible or disqualified household members: The resources of ineligible or disqualified household members shall be counted as available to the household in their entirety. If a resource exclusion applies to a household member, the exclusion shall also apply to the resources of an ineligible or disqualified person whose resources are counted as available to the household. [02/01/95, 07/01/97, 07/01/98, 06/01/99; 8.139.510.8 NMAC - Rn, 8 NMAC 3.FSP.510, 05/15/2001; A, 02/01/2002; A, 10/01/2002; A, 04/01/2010; A/E, 03/01/2015; A/E, 10/01/2017; A, 2/01/2018]

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an emergency amendment to 8.200.410 NMAC, Section 11, effective 1/18/2018.

8.200.410.11 CITIZENSHIP: To be eligible for medicaid, an individual must be a citizen of the United States; United States national or a non-citizen who meets the requirements set forth in either Subsection A or B of 8.200.410.11 NMAC.

A. Non-citizens who entered the United States prior to August 22, 1996: Non-citizens who entered the United States prior to August 22, 1996, will not be subject to the five-year bar for purposes of medicaid eligibility. These classes of non-citizens are as follows.

(1) Qualified non-citizens who entered the United States prior to August 22, 1996, and obtained their qualified non-citizen status prior to that date, are eligible for medicaid without the 5 year waiting period.

(2) Non-citizens who entered the United States prior to August 22, 1996, and remained continuously present in the United States until the date they obtained qualified non-citizen status on or after August 22, 1996; any single absence from the United States of more than 30 days, or a total aggregate of absences of more than 90 days, is considered to interrupt "continuous presence".

(3) Lawful Permanent Residents (LPRs) are qualified non-citizens per 8 USC 1641.

(4) Non-citizens lawfully admitted for permanent residence or are permanently residing in the United States under color of law as follows:

(a) the individual may be eligible for medicaid if the individual is a non-citizen residing in the United States with the knowledge and permission of the United States immigration and customs enforcement (ICE) and ICE does not contemplate enforcing the non-citizens departure; ICE does not contemplate enforcing a non-citizens departure if it is the policy or practice of ICE not to enforce the departure of non-citizens in the same category, or if from all the facts and circumstances in a particular case it appears that ICE is otherwise permitting the non-citizen to reside in the United States indefinitely, as determined by verifying the non-citizens status with ICE;

(b) non-citizens who are permanently residing in the United States under color of law are listed below; none of the categories include applicants for a non-citizen status other than those applicants listed in item (vi) or (xvi) of this Subparagraph; none of the categories allow medicaid eligibility for non-immigrants; for example, students or visitors; also listed are the most commonly used documents that ICE provides to non-citizens in these categories:

(i) non-citizens admitted to the United States pursuant to 8 U.S.C. 1153(a)(7) (Section 203(a)(7) of the Immigration and Nationality Act); ask for a copy of ICE Form I-94 endorsed "refugee-conditional entry";

(ii) non-citizens, including Cuban/Haitian entrants, paroled in the United States pursuant to 8 U.S.C. 1182(d)(5)(Section 212(d)(5) of the Immigration and Nationality Act; for Cuban/Haitian entrant (Status Pending) reviewable January 15, 1981; (although the forms bear this notation, Cuban/Haitian entrants are admitted under Section 212(d)(5) of the Immigration and Nationality Act);

(iii) non-citizens residing in the United States pursuant to an indefinite stay of deportation; ask for an immigration and naturalization services letter with this information or ICE Form I-94 clearly stated that voluntary departure has been granted for an indefinite period of time;

(iv)

non-citizens residing in the United States pursuant to an indefinite voluntary departure; ask for an immigration and naturalization services letter or ICE Form I-94 showing that voluntary departure has been granted for an indefinite time period;

(v) non-citizens on whose behalf an immediate relative petition has been approved and their families covered by the petition who are entitled to voluntary departure (under 8 CFR 242.5(a)(2)(vi)) and whose departure ICE does not contemplate enforcing; ask for a copy of ICE Form I-94 or Form I-210 or a letter clearly stating that status;

(vi) non-citizens who have filed applications for adjustment of status pursuant to Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) that ICE has accepted as properly filed (within the meaning of 8 CFR 245.2(a)(1) or (2)) and whose departure ICE does not contemplate enforcing; ask for a copy of ICE Form I-94 or I-181 or a passport appropriately stamped;

(vii) non-citizens granted stays of deportation by court order, statute, or regulation, or by individual determination of ICE pursuant to Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105 (a)) or relevant ICE instructions, whose departure that agency does not contemplate enforcing; ask for a copy of ICE Form I-94 or a letter from ICE, or a copy of a court order establishing the non-citizens status;

(viii) non-citizens granted asylum pursuant to Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158); ask for a copy of ICE Form I-94 and a letter establishing this status;

(ix) non-citizens admitted as refugees pursuant to Section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or Section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)); ask for a copy of ICE Form I-94 properly endorsed;

(x) non-citizens granted voluntary departure pursuant to Section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) or 8 CFR 242.5 whose departure ICE does not contemplate enforcing; ask for a Form I-94 or Form I-210 bearing a departure date;

(xi) non-citizens granted deferred action status pursuant to Immigration and Naturalization Service Operations Instruction 103.1(a)(ii) prior to June 15, 1984 or 242.1(a)(22) issued June 15, 1984 and later; ask for a copy for ICE Form I-210 or a letter showing that departure has been deferred;

(xii) non-citizens residing in the United States under orders of supervision pursuant to Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252(d)); ask for a copy of Form I-220 B;

(xiii) non-citizens who have entered and continuously resided in the United States since before January 1, 1972, (or any date established by Section 249 of the Immigration and Nationality Act,8 U.S.C. 1259); ask for any proof establishing this entry and continuous residence;

(xiv) non-citizens granted suspension for deportation pursuant to Section 244 of the Immigration and Nationality Act (8 U.S.C. 1254) and whose departure ICE does not contemplate enforcing; ask for an order from an immigration judge showing that deportation has been withheld;

(xv) non-citizens whose deportation has been withheld pursuant to Section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)); ask for an order from an immigration judge showing that deportation has been withheld;

(xvi) any other non-citizens living in the United States with the knowledge and permission of the immigration and naturalization service and whose departure the agency does not contemplate enforcing (including permanent non-immigrants as established by Public Law 99-239, and persons granted extended voluntary departure due to conditions in the non-citizens home country based on a determination by the secretary of state).

B. Qualified non-citizens who entered the United States on or after August 22, 1996:

(1) Qualified non-citizens who entered the United States on or after August 22, 1996, are barred from medicaid eligibility for a period of five years, other than emergency services (under Category 085), unless meeting an exception below. LPRs who adjust from a status exempt from the five-year bar are not subject to the five-year bar. The five-year bar begins on the date the non-citizen obtained qualified status. The following classes of qualified non-citizens are exempt from the five-year bar:

(a) a non-citizen admitted to the United States as a refugee under Section 207 of the Immigration and Nationality Act;

(b) a non-citizen granted asylum under Section 208 of the Immigration and Nationality Act;

(c) a non-citizen whose deportation is withheld under Section 243(h) of the Immigration and Nationality Act;

(d) a non-citizen who is lawfully residing in the state and who is a veteran with an honorable discharge not on account of non-citizen status; is on active duty other than on active duty for training, in the armed forces of the United States; or the spouse or unmarried dependent child under the age of 18 of such veteran or active duty non-citizen;

(e) a non-citizen who was granted status as a Cuban and Haitian entrant, as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;

(f) a non-citizen granted Amerasian immigrant status as defined

under Section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1988;

(g)
victims of a severe form of trafficking, in accordance with Section 107(b)(1) of the Trafficking Victims Protection Act of 2000, P.L. 106-386;

(h)
members of a federally recognized Indian tribe, as defined in 25 U.S.C. 450b(e);

(i)
American Indians born in Canada to whom Section 289 of the Immigration and Nationality Act applies;

(j)
Afghan and Iraqi special immigrants under Section 8120 of Pub. L. 111-118 of the Department of Defense Appropriations Act, 2010; [~~and~~]

(k)
[~~Non~~] non-citizens receiving SSI.; and

(l)
battered non-citizens who meet the conditions set forth in Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) as added by Section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208 (IIRIRA), and amended by Section 5571 of the Balanced Budget Act of 1997, P.L. 105-33 (BBA), and Section 1508 of the Violence Against Women Act of 200, P.L. 106-386; Section 431(c) of PRWORA, as amended, is codified at 8 USC 1641(c).

(2)
Qualified non-citizen: A "qualified non-citizen", for purposes of this regulation, is a non-citizen, who at the time the non-citizen applies for, receives, or attempts to receive a federal public benefit, is:

(a) a non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act;

[~~(a)~~] (b)
a non-citizen who is granted asylum under Section 208 of such act; or

[~~(b)~~] **(c)** a refugee who is admitted to the United States under Section 207 of the act; or

[~~(c)~~] **(d)**
an Amerasian who is admitted to the United States under Section 207 of the act; or

[~~(d)~~] **(e)**
a non-citizen who is paroled into the United States under Section 212(d)(5) of such act for a period of at least one year; or

[~~(e)~~] **(f)**
a non-citizen whose deportation is being withheld under Section 243(h) of such act or under Section 241(b)(3); or

[~~(f)~~] **(g)** a non-citizen who is granted conditional entry pursuant to 203(a)(7) or such act as in effect prior to April 1, 1980; or

[~~(g)~~] **(h)** a non-citizen who is a Cuban or Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980); or

[~~(h)~~] **(i)** [~~a non-citizen, per 8 USC 1641(c), who has been battered per 8 USC 1641(c) or subject to extreme cruelty in the United States by a spouse or a parent or by a member of the spouse's or parent's family who is residing in the same household as the non-citizen; but only after having resided in the United States for at least five calendar years from the date the non-citizen obtained qualified status. The child or children of a battered non-citizen meeting these requirements are also eligible.~~] certain battered women and non-citizen children of battered parents (only those who have begun the process of becoming a lawful permanent resident under the Violence Against Women Act); or

[~~(i)~~] **(j)**
victims of a severe form of trafficking and their spouses, children, siblings, or parents; or

[~~(j)~~] **(k)**
members of a federally recognized Indian tribe, as defined in 25 U.S.C. 450b(e); or

[~~(k)~~] **(l)**
American Indians born in Canada to whom Section 289 of the Immigration and Nationality Act applies; or

[~~(l)~~] **(m)**
Afghan and Iraqi special immigrants under Section 8120 of Pub. L. 111-118 of the Department of Defense Appropriations Act, 2010.

(3) Children under age 21 and pregnant women exempt from the five year bar: As authorized by CHIPRA 2009 legislation, New Mexico medicaid allows lawfully residing children under age 21 and pregnant women, if otherwise eligible including meeting state residency and income requirements, to obtain medicaid coverage. Lawfully residing children under age 21 and pregnant women must meet the residency requirement as set forth in 8.200.410.12 NMAC. A child or pregnant woman is considered lawfully present if he or she is:

(a)
a qualified non-citizen as defined in Section 431 of PRWORA (8 USC Section 1641);

[~~(a)~~] **(b)**
a non-citizen in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission as defined under 8 USC 1101(a)(15);

[~~(b)~~] **(c)**
a non-citizen who has been paroled into the United States pursuant to Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. Section 1182(d)(5)) for less than one year, except for a non-citizen paroled for prosecution, for deferred inspection or pending removal proceedings;

[~~(c)~~] **(d)** a non-citizen who belongs to one of the following classes:

(i)
[~~aliens~~] non-citizens currently in temporary resident status pursuant to Section 210 or 245A of the Immigration and Nationality Act (8 U.S.C. Section1160 or 1255a, respectively);

(ii)
non-citizens currently under temporary protected status (TPS) pursuant to Section 244 of the Immigration and Nationality Act (8 U.S.C. Section 1254a), and pending applicants for TPS who have been granted employment authorization;

(iii)

non-citizens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);

(iv) family unity beneficiaries pursuant to Section 301 of Pub. L. 101-649, as amended;

(v) non-citizens currently under deferred enforced departure (DED) pursuant to a decision made by the president;

(vi) non-citizens currently in deferred action status except those with deferred action under "Defined Action for Childhood Arrivals" who are not considered lawfully present.

(vii) non-citizens whose visa petitions have been approved and who have a pending application for adjustment of status;

[~~(d)~~] (e) a non-citizen with pending applicants for asylum under Section 208(a) of the INA (8 U.S.C. Section 1158) or for withholding of removal under Section 241(b)(3) of the INA (8 U.S.C. Section 1231) or under the convention against torture who has been granted employment authorization, or is an applicant under the age of 14 and has had an application pending for at least 180 days;

[~~(e)~~] (f) non-citizens whose applications for withholding of removal under the convention against torture have been granted;

[~~(f)~~] (g) children who have pending applications for special immigrant juvenile status as described in Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. Section1101(a)(27)(J));

[~~(g)~~] (h) non-citizens who are lawfully present in the Commonwealth of the Northern Mariana Islands under 48 USC Section 1806(e);

[~~(h)~~] (i) non-citizens who are lawfully present in American Samoa under the immigration laws of American Samoa; or

[~~(i)~~] (j) victims of trafficking.

(4) Non-citizen sponsors (where an affidavit of sponsorship was executed pursuant to Section 213 of the Immigration and Nationality Act subsequent to August 22, 1996): The income and resources of a non-citizen sponsor, of any individual applying for medicaid, are deemed available to the applicant, when an affidavit of support is executed pursuant to Section 213 of the Immigration and Nationality Act, on or after August 22, 1996. This counting of non-citizen sponsor income and resources is effective until the sponsored non-citizen achieves citizenship.

(5) The state assures that it provides limited medicaid services for treatment of an emergency medical condition, not related to an organ transplant procedure, as defined in 1903(v)(3) of the social security act and 8.285.400 NMAC and implemented at 42 CFR 440.255, to the following individuals who meet all medicaid eligibility requirements, except documentation of citizenship or satisfactory immigration status or present an SSN.

(a) qualified non-citizens subject to the [~~5~~] five year waiting period described in 8 USC 1613; or

(b) non-qualified non-citizens, unless covered as a lawfully residing child or pregnant woman by the state under the option in accordance with 1903(v)(4) and implemented at 42 CFR 435.406(b).

[8.200.410.11 NMAC - Rp, 8.200.410.11 NMAC, 10/1/2017; A/E, 1/18/2018]

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.520 NMAC, Section 11, effective 2/1/2018.

8.200.520.11 FEDERAL POVERTY INCOME GUIDELINES:

A. One hundred percent federal poverty limits (FPL):

Size of budget group	FPL per month
1	[~~$990~~] $1,005
2	[~~$1,335~~] $1,354
3	[~~$1,680~~] $1,702
4	[~~$2,025~~] $2,050
5	[~~$2,370~~] $2,399
6	[~~$2,715~~] $2,747
7	[~~$3,061~~] $3,095
8	[~~$3,408~~] $3,444

Add [~~$347~~] $349 for each additional person in the budget group.

*Use only these two standards for the qualified medicare beneficiary (QMB) program.

B. One hundred twenty percent FPL: This income level is used only in the determination of the maximum income limit for specified low income medicare beneficiaries (SLIMB) applicants or eligible recipients.

Applicant or eligible recipient		Amount
1.	Individual	At least [~~$990~~] $1,005 per month but no more than [~~$1,188~~] $1,206 per month.
2.	Couple	At least [~~$1,335~~] $1,354 per month but no more than [~~$1,602~~] $1,624 per month.

For purposes of this eligibility calculation, "couple" means an applicant couple or an applicant with an ineligible spouse when income is deemed.

C. One hundred thirty-three percent FPL:

Size of budget group	FPL per month
1	[~~$1,317~~] $1,337
2	[~~$1,776~~] $1,800
3	[~~$2,235~~] $2,264
4	[~~$2,694~~] $2,727
5	[~~$3,153~~] $3,190
6	[~~$3,611~~] $3,654
7	[~~$4,071~~] $4,117
8	[~~$4,532~~] $4,580

Add [~~$461~~] $463 for each additional person in the budget group.

D. One hundred thirty-five percent FPL: This income level is used only in the determination of the maximum income limit for a qualified individual 1 (QI1) applicant or eligible recipient. For purposes of this eligibility calculation, "couple" means an applicant couple or an applicant with an ineligible spouse when income is deemed. The following income levels apply:

Applicant or eligible recipient		Amount
1.	Individual	At least [~~$1,188~~] $1,206 per month but no more than [~~$1,337~~] $1,357 per month.
2.	Couple	At least [~~$1,602~~] $1,624 per month but no more than [~~$1,803~~] $1,827 per month.

E. One hundred eighty-five percent FPL:

Size of budget group	FPL per month
1	[~~$1,832~~] $1,860
2	[~~$2,470~~] $2,504
3	[~~$3,108~~] $3,149
4	[~~$3,747~~] $3,793
5	[~~$4,385~~] $4,437
6	[~~$5,023~~] $5,082
7	[~~$5,663~~] $5,726
8	[~~$6,304~~] $6,371

Add [~~$641~~] $645 for each additional person in the budget group.

F. Two hundred percent FPL:

Size of budget group	FPL per month
1	[~~$1,980~~] $2,010
2	[~~$2,670~~] $2,707
3	[~~$3,360~~] $3,404
4	[~~$4,050~~] $4,100
5	[~~$4,740~~] $4,797
6	[~~$5,430~~] $5,494
7	[~~$6,122~~] $6,190
8	[~~$6,815~~] $6,887

Add [~~$693~~] $697 for each additional person in the budget group.

G. Two hundred thirty-five percent FPL:

Size of budget group	FPL per month
1	[~~$2,327~~] $2,362
2	[~~$3,138~~] $3,181
3	[~~$3,948~~] $3,999
4	[~~$4,759~~] $4,818
5	[~~$5,570~~] $5,637
6	[~~$6,381~~] $6,455
7	[~~$7,193~~] $7,274
8	[~~$8,008~~] $8,092

Add [~~$815~~] $818 for each additional person in the budget group.

H. Two hundred fifty percent FPL:

Size of budget group	FPL per month
1	[~~$2,475~~] $2,513
2	[~~$3,338~~] $3,384
3	[~~$4,200~~] $4,255
4	[~~$5,063~~] $5,125
5	[~~$5,925~~] $5,996
6	[~~$6,788~~] $6,867
7	[~~$7,653~~] $7,738
8	[~~$8,519~~] $8,609

Add [~~$866~~] $871 for each additional person in the budget group.

[8.200.520.11 NMAC - Rp, 8.200.520.11 NMAC, 8/28/2015; A/E, 4/1/2016; A/E, 9/14/2017; A, 2/1/2018]

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.291.430 NMAC, Section 10 effective 2/1/2018.

8.291.430.10 FEDERAL POVERTY LEVEL (FPL): This part contains the monthly federal poverty level table for use in determining monthly income standards for MAP categories of eligibility outlined in 8.291.400.10 NMAC:

HOUSEHOLD SIZE	100%	133%	138%	190%	240%	250%	300%
1	[~~$990~~] $1,005	[~~$1,317~~] $1,337	[~~$1,367~~] $1,387	[~~$1,881~~] $1,910	[~~$2,376~~] $2,412	[~~$2,475~~] $2,513	[~~$2,970~~] $3,015
2	[~~$1,335~~] $1,354	[~~$~~$1,776~~] $1,800	[~~$1,843~~] $1,868	[~~$2,537~~] $2,572	[~~$3,204~~] $3,248	[~~$3,338~~] $3,384	[~~$4,005~~] $4,060
3	[~~$1,680~~] $1,702	[~~$2,235~~] $2,264	[~~$2,319~~] $2,349	[~~$3,192~~] $3,234	[~~$4,032~~] $4,084	[~~$4,200~~] $4,255	[~~$5,040~~] $5,105
4	[~~$2,025~~] $2,050	[~~$2,694~~] $2,727	[~~$2,795~~] $2,829	[~~$3,848~~] $3,895	[~~$4,860~~] $4,920	[~~$5,063~~] $5,125	[~~$6,075~~] $6,150
5	[~~$2,370~~] $2,399	[~~$3,153~~] $3,190	[~~$3,271~~] $3,310	[~~$4,503~~] $4,557	[~~$5,688~~] $5,756	[~~$5,925~~] $5,996	[~~$7,110~~] $7,195

6	[~~$2,715~~] $2,747	[~~$3,611~~] $3,654	[~~$3,747~~] $3,791	[~~$5,159~~] $5,219	[~~$6,516~~] $6,592	[~~$6,788~~] $6,867	[~~$8,145~~] $8,240
7	[~~$3,061~~] $3,095	[~~$4,071~~] $4,117	[~~$4,224~~] $4,272	[~~$5,816~~] $5,881	[~~$7,346~~] $7,428	[~~$7,653~~] $7,738	[~~$9,183~~] $9,285
8	[~~$3,408~~] $3,444	[~~$4,532~~] $4,580	[~~$4,703~~] $4,752	[~~$6,475~~] $6,543	[~~$8,178~~] $8,264	[~~$8,519~~] $8,609	[~~$10,223~~] $10,330
+1	[~~$347~~] $349	[~~$461~~] $463	[~~$479~~] $480	[~~$659~~] $662	[~~$832~~] $836	[~~$866~~] $871	[~~$1,040~~] $1,045

[8.291.430.10 NMAC - Rp, 8.291.430.10 NMAC, 11/16/2015; A/E, 4/1/2016; A/E, 9/14/2017; A, 2/1/2018]

PUBLIC EDUCATION DEPARTMENT

The New Mexico Public Education Department approved, at its 12/5/2017 hearing, to repeal its rule 6.29.2 NMAC, Arts Education (filed 6/30/2009) and replace it with 6.29.2 NMAC, New Mexico Core Arts Standards, (adopted on 1/9/2018) and effective 7/1/2018.

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 29 STANDARDS FOR EXCELLENCE
PART 2 NEW MEXICO CORE ARTS STANDARDS

6.29.2.1 ISSUING AGENCY: Public Education Department, hereinafter the department.
[6.29.2.1 NMAC - Rp, 6.29.2.1 NMAC, 07/01/2018]

6.29.2.2 SCOPE: All public schools, state educational institutions and educational programs conducted in state institutions other than New Mexico military institute.
[6.29.2.2 NMAC - Rp, 6.29.2.2 NMAC, 07/01/2018]

6.29.2.3 STATUTORY AUTHORITY:

A. Section 22-2-2 NMSA 1978 grants the authority and responsibility for the assessment and evaluation of public schools, state-supported educational institutions and educational programs conducted in state institutions other than New Mexico military institute.

B. Section 22-2-2 NMSA 1978 directs the department to set graduation expectations.

C. Section 22-2C-3 NMSA 1978 requires the department to adopt academic content and performance standards and to measure the performance of public schools in New Mexico.
[6.29.2.3 NMAC - Rp, 6.29.2.3 NMAC, 07/01/2018]

6.29.2.4 DURATION: Permanent.
[6.29.2.4 NMAC - Rp, 6.29.2.4 NMAC, 07/01/2018]

6.29.2.5 EFFECTIVE DATE: July 1, 2018, unless a later date is cited at the end of a section.
[6.29.2.5 NMAC - Rp, 6.29.2.5 NMAC, 07/01/2018]

6.29.2.6 OBJECTIVE: The department-approved New Mexico core art standards represent the required knowledge and skills in this field. They are mandated for grades K-8. In addition, these standards are required in the arts electives for participating students in grades 9-12.
[6.29.2.6 NMAC - Rp, 6.29.2.6 NMAC, 07/01/2018]

6.29.2.7 DEFINITIONS: [RESERVED]
[6.29.2.7 NMAC - Rp, 6.29.2.7 NMAC, 07/01/2018]

6.29.2.8 CONTENT STANDARDS WITH BENCHMARKS AND PERFORMANCE STANDARDS

A. All public schools, state supported educational institutions and educational programs conducted in state institutions other than the New Mexico military institute are bound by the New Mexico core arts standards. These standards are available at www.ped.state.nm.us. The national core arts standards published by the national coalition for core arts standards and any amendments made thereto are incorporated in this rule by reference.

B. All instances within the national core arts standards where content standards, benchmarks, and performance standards reference history or culture shall be interpreted to include New Mexico history and culture. References to artwork shall be interpreted to include local and New Mexico produced artwork. The department and local education agencies shall provide guidance and technical assistance to support the integration of New Mexico history and culture in consultation with tribal leaders.
[6.29.2.8 NMAC - Rp, 6.29.2.8 NMAC, 07/01/2018]

HISTORY OF 6.29.2 NMAC:
Pre-NMAC HISTORY: The material in this part is derived from that previously filed with the State Records Center:
SDE 74-17, (Certificate No. 74-17), Minimum Educational Standards for New Mexico Schools, filed April 16, 1975.
SDE 76-9, (Certificate No. 76-9), Minimum Education Standards for New Mexico Schools, filed July 7, 1976.
SDE 78-9, Minimum Education Standards for New Mexico Schools, filed August 17, 1978.

SBE 80-4, Educational Standards for New Mexico Schools, filed September 10, 1980.
SBE 81-4, Educational Standards for New Mexico Schools, filed July 27, 1981.
SBE 82-4, Educational Standards for New Mexico Schools, Basic and Vocational Program Standards, filed November 16, 1982.
SBE Regulation No. 83-1, Educational Standards for New Mexico Schools, Basic and Vocational Program Standards, filed June 24, 1983.
SBE Regulation 84-7, Educational Standards for New Mexico Schools, Basic and Vocational Program Standards, filed August 27, 1984.
SBE Regulation 85-4, Educational Standards for New Mexico Schools, Basic, Special Education, and Vocational Programs, filed October 21, 1985.
SBE Regulation No. 86-7, Educational Standards for New Mexico Schools, filed September 2, 1986.
SBE Regulation No. 87-8, Educational Standards for New Mexico Schools, filed February 2, 1988.
SBE Regulation No. 88-9, Educational Standards for New Mexico Schools, filed October 28, 1988.
SBE Regulation No. 89-8, Educational Standards for New Mexico Schools, filed November 22, 1989.
SBE Regulation No. 90-2, Educational Standards for New Mexico Schools, filed September 7, 1990.
SBE Regulation No. 92-1, Standards for Excellence, filed January 3, 1992.

History of Repealed Material:
6.30.2 NMAC, Standards for Excellence, filed November 2, 2000 - Repealed effective June 30, 2009.
6.29.2 NMAC, Arts Education, effective June 30, 2009 - Repealed effective July 1, 2018.

NMAC History:
6 NMAC 3.2, Standards for Excellence, filed October 17, 1996.
6.30.2 NMAC, Standards for Excellence, November 2, 2000, replaced by 6.29.1 NMAC, General Provisions; 6.29.2 NMAC, Arts Education; 6.29.3 NMAC, Career and Technical Education; 6.29.4 NMAC, English Language Arts; 6.29.5 NMAC, English Language Development; 6.29.6 NMAC, Health Education; 6.29.7 NMAC, Mathematics; 6.29.8 NMAC, Modern, Classical and Native Languages; 6.29.9 NMAC, Physical Education; 6.29.10 NMAC, Science; 6.29.11 NMAC, Social Studies; effective June 30, 2009.
6.29.2 NMAC, Arts Education, filed June 30, 2009, Replaced by 6.29.2 NMAC - New Mexico Core Arts Standards, effective July 1, 2018.

PUBLIC REGULATION COMMISSION

This is an amendment to 17.7.3 NMAC, Section 12 effective 01/30/2018.

17.7.3.12 COMMISSION REVIEW, ACCEPTANCE AND ACTION:

[~~**A.** Compliance Review.~~] The commission will review the utility's proposed IRP for compliance with the procedures and objectives set forth herein. [~~The commission may accept the proposed IRP as compliant with this rule without a hearing, unless a protest is filed that demonstrates to the commission's reasonable satisfaction that a hearing is necessary. Protests must be filed within 30 days of the filing of the proposed IRP.~~] Written public comments may be filed within 20 days of the utility's filing of the proposed IRP in support or in opposition of the proposed IRP as filed. The utility shall file, within 40 days of the utility's filing of the proposed IRP, a written response to all written public comments that were timely filed in support or in opposition, stating whether or not it will incorporate any of the written comments into its proposed IRP and state its reasons why or why not. The commission's utility division staff shall review the utility's proposed IRP as filed and shall consider the filed written public comments in support or in opposition and the utility's written response and shall file a written recommendation to the commission within 60 days of utility's filing as to whether or not the IRP complies with the procedures and objectives of this rule and whether or not it recommends that the commission accept the proposed IRP as filed. If the commission has not acted within [~~45~~] 90 days after the filing of the proposed IRP, that IRP is deemed accepted as compliant with this rule. If the commission determines the proposed IRP does not comply with the requirements of this rule, the commission will identify the deficiencies and return it to the utility with instructions for re-filing.

[~~**B.** Use in Resource Acquisition Proceedings. In a proceeding concerning a utility's request for a CCN for a new utility resource, or in other proceedings concerning a utility's resource acquisition, the utility shall present evidence that the requested resource is consistent with the commission-accepted utility IRP unless material changes, as described in Section 17.7.3.10 of this rule, have occurred that would warrant a different utility course of action. Evidence that the resource is consistent with the IRP, and that there have not been material changes that would warrant a different course of action by the utility, will constitute prima facie evidence that the resource type, but not the particular resource being proposed, is required by the public convenience and necessity.~~]

[17.7.3.12 NMAC - N, 4/16/2007; A, 8/29/2017; A, 01/30/2018]

PUBLIC REGULATION COMMISSION

This is an amendment to 18.3.2 NMAC, Sections 8, 9 and 10 effective 01/30/2018.

18.3.2.8 OPERATING AUTHORITY REQUIRED: The director shall determine which type of operating authority is appropriate based on the attributes of the type of service the applicant proposes to provide. The commission may at any time determine whether an operating authority is appropriate for the type of service a motor carrier is providing.

A. A warrant is required for:

(1) charter services;

(2) towing services;

(3) repossession services using towing equipment; or

[~~**(4)** commuter services; or~~

~~**(5)**~~] **(4)** transportation of property, except that a person licensed pursuant to the Thanatopractice Act, Section 61-32-1 et seq. NMSA 1978 is not required to obtain a warrant for the transportation of cadavers.

B. A certificate or permit is required for:

(1) municipal or general taxicab services;

(2) scheduled or general shuttle services;

(3) ambulance service;

(4) household goods services; or

(5) specialized passenger services; specialized passenger service includes tour and sightseeing services, non-emergency medical transportation services, and limousine services.

[18.3.2.8 NMAC - Rp, 18.3.2.8 NMAC, 2/13/2015; A, 01/30/2018]

18.3.2.9 LIMITATIONS ON PASSENGER SERVICES:

A. General shuttle services. A general shuttle service:

(1) may not provide municipal or general taxicab services, ambulance services, specialized passenger services, or household goods services; and

(2) may use chauffeur-driven luxury motor vehicles to provide general shuttle service.

B. Charter services. A charter service:

(1) may not hold itself out as a full service or general service motor carrier;

(2) may not provide full service or general service;

(3) may not use the terms bingo bus service, commuter service, limousine service, non-emergency medical transport service, shared ride service, shuttle service, tour and sightseeing service, taxicab service, general service, full service or terminal shuttle service in its business name, markings on motor vehicles, or advertising, except as permitted by Subsection D of Section 65-2A-15 NMSA 1978;

(4) may only provide round-trip transportation of passengers;

(5) may not charge rates that apply to each individual passenger;

(6) may not use chauffeur-driven luxury motor vehicles to provide charter services, except when providing charter service pursuant to contracts with government agencies;

(7) may not solicit business on the streets;

(8) shall enter into a single prearranged written contract for charter services; such contract shall not be arranged, accepted, entered into or paid for with or through the driver of the motor vehicle; and

(9) may only provide charter service to a group of persons (two or more).

[~~**C. Commuter service.** A commuter service:~~

~~**(1)** may not provide general services or full services; and~~

~~**(2)** may not use chauffeur-driven luxury motor vehicles to provide commuter service.~~

~~**D**~~] **C. Limousine service**. A limousine service:

(1) may not provide full services, general shuttle services, general taxicab services, or household goods services;

(2) may not charge rates that apply to each individual passenger;

(3) may not solicit business on the streets; and

(4) shall enter into a contract for limousine service in advance of providing the service; such contract shall not be arranged, accepted, or entered into with or through the driver of the motor vehicle.

[~~**E**~~] **D. Non-emergency medical transport service.** A non-emergency medical transport service:

(1) may not provide full services, general shuttle services, general taxicab services, or household goods services;

(2) may only transport passengers who do not require medical intervention to maintain their level of response, airway, breathing and circulatory status, with the exception of self-administered oxygen not to exceed six liters per minute via a nasal cannula; the oxygen container must be secured in accordance with other state and federal laws; and

(3) may not transport passengers that require medical monitoring or medical intervention.

[~~**F**~~] **E. Scheduled shuttle service**. A scheduled shuttle service:

(1) may not provide ambulance service, municipal or general taxi service, specialized passenger service, or household goods service;

(2) may solicit business at scheduled stops on its regular route or may prearrange to provide service; and

(3) may use chauffeur-driven luxury motor vehicles to provide shuttle service.

[~~**G**~~] **F. Municipal taxicab service.** A municipal taxicab service:

(1) may not provide ambulance service, scheduled or general shuttle service, specialized passenger service, or household goods service;

(2) shall charge metered rates based on one charge for the first person and an additional small fixed charge for each additional person, or may charge, at the passenger's informed option, a predetermined calculated full fare based on dropflag and mileage component rates as provided by tariff, and may use surge pricing as provided by tariff;

(3) shall grant exclusive direction to the first person engaging the taxicab service for metered carriage;

(4) may provide one-way transportation of passengers;

(5) may solicit business on the streets or may prearrange to provide service;

(6) may not use chauffeur-driven luxury motor vehicles to provide taxicab service; and

(7) except for hailed or for pre-arranged service hereby defined as "any call requesting service made 30 minutes or longer before service is required" may only respond to calls for service that are dispatched by the taxicab service.

[~~H~~] **G. General taxicab service.** A general taxicab service:

(1) may not provide ambulance service, scheduled or general shuttle service, specialized passenger service, or household goods service;

(2) shall charge metered rates based on one charge for the first person and an additional small fixed charge for each additional person, or may charge, at the passenger's option, a predetermined calculated full fare based on dropflag and mileage component rates as provided by tariff, and may use surge pricing as provided by tariff;

(3) shall grant exclusive direction to the first person engaging the taxicab service for metered carriage;

(4) may provide one-way transportation of passengers;

(5) may solicit business on the streets or may prearrange to provide service;

(6) may not use chauffeur-driven luxury motor vehicles to provide taxicab service; and

(7) except for hailed or pre-arranged service (defined as "any call requesting service made 30 minutes or longer before service is required), may only respond to calls for service that are dispatched by the taxicab service.

[~~I~~] **H. Tour and sightseeing service**. A tour and sightseeing service:

(1) may not provide full services, general shuttle services, general taxicab services, or household goods services; and

(2) may use chauffeur-driven luxury motor vehicles to provide tour and sightseeing service.

[18.3.2.9 NMAC - Rp, 18.3.2.9 NMAC, 2/13/2015; A, 11/30/2016; A, 01/30/2018]

18.3.2.10 CONTENTS OF APPLICATIONS FOR A WARRANT: An applicant for a warrant shall file with the commission an application containing the following information and documents:

A. the applicant's name;

B. if the applicant is a sole proprietor or a partnership, the applicant's social security number for purposes of verifying parental responsibility act compliance;

C. each and all of the applicant's doing business as (d/b/a) names, if applicable;

D. the applicant's principal place of business within the state of New Mexico and mailing address, and, for a towing service, the mailing and physical address of the storage facility and office, if different from those of the principal place of business;

E. the applicant's business telephone number;

F. the applicant's electronic mail address, if applicable;

G. the applicant's combined reporting system (CRS) number obtained from the New Mexico taxation and revenue department;

H. if the applicant is a corporation or limited liability company, evidence that the applicant is authorized by the office of the secretary of state to do business in New Mexico and that it is in good standing in New Mexico;

I. [~~if the applicant is a commuter service, a description of the area to be served;~~

~~**J.**~~] if the applicant is a towing service providing non-consensual tows, a proposed tariff meeting the requirements of 18.3.6 NMAC and Sections 65-2A-20 and 21 NMSA 1978;

[~~K~~] **J.** an appointment of an agent for service of process;

[~~L~~] **K.** a list of all equipment to be used by the applicant, including all equipment leases filed with and approved by the commission in accordance with these rules;

[~~M~~] **L.** for each piece of equipment, an annual inspection form completed by a qualified inspector within the preceding 12 months that shows that each motor vehicle proposed to be operated by the applicant meets the safety requirements of the federal motor carrier safety regulations;

[~~N~~] **M.** a list of drivers and drivers license information for each driver including state of issuance, license number, and class of license; a legible copy of each driver's license; a legible copy of each driver's motor vehicle record received from the driver licensing agency of the state or states within which the driver is licensed; and a legible copy of each driver's medical examiner's certificate as required by 49 CFR 391.43(g);

[~~O~~] **N.** the applicant's written statement certifying that all drivers meet the driver qualifications of 18.3.4 NMAC - Safety Requirements, and that the applicant will maintain driver qualification files

on each driver;

[~~P~~] **Q.** the applicant's U.S. DOT safety rating, if it has one;

[~~Q~~] **P.** proof of public liability insurance in accordance with 18.3.3 NMAC - Financial Responsibility;

[~~R~~] **Q.** if the applicant is a towing service, proof of garage keepers and on the hook liability insurance as required by 18.3.3.11 NMAC;

[~~S~~] **R.** a copy of either a certificate of workers' compensation insurance or a certificate of exemption from the workers' compensation administration; [~~(commuter services shall not be required to file a certificate for volunteer drivers but shall file the appropriate certificate for drivers who are employees);~~]

[~~T~~] **S.** the applicant's written statement certifying that it has developed a drug and alcohol testing program that will meet the requirements of 49 CFR Parts 40 and 382; [~~or, if the applicant is a commuter van pool, a certification that it has a program providing for an initial drug test for anyone seeking to be a commuter service driver;~~]

[~~U~~] **T.** a copy of the applicant's written preventive maintenance program for its motor vehicles as required by 18.3.4.11 NMAC;

[~~V~~] **U.** a contact person, telephone number and email address for the commission to use in the event of a question, inquiry or complaint;

[~~W~~] **V.** the verified oath of the applicant pursuant to Subsection MMM of Section 65-2A-3 NMSA 1978 attesting that all statements in the application are true and correct;

[~~X~~] **W.** the application fee required by Section 65-2A-36 NMSA 1978; and

[~~Y~~] **X.** a statement disclosing any other operating authority(ies) owned or operated by the applicant including any partial interest in any other operating authority(ies), and certifying that the operating authority sought in the application does not duplicate the operating authority of the same kind and for the same territory already held by the motor carrier.

[18.3.2.10 NMAC - Rp, 18.3.2.11 NMAC, 2/13/2015; A, 3/14/2017 A, 01/30/2018]

PUBLIC REGULATION COMMISSION

This is an amendment to 18.3.4 NMAC, Sections 2, 6, 7, and 12 effective 01/30/2018.

18.3.4.2 SCOPE:

A. This rule applies to all drivers, all motor carriers [~~and commuter services~~] subject to the jurisdiction of the commission, and all motor vehicles operated by the motor carrier [~~or commuter service~~] in the course of its operations, subject to the exceptions and limitations stated in particular sections of this rule.

B. Whenever this rule prescribes a duty or imposes a prohibition on a driver, the motor carrier that uses, employs, or contracts with the driver shall require its drivers to observe the duty or prohibition.

C. A motor carrier who employs himself or herself as a driver must comply with both the rules that apply to motor carriers and the rules that apply to drivers.

D. The Commission may waive any specific requirement of this part if it conflicts with a rule or requirement of another state agency, governmental entity, or law enforcement entity or if such an agency requests in writing that the rule be waived.

[18.3.4.2 NMAC - Rp, 18.3.4.2 NMAC, 2/13/2015; A, 01/30/3018]

18.3.4.6 OBJECTIVE: The purpose of this rule is to implement Sections 65-2A-19 and 65-6-4 NMSA 1978 by establishing safety requirements for drivers, motor vehicles, and motor carriers [~~and commuter services~~] subject to the jurisdiction of the commission.

[18.3.4.6 NMAC - Rp, 18.3.4.6 NMAC, 2/13/2015; A, 01/30/2018]

18.3.4.7 DEFINITIONS: In addition to the definitions in 18.3.1.7 NMAC, as used in this rule:

A. CDL driver means a driver who is required by 49 CFR Section 383.3 or Section 66-5-59 NMSA 1978 to have a commercial driver's license;

B. driver means a person who drives a motor vehicle as, for, or on behalf of a motor carrier [~~or a commuter service~~];

C. MVD means the motor vehicle division of the New Mexico taxation and revenue department.

[18.3.4.7 NMAC - Rp, 18.3.4.7 NMAC, 2/13/2015; A, 01/30/2018]

18.3.4.12 REQUIREMENTS APPLICABLE ONLY TO NON-CDL DRIVERS:

A. Operators' and chauffeurs' licenses. This rule adopts by reference Chapter 66, Article 5, Part 1 NMSA 1978.

B. Qualifications, investigations, inquiries, reporting, records, driving, equipment, inspection repair and maintenance by and for small passenger vehicles and drivers of small passenger vehicles.

(1) Before allowing a transportation service driver to provide carriage:

(a) the prospective driver shall submit an application to the transportation service that includes the individual's address, age, driver's license number and state, and driving history;

(b) the transportation service shall obtain a local and national criminal background check for the prospective driver that shall include:

(i) multistate or multi-jurisdiction criminal records locator or other similar commercial nationwide database with validation and primary source search; and

(ii) a national sex offender registry; and

(iii) the transportation service shall obtain and review a driving history research report for the prospective driver.

(2) A

transportation service shall not permit a person to act as a transportation service driver who:

(a) has had more than three moving violations in the preceding three-year period or one violation in the preceding three-year period involving any attempt to evade law enforcement, reckless driving or driving on a suspended or revoked license;

(b) has been convicted within the past seven years of:

(i) a felony;

(ii) misdemeanor driving under the influence, reckless driving, leaving the scene of an accident or any other driving-related offense or any misdemeanor violent offense or sexual offense; or

(c) more than three misdemeanors of any kind;

(d) is identified by a national sex offender registry;

(e) does not possess a valid license; or

(f) is not at least 21 years old.

(3) A transportation service shall not use a small passenger vehicle that:

(a) is not in compliance with all federal, state and local laws concerning the operation and maintenance of the motor vehicle;

(b) has fewer than four doors; or

(c) is designed to carry more than eight passengers, including the driver.

(4) A transportation service shall inspect or cause to be inspected every motor vehicle used by a driver to provide transportation services before allowing the driver to use the motor vehicle to provide transportation services and not less than once each year thereafter. The type of inspection required shall follow the Commission rules for annual inspections for transportation network company service driver vehicles promulgated as 18.l7.1.8 NMAC.

(5) Provided that passenger services may voluntarily adopt and implement other more stringent policies and procedures for small passenger vehicles and drivers of small passenger vehicles, including full or modified forms of federal safety policies and procedures.

C. Qualifications of drivers other than drivers of small passenger vehicles. This rule adopts by reference only the following specific sections of Title 49, Part 391 of the Code of Federal Regulations:

(1) general qualifications of drivers: Section 391.11(b)(8);

(2) application for employment: Section 391.21;

(3) investigations and inquiries: Section 391.23, except that:

(a) [~~this section shall not apply to commuter services;~~

~~(b)~~] "public regulation commission" should be substituted for:

(i) department of transportation in section 391.23(a)(2), (i)(1), and (i)(2);

(ii) FMCSA in section 391.23(c)(3) and (j)(6);

(iii) DOT in section 391.23(c)(4) and (e);

[**~~(c)~~**] **(b)** Section 391.23(d)(2) is amended to substitute "in the uniform accident report form prescribed by the state of New Mexico" for "as specified in section 390.15(b)(1) of this chapter";

(4) annual inquiry and review of driving record. Section 391.25, except that:

(a) Subsections 391.25(a) and (b) are amended to delete: "Except as provided in subpart G of this part;"

(b) Section 391.25 shall not apply to volunteer drivers;

(5) record of violations: Section 391.27, except that section 391.27(a) is amended to delete: "Except as provided in subpart G of this part;"

(6) road test: Section 391.31, except that section 391.31(a) is amended to delete: "Except as provided in subpart G;"

(7) equivalent of road test: Section 391.33; an ambulance service may also accept from a person who seeks to drive an ambulance a copy of a certificate of completion from an emergency vehicle operator's course approved by the emergency medical services bureau;

(8) physical qualifications for drivers: Section 391.41, except that drivers for ambulance [~~and commuter services~~] are exempt from section 391.41(a);

(9) medical examinations; certificate of physical examination: Section 391.43, except that:

[~~**(a)** for volunteer drivers of ambulance services only, the medical examiner (as defined in 49 CFR Section 390.5) performing the medical examination shall perform a medical examination sufficient to enable the medical examiner to certify, in accordance with Subsection C of 18.19.5.33 NMAC, whether or not the driver has a condition that may interfere with the safe operation of an ambulance and~~

~~**(b)** this section shall not apply to commuter services;~~] for volunteer drivers of ambulance services only, the medical examiner (as defined in 49 CFR Section 390.5) performing the medical examination shall perform a medical examination sufficient to enable the medical examiner to certify, in accordance with Subsection C of 18.19.5.33 NMAC, whether or not the driver has a condition that may interfere with the safe operation of an ambulance.

(10) persons who must be medically examined and certified: Section 391.45, but this section shall not apply to volunteer drivers;

(11)

general requirements for driver qualification files: Section 391.51, except that:

[~~**(a)** subsections 391.51(b)(8) and (d)(5) are not adopted;~~

~~**(b)** this section shall not apply to commuter services;~~] subsections 391.51(b)(8) and (d)(5) are not adopted;

(12) driver investigation history file: Section 391.53, but this section shall not apply to commuter services.

D. Driving of commercial motor vehicles other than small passenger vehicles. This rule adopts by reference the following sections of Title 49, Part 392 of the Code of Federal Regulations:

(1) ill or fatigued operator: Section 392.3;

(2) drugs and other substances: Section 392.4;

(3) alcohol prohibition: Section 392.5;

(4) emergency equipment, inspection and use: Section 392.8, but this section is amended to substitute NMSA 1978 Section 66-3-849 for the reference to Section 393.95;

(5) inspection of cargo, cargo securement devices and systems: Section 392.9**,** except that this section shall:

[~~**(a)** not apply to ambulance or commuter services;~~

~~**(b)**~~ **]** only apply to a motor vehicle with a gross vehicle weight rating of 10,000 pounds or more;

(6) hazardous conditions; extreme caution: Section 392.14, but this section shall not apply to ambulance services;

(7) use of seat belts: Section 392.16;

(8) obscured lamps or reflectors: Section 392.33;

(9) ignition of fuel; prevention: Section 392.50;

(10) safe operation, buses: Section 392.62;

(11) towing or pushing loaded buses: Section 392.63;

(12) riding within closed commercial motor vehicles without proper exits: Section 392;

(13) carbon monoxide; use of commercial motor vehicle when detected: Section 392.66;

(14) radar detectors; use and/or possession: Section 392.71.

E. Equipment for vehicles other than small passenger vehicles. This rule adopts by reference Chapter 66, Article 3, Parts 9 and 10 NMSA 1978.

F. Inspection, repair and maintenance for vehicles other than small passenger vehicles. This rule adopts by reference the following sections of title 49, part 396 of the code of federal regulations:

(1) inspection, repair and maintenance: Section 396.3, but this section shall not apply to commuter services;

(2) lubrications: Section 396.5;

(3) driver vehicle inspection reports: Section 396.1; [~~a commuter service shall be exempt from this section, but each commuter service shall require its drivers to report to it, and each commuter service shall timely repair any defect or deficiency that would be likely to affect the safe operation of the motor vehicle;~~]

(4) driver inspection: Section 396.13 [~~, except that commuter services are exempt from subsections 396.13 (b) and (c)~~];

(5) periodic inspection: Section 396.17;

(6) inspector qualifications: Section 396.19;

(7) periodic inspection recordkeeping requirements: Section 396.21;

(8) equivalent to periodic inspection: Section 396.23(a);

(9) qualifications of brake inspectors: Section 396.25.

[18.3.4.12 NMAC - Rp, 18.3.4.12 NMAC, 2/13/2015; A, 11/30/2016; A, 01/30/2018]

PUBLIC REGULATION COMMISSION

This is an amendment to 18.3.7 NMAC, Sections 2 and 9 effective 01/30/2018.

18.3.7.2 SCOPE:

A. 18.3.7.8 NMAC through 18.3.7.13 NMAC apply to all motor carriers subject to the jurisdiction of the commission other than in the operation of small passenger vehicles, except that ambulance services are exempt from 18.3.7.8, 18.3.7.9, and 18.3.7.13 NMAC.

B. 18.3.7.14 NMAC through 18.3.7.16 NMAC apply only to motor carriers operating pursuant to a certificate or a permit other than in the operation of small passenger vehicles.

[~~**C.** Commuter services are subject to 18.3.7.11 NMAC only.~~

~~**D**~~**] C.** The maintenance, inspection and production of documents for carriers providing passenger transportation services through the use of small passenger vehicles is governed by the following provisions:

(1) A transportation service shall maintain:

(a) individual ride records for at least four years from the date each ride was provided; and

(b) individual records of transportation service drivers for at least four years after the driver's relationship with the transportation service has ended.

(2) In response to a specific complaint, the public regulation commission, its employees or its duly authorized agents may inspect those records held by a transportation service for the investigation and resolution of the complaint.

(3) No more than semiannually and as determined by the public regulation commission, the commission, its employees or

its duly authorized agents may, in a mutually agreed setting, inspect those records held by a transportation service whose review is necessary to ensure public safety; provided that such review shall be on an audit rather than a comprehensive basis.
[18.3.7.2 NMAC - Rp, 18.3.7.2 NMAC, 2/13/15; A, 11/30/2016; A, 01/30/2018]

18.3.7.9 CONTENTS OF ANNUAL REPORT: The annual report shall include:

A. the motor carrier's operating authority number;

B. the motor carrier's name;

C. the motor carrier's d/b/a name;

D. the motor carrier's principal place of business;

E. the motor carrier's business telephone number;

F. the applicant's electronic mail address;

G. [~~the motor carrier's **Combined Reporting System (CRS)** tax identification number;~~

~~**H.** for all motor carriers, a list of equipment used in the motor carrier's operations if the motor carrier is using twenty-five (25) vehicles or less, including the stationing point for each vehicle, or the motor carrier's written statement certifying the number of vehicles in use if the motor carrier is using more than twenty-five (25) vehicles and a list of all stationing points;~~

~~**I.** for motor carriers operating pursuant to a certificate or permit, the names and addresses of any shareholders who own ten percent or more of the voting stock of the motor carrier if it is a corporation, or if the motor carrier is other than a corporation, a description of the form of ownership, the names and addresses of all principal owners, and the percentage ownership of each;~~

~~**J.** for motor carriers operating pursuant to a permit, any changes in the contract for which the permit was issued;~~

~~**K.** the motor carrier's written statement certifying that each piece of equipment it uses has passed an annual inspection within the preceding twelve (12) months;~~

~~**L.** the motor carrier's written statement certifying that it maintains a file containing a current MVD printout of the driving record and all other information required by these rules for each of its drivers;~~

~~**M.** the motor carrier's written statement certifying that it has received a current certificate of workers' compensation insurance or evidence that the motor carrier is not required to maintain workers' compensation insurance;~~

~~**N.** for all towing services and household goods services, a copy of the insurance policy or policies showing compliance with 18.3.3.11 NMAC;~~

~~**O.** an updated appointment of an agent for service of process, if applicable; and~~

~~**P.** the signature prescribed by subsection B of 18.3.7.8 NMAC.~~] an affirmation by checking a box on the annual report that;

(1) the motor carrier certifies that each piece of equipment it uses has passed an annual inspection within the preceding 12 months;

(2) the motor carrier certifies that it maintains a file containing a current MVD printout of the driving record and all other information required by these rules for each of its drivers;

(3) the motor carrier certifies that it has received a current certificate of workers' compensation insurance or evidence that the motor carrier is not required to maintain workers' compensation insurance;

H. an updated appointment of an agent for service of process, if applicable; and

I. the signature prescribed by Subsection B of 18.3.7.8 NMAC.

[18.3.7.9 NMAC - Rp, 18.3.7.9 NMAC, 2/13/2015; A, 01/30/2018]

WORKFORCE SOLUTIONS, DEPARTMENT OF

At its public hearing on January 4, 2018, the Department of Workforce Solutions repealed its rule 11.2.3 NMAC entitled Labor and Workers Compensation; Job Training; State Apprenticeship Policy Manual, effective January 30, 2018 and replaced it with 11.2.3 NMAC entitled Labor and Workers Compensation; Job Training; State Apprenticeship Policy Manual, effective January 30, 2018.

WORKFORCE SOLUTIONS, DEPARTMENT OF

TITLE 11 LABOR AND WORKERS COMPENSATION
CHAPTER 2 JOB TRAINING
PART 3 STATE APPRENTICESHIP POLICY MANUAL

11.2.3.1 ISSUING AGENCY: New Mexico Department of Workforce Solutions, as the State Apprenticeship Agency.
[11.2.3.1 NMAC - Rp, 11.2.3.1 NMAC, 1/30/2018]

11.2.3.2 SCOPE: All apprenticeship programs, sponsors, and apprentices registered with the New Mexico department of workforce solutions.
[11.2.3.2 NMAC - Rp, 11.2.3.2 NMAC, 1/30/2018]

11.2.3.3 STATUTORY AUTHORITY: Section 50-7-1 to 50-7-4.1, 50-7-7 NMSA 1978
[11.2.3.3 NMAC - Rp, 11.2.3.3 NMAC, 1/30/2018]

11.2.3.4 DURATION: Permanent
[11.2.3.4 NMAC - Rp, 11.2.3.4 NMAC, 1/30/2018]

11.2.3.5 EFFECTIVE DATE: January 30, 2018 unless

a later date is cited at the end of a section.
[11.2.3.5 NMAC - Rp, 11.2.3.5 NMAC, 1/30/2018]

11.2.3.6 NEW MEXICO STATE APPRENTICESHIP OBJECTIVES:

A. The department of workforce solutions ("the department") is the state apprenticeship agency (SAA). By delegation, the apprenticeship director is the department's operating head and administrator for all apprenticeship related functions and activities.

B. General: To help achieve, through cooperative effort, the training of apprentices in apprenticeable occupations to meet current and future needs for skilled journeyworkers. To help insure that this training stays abreast of technological developments and needs for national security, and to increase the job opportunities, earning ability, and security of the apprentices. In order to provide equal opportunities for all qualified applicants for apprenticeship, hereafter all apprentices shall be selected in accordance with a plan which assures equality of opportunity and which is acceptable to the state apprenticeship council and approved by the department of workforce solutions.

C. Specific:

(1) to develop and improve techniques which will more accurately measure future apprenticeship requirements on a national, industrial, and community basis;

(2) to promote more widespread use of effective techniques which will assist in the selection and employment of apprentices;

(3) to make available to potential users, information relating to prospective apprenticeship requirements, occupational outlook, counseling techniques, and procedures which will aid:

(a) educational institutions in planning curricula;

(b) management and labor in planning apprenticeship programs;

(c) parents, teachers, and counselors in advising youth; and

(d) individuals in their occupational planning.

(4) to encourage communities to survey their apprenticeship needs in order to have a sound basis for providing adequate educational facilities, vocational guidance, selective placement services, and to assist in the development of sound educational and training opportunities for all individuals;

(5) to encourage those responsible for apprenticeship development in all industries to determine their future apprenticeship requirements in order to have a sound basis for action;

(6) To promote effective apprenticeship training by:

(a) studying the quantity and quality of apprenticeship training in industry;

(b) organizing and promoting research on effective apprenticeship training practices;

(c) encouraging the use of methods which have proven to be effective in apprenticeship training;

(d) developing and promoting services to assist management and labor in determining apprenticeship training needs; and

(e) developing, organizing, and offering technical assistance to apprenticeship training programs.

(7) to assist other agencies to develop and provide services for apprenticeship programs which are flexible and acceptable to labor and management; and

(8) to stimulate national, state, and local organizations and groups to give active support to effective apprenticeship training programs so that a greater proportion of journeyworkers in apprenticeable occupations will have achieved their skill through apprenticeship programs.
[11.2.3.6 NMAC - Rp, 11.2.3.6 NMAC, 1/30/2018]

11.2.3.7 DEFINITIONS:

A. "Administrator" means the administrator of the office of apprenticeship (OA), or any person specifically designated by the administrator.

B. "Apprentice" means a worker at least 16 years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn an apprenticeable occupation as provided in 11.2.3.22 NMAC under standards of apprenticeship fulfilling the requirements of 11.2.3.23 NMAC.

C. "Apprenticeship agreement" means a written agreement, complying with 11.2.3.27 NMAC, between an apprentice and either the apprentice's program sponsor, or an apprenticeship committee acting as agent for the program sponsor(s), which contains the terms and conditions of the employment and training of the apprentice.

D. "Apprenticeship committee (committee)" means those persons designated by the sponsor to administer the program. A committee may be either joint or non-joint, as follows:

(1) A joint committee is composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s);

(2) A non-joint committee, which may also be known as a unilateral or group non-joint (which may include employees) committee, has employer representatives but does not have a bona fide collective bargaining agent as a participant.

E. "Apprenticeship program" means a plan containing all terms and conditions for the qualification, recruitment, selection,

employment and training of apprentices, as required under 11.2.2 NMAC and 11.2.3 NMAC, including such matters as the requirement for a written apprenticeship agreement.

F. "Apprenticeship program completion approaches" means the different ways that the term of apprenticeship for completion of a program can be measured. They are defined as follows.

(1) Time based approach is measured by the skill acquisition through the individual apprentice's completion of at least 2,000 hours of on-the-job training as described in a work process schedule.

(2) Competency based approach is measured by the attainment of manual, mechanical or technical skills and knowledge, as specified by an occupational standard and demonstrated by an appropriate written and hands-on proficiency measurement.

(3) Hybrid approach is measured by the individual apprentice's skill acquisition through a combination of a specified minimum number of hours of on-the-job training and the successful demonstration of competency as described in a work process schedule.

G. "Apprenticeship standards" means a document with the requirements, as a minimum, as defined in 11.2.3.23 NMAC.

H. "Cancellation" means the termination of the registration or approval status of a program at the request of the sponsor, or termination of an apprenticeship agreement at the request of the apprentice.

I. "Certification or certificate" means documentary evidence that:

(1) the OA has approved a set of national guidelines for apprenticeship standards developed by a national committee or organization, joint or unilateral, for policy or guideline use by local affiliates;

(2) the department has established that an individual is eligible for probationary employment as an apprentice under a registered apprenticeship program;

(3) the department has registered an apprenticeship program as evidenced by a certificate of registration or other written indicia;

(4) the department has determined that an apprentice has successfully met the requirements to receive an interim credential; or

(5) the department has determined that an individual has successfully completed apprenticeship.

J. "Competency" means the attainment of manual, mechanical or technical skills and knowledge, as specified by an occupational standard and demonstrated by an appropriate written and hands-on proficiency measurement.

K. "Completion rate" means the percentage of an apprenticeship cohort who receives a certificate of apprenticeship completion within one year of the projected completion date. An apprenticeship cohort is the group of individual apprentices registered to a specific program during a one-year time frame, except that a cohort does not include the apprentices whose apprenticeship agreement has been cancelled during the probationary period.

L. "Director" means the apprenticeship director at the department of workforce solutions.

M. "Electronic media" means media that utilize electronics or electromechanical energy for the end user (audience) to access the content; and includes, but is not limited to, electronic storage media, transmission media, the internet, extranet, lease lines, dial-up lines, private networks, and the physical movement of removable or transportable electronic media or interactive distance learning.

N. "Employer" means any person or organization employing an apprentice whether or not such person or organization is a party to an apprenticeship agreement with the apprentice.

O. "Equal employment opportunity (EEO) compliance review" means a comprehensive review conducted by the department in regards to the EEO aspects of a registered apprenticeship program in accordance with those activities defined in the 11.2.2 NMAC equal employment opportunity in apprenticeship state plan.

P. "Federal purposes" includes any federal contract, grant, agreement or arrangement dealing with apprenticeship; and any federal financial or other assistance, benefit, privilege, contribution, allowance, exemption, preference or right pertaining to apprenticeship.

Q. "Interim credential" means a credential issued by the department, upon request of the appropriate sponsor, as certification of competency attainment by an apprentice.

R. "Journeyworker" means a worker who has attained a level of skill, abilities, and competencies recognized within an industry as having mastered the skills and competencies required for the occupation. (Use of the term may also refer to a mentor, technician, specialist or other skilled worker who has documented sufficient skills and knowledge of an occupation, either through formal apprenticeship or through practical on-the-job experience and formal training).

S. "Office of apprenticeship (OA)" means the office designated by the employment and training administration, United States department of labor, to administer the national apprenticeship system or its successor organization.

T. "Provisional registration" means the one-year initial provisional approval of newly registered programs that meet the required standards for program registration, after which program approval may be made permanent, continued as provisional, or rescinded following a review by the department and the state apprenticeship council, as provided for in the criteria described in Subsection B of

11.2.3.20 NMAC.

U. "Quality assurance assessment" means a comprehensive review conducted by the department regarding all aspects of an apprenticeship program's performance, including but not limited to, determining if apprentices are receiving: on-the-job learning in all phases of the apprenticeable occupation; scheduled wage increases consistent with the registered standards; related instruction through appropriate curriculum and delivery systems; and that the department is receiving notification of all new registrations, cancellations, and completions as required in this part.

V. "Registration agency" means the office of apprenticeship or a recognized state apprenticeship agency that has responsibility for registering apprenticeship programs and apprentices; providing technical assistance; conducting reviews for compliance with 29 CFR parts 29 and 30 and quality assurance assessments. The registration agency for the state of New Mexico is the department of workforce solutions.

W. "Registration of an apprenticeship agreement" means the acceptance and recording of an apprenticeship agreement by the department as evidence of the apprentice's participation in a particular registered apprenticeship program.

X. "Registration of an apprenticeship program" means the acceptance and recording of such program by the office of apprenticeship, or registration or approval by a recognized state apprenticeship agency, as meeting the basic standards and requirements of the United States department of labor, OA, for approval of such program for federal purposes. Approval is evidenced by a certificate of registration or other written indicia.

Y. "Related instruction" means an organized and systematic form of instruction designed to provide the apprentice with the knowledge of the theoretical and technical subjects related to the apprentice's occupation. Such instruction may be given in a classroom, through occupational or industrial courses, or by correspondence courses of equivalent value, electronic media, or other forms of self-study approved by the department.

Z. "Sponsor" means any person, association, committee, or organization operating an apprenticeship program and in whose name the program is (or is to be) registered or approved.

AA. "State apprenticeship agency (SAA)" means an agency of a state government that has responsibility and accountability for apprenticeship within the state. The SAA for New Mexico is the New Mexico department of workforce solutions, herein after referred to as "the department".

BB. "State apprenticeship council (SAC)" means the entity established to assist the department.

CC. "Technical assistance" means guidance provided by department staff in the development, revision, amendment, or processing of a potential or current sponsor's standards of apprenticeship, apprenticeship agreements, or advice or consultation with a sponsor to further comply with this part or guidance from the OA to the department on how to remedy nonconformity with this part.

DD. "Transfer" means a shift of apprenticeship registration from one program to another or from one employer within a program to another employer within that same program, where there is agreement between the apprentice and the affected apprenticeship committees or program sponsors.

[11.2.3.7 NMAC - Rp, 11.2.3.7 NMAC, 1/30/2018]

11.2.3.8 DUTIES OF THE DEPARTMENT OF WORKFORCE SOLUTIONS:

A. Only the department may seek recognition by the OA as an agency which has been properly constituted under an acceptable law or executive order, and authorized by the OA to register and oversee apprenticeship programs and agreements for federal purposes.

B. The department shall:

(1) have authority to give final approval in all areas pertaining to the registration of apprenticeship programs and program standards;

(2) maintain a register and appropriate records of all apprentices and apprenticeship programs that have approval of the department;

(3) review the activities of apprenticeship programs;

(4) approve and keep record of registered apprentices and apprenticeship agreements;

(5) monitor apprenticeship programs, performance standards, and conduct quality assurance assessments and EEO compliance reviews;

(6) apply for recognition as a registration agency with the OA and maintain national requirements as determined in 29 CFR 29.13 for recognition as a registration agency; the department is subject to derecognition by the OA for failure to fulfill or operate inconformity with the requirements of CFR parts 29 and 30;

(7) serve as the registration agency for apprenticeship programs and apprentices;

(8) issue interim credentials to apprentices;

(9) issue certificates of completion to apprentices;

(10) coordinate linkages with the New Mexico workforce investment system;

(11) issue certifications;

(12) issue certificates of registration;

(13) be the highest authority within the division where complaint appeals can be sent.

[11.2.3.8 NMAC - Rp, 11.2.3.8 NMAC, 1/30/2018]

11.2.3.9 DUTIES OF THE DIRECTOR:

A. The director oversees the registration of apprenticeship programs, apprentices, and all activities associated with the department.

B. The director shall:

(1) encourage apprenticeship training through personal contact with individual employers and labor organizations;

(2) act as liaison and shall coordinate, and cooperate with other state and federal agencies;

(3) assist in the preparation of standards of apprenticeship for presentation to the SAC;

(4) protect the welfare of the apprentices;

(5) devise procedures and keep records and statistics;

(6) handle public relations pertaining to apprenticeship training for the purpose of public education;

(7) carry out the policies approved and assigned by the department;

(8) notify all apprenticeship program sponsors of new or changed policy adopted by the SAA; and

(9) coordinate the activities and objectives of the department and SAC with OA staff assigned to New Mexico.

[11.2.3.9 NMAC - Rp, 11.2.3.9 NMAC, 1/30/2018]

11.2.3.10 ORGANIZATION OF SAC: The SAC provides advice and guidance to the department on the operation of the state's apprenticeship system.

A. The SAC shall consist of three persons known to represent employers, three persons known to represent labor organizations, and three public representatives. Persons appointed to the council shall be familiar with apprenticeable occupations.

B. SAC members shall be appointed as provided for in Section 50-7-3 NMSA 1978. If a SAC member misses two consecutive meetings, unless for just cause beyond the member's control, the SAC shall recommend to the department that such member be replaced by a person who represents the same interest group.

C. Officers of the SAC shall consist of a chairman and a vice-chairman. These officers will be elected annually at the third quarter regular meeting, and shall assume office immediately upon election. The chairman and vice-chairman shall not be selected from the same interest group, and shall not be eligible to succeed themselves. A former chairman or vice-chairman may be elected to the same office after having been out of that office for one year.

D. The director shall serve as executive secretary and as an ex-officio, non-voting member of the SAC and as an ex-officio non-voting member of any committees created pursuant to Subsection E of 11.2.3.10 NMAC.

E. Committees may be appointed by the SAC chairman to study, research, and make recommendations to the SAC on such matters as may be deemed to be appropriate by the SAC. Membership of such committees may be composed of SAC members, other interested persons, or a combination of SAC members and non-members.

[11.2.3.10 NMAC - Rp, 11.2.3.10 NMAC, 1/30/2018]

11.2.3.11 DUTIES OF SAC: The SAC shall:

A. work to effectively encourage the development of, and assist in the establishment of, voluntary apprenticeship training opportunities for eligible persons;

B. review all applications for the registration of an apprenticeship program, revisions to an existing apprenticeship program, and other aspects of apprenticeship and provide a final recommendation to the department for final action on any such application; and

C. work in cooperation with the department to review the activities of all registered apprenticeship programs and all registered apprentices.

[11.2.3.11 NMAC - Rp, 11.2.3.11 NMAC, 1/30/2018]

11.2.3.12 MEETINGS OF SAC:

A. Regular meetings shall be held quarterly on the third Thursday of the second month of each quarter, unless otherwise rescheduled within each quarter by the chairman.

B. Meetings may be scheduled in any city, town, or village of the state.

C. During a regular meeting at least once each year, the SAC shall adopt an annual resolution stating its procedure for giving reasonable public notice of regular and special meetings pursuant to the requirements of the state Open Meetings Act.

D. Meetings may be requested by the chairman, or in the chairman's absence, by the vice-chairman, or on petition by any three members of the SAC. The department may also request a meeting.

E. Five members of the SAC shall constitute a quorum, provided at least one member representing employers and one member representing labor, and one public member are present.

F. Voting shall be limited to the members present at the SAC meeting. The chairman may vote on all questions and issues, or may choose to vote only in the case of a tie.

G. All meetings shall be open to all interested parties and to the public, except that meetings may be closed to the public as provided for in the state Open Meetings Act.

[11.2.3.12 NMAC - Rp, 11.2.3.12 NMAC, 1/30/2018]

11.2.3.13 PARLIAMENTARY PROCEDURE AND ORDER OF BUSINESS:

A. Roberts Rules of Order, revised, shall govern the proceedings of the SAC, unless

otherwise specified in this manual.

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

(1) approval of minutes for previous meeting;

(2) communications;

(3) reports of:

(a) SAC members;

(b) committees;

(c) consultants;

(d) director of apprenticeship;

(4) unfinished business;

(5) new business;

(6) persons wishing to be heard by the SAC;

(7) election of officers;

(8) adjourn.

[11.2.3.13 NMAC - Rp, 11.2.3.13 NMAC, 1/30/2018]

11.2.3.14 FORMULATION OF POLICY: The SAC advises on general policies, principles, and standards under which the department operates. The department interprets, and enforces these policies, principles and standards. SAC advises the areas of emphasis to be placed on apprenticeship activities; represents the point of view of employers and labor and the public in respect to major state problems in apprenticeship; serves as a liaison with employers and labor, and in this capacity helps to promote apprenticeship by participation in conferences and meetings.

[11.2.3.14 NMAC - Rp, 11.2.3.214 NMAC, 1/30/2018]

11.2.3.15 U.S. DEPARTMENT OF LABOR, OFFICE OF APPRENTICESHIP: General policy: It shall be the responsibility of the director to coordinate the activities and objectives of the department with staff of the OA assigned to New Mexico. Mutual understanding and good faith on part of the state and federal agencies is essential to the advancement of parallel interest of the state and federal governments.

[11.2.3.15 NMAC - Rp, 11.2.3.15 NMAC, 1/30/2018]

11.2.3.16 NATIONAL STANDARDS AND POLICY STATEMENTS OF APPRENTICESHIP: General policy: It is basic department policy to cooperate in promoting the development of joint national standards of apprenticeship agreed upon by the appropriate national organizations concerned. When national standards for various reasons cannot be obtained, national policy statements by employer or employee organizations which observe the fundamentals of apprenticeship are recognized as guides by the SAA in the promotion of apprenticeship among the members of the organizations which formulate the policy.

[11.2.3.16 NMAC - Rp, 11.2.3.16 NMAC, 1/30/2018]

11.2.3.17 APPRENTICESHIP PROGRAMS: The terms and conditions of an apprenticeship program must be in written form so that all parties concerned may be informed of its provisions, and so it can be used in the training operations and the administration of the program. Apprenticeship programs are defined by the department based upon guidance from the United States department of labor, OA.

[11.2.3.17 NMAC - Rp, 11.2.3.17 NMAC, 1/30/2018]

11.2.3.18 RELATIONSHIP TO BARGAINING AGREEMENTS:

A. General policy: Because a bargaining agreement is a legal contract between the parties who sign it, its terms and conditions with respect to the employment and training of apprentices are to be fully respected. Any changes from the terms in the bargaining agreement advocated in connection with apprenticeship must be made in conformance with the recognized procedures for amending the bargaining agreement.

B. Apprenticeship provisions in bargaining agreements: It is preferable that apprenticeship programs be developed separately from the bargaining agreement to focus greater attention to apprenticeship. Where the parties to the agreement so desire, it is recommended that a clause be inserted in the agreement authorizing the establishment of an apprenticeship program, (or recognizing a program in existence), to conform to the fundamentals or standards of the department.

C. To be eligible for registration: Under a program proposed for registration by an employer or employers' association, where the standards, collective bargaining agreement or other instrument provides for participation by a union in any manner in the operation of the substantive matters of the apprenticeship program, and such participation is exercised, written acknowledgement of union agreement or no objection to the registration is required. Where no such participation is evidenced and practiced, the employer or employers' association must simultaneously furnish to an existing union, which is the collective bargaining agent of the employees to be trained, a copy of its application for registration and of the apprenticeship program. The department must provide for receipt of union comments, if any, within 45 days before final action on the application for registration and approval.

[11.2.3.18 NMAC - Rp, 11.2.3.18 NMAC, 1/30/2018]

11.2.3.19 EMPLOYEE-EMPLOYER COOPERATION: General policy: Cooperation between an employer and his skilled employees is essential for the proper training of the apprentice. The employer provides employment for the apprentices. The skilled employees impart their skills and knowledge to the apprentice.

[11.2.3.19 NMAC - Rp, 11.2.3.19 NMAC, 1/30/2018]

11.2.3.20 METHOD OF RECOGNITION:

A. General policy: Recognition is a means of publicly acknowledging apprenticeship programs that are considered to have met the fundamentals of apprenticeship. Recognition may be accorded to New Mexico apprenticeship programs by the department, by registration, when they have met the fundamentals of apprenticeship, and as detailed below. The director of apprenticeship shall notify programs of registration or denial, with the stated reason of denial within five working days of said action.

B. Eligibility and procedure for registration of an apprenticeship program:

(1) Eligibility for registration of an apprenticeship program is conditioned upon a program's conformity with the apprenticeship program standards published in this part. For a program to be determined by the department as being in conformity with these published standards, the program must apply for registration and be registered with the department. The determination that the program meets the apprenticeship program standards is effectuated only through such registration.

(2) Only an apprenticeship program or agreement that meets the following criteria is eligible for department registration:

(a) it is in conformity with the requirements of this part and the training is in an apprenticeable occupation having the characteristics set forth in 11.2.3.22 NMAC and

(b) it is in conformity with the requirements of the equal employment opportunity in apprenticeship state plan, 11.2.2 NMAC.

(3) Except as provided under Paragraph (4) of this subsection, apprentices must be individually registered under a registered program. Such individual registration may be accomplished by filing copies of each individual apprenticeship agreement with the department:

(a) by filing copies of each individual apprenticeship agreement with the department or;

(b) subject to prior department approval, by filing a master copy of such agreement followed by a listing of the name, and other required data, of each individual when apprenticed.

(4) The names of persons in probationary employment as an apprentice under an apprenticeship program registered by the department, if not individually registered under such program, must be submitted within 45 days of employment to the department for certification to establish the apprentice as eligible for such probationary employment.

(5) The department must be notified within 45 days of all individuals who have successfully completed apprenticeship programs. The department must also be notified and provided a statement of the reasons within 45 days of all apprentice actions; i.e., registrations, holds, advancements, cancellations, completions, or transfers.

(6) Operating apprenticeship programs when approved by the department are accorded registration by a certificate of registration or other written indicia.

(7) Applications for new programs that the department determines meet the required standards for program registration shall be given provisional approval for a period of one year. The department must review all new programs for quality and for conformity with the requirements of this part at the end of the first year after registration and make a determination that:

(a) a program that conforms with the requirements of this part shall be made permanent or shall continue to be provisionally approved through the first full training cycle;

(b) a program that is not in operation or does not conform to the regulations during the provisional approval period shall be recommended for deregistration procedures.

(8) The department shall review all programs for quality and for conformity with the requirements of 11.2.3 NMAC at the end of the first full training cycle. A satisfactory review of a provisionally approved program shall result in conversion of provisional approval to permanent registration. Subsequent reviews shall be conducted no less frequently than every five years. Programs that are not in operation or not conforming to the regulations shall be recommended for deregistration procedures.

(9) Any sponsor proposals or applications for modification(s) or change(s) to registered programs must be submitted to the department. The registration agency must make a determination on whether to approve such submissions within 90 days from the date of receipt. If approved, the modification(s) or change(s) will be recorded and acknowledged within 90 days of approval as an amendment to such program. If not approved, the sponsor shall be notified of the reasons for the disapproval and provided the appropriate technical assistance.

(10) Under a program proposed for registration by an employer or employers' association, where the standards, collective bargaining agreement or other instrument provides for participation by a union in any manner in the operation of the substantive matters of the apprenticeship program, and such participation is exercised, written acknowledgement of the union agreement or no objection to the registration is required. Where no such participation is evidenced and practiced, the employer or employers' association shall simultaneously furnish to an existing union, which is the collective bargaining agent of

the employees to be trained, a copy of its application for registration and of the apprenticeship program. The department shall provide for receipt of union comments, if any, within 45 days before final action on the application for registration and approval.

(11) Where the employees to be trained have no collective bargaining agreement, an apprenticeship program may be proposed for registration by an employer or group of employers, or an employers' association.

C. Reciprocity of multi-state and out-of-state programs: The department will cooperate with the United States department of labor, OA, in the recognition of multi-state or out-of-state programs registered by OA. The department shall grant reciprocal approval for federal purposes to apprentices, apprenticeship programs, and standards that are registered in other states by the OA or another SAA if such reciprocity is requested by the apprenticeship program sponsor. Program sponsors seeking reciprocal approval must meet the wage and hour provisions and apprentice ratio standards of the reciprocal state.
[11.2.3.20 NMAC - Rp, 11.2.3.20 NMAC, 1/30/2018]

11.2.3.21 REVIEW OF PROGRAMS PERFORMANCE STANDARDS:

A. General policy: In order to carry out the provisions of the New Mexico State Apprenticeship Act with regard to safeguarding the welfare of the apprentice, the program provisions under which the apprentice is to be employed should be reviewed for their consistency with current apprenticeship fundamentals and recognized apprenticeship policies and practices of industry.

B. Every registered apprenticeship program shall have at least one registered apprentice, except for the following specified periods of time, which may not exceed one year:

(1) between the date when a program is registered and the date of registration for its first apprentice(s); or

(2) between the date that a program graduates an apprentice and the date of registration for the next apprentice(s) in the program.

C. The department shall evaluate performance of registered apprenticeship programs. The tools and factors to be used shall include, but are not limited to: quality assurance assessments, equal employment opportunity (EEO) compliance reviews, and completion rates. Any additional tools and factors used by the department in evaluating program performance must adhere to the goals and policies of the department.

D. In order to evaluate completion rates, the department shall review a program's completion rates in comparison to the national average for completion rates. Based on the review, the department shall provide technical assistance to programs with completion rates lower than the national average. Cancellation of apprenticeship agreements during the probationary period will not have an adverse impact on a sponsor's completion rate.
[11.2.3.21 NMAC - Rp, 11.2.3.21 NMAC, 1/30/2018]

11.2.3.22 CRITERIA FOR APPRENTICEABLE OCCUPATIONS: Criteria for apprenticeable occupations: An industry specific occupation, in order to be recognized as apprenticeable by the department, must possess all the following characteristics:

A. it involves skills that are customarily learned in a practical way through a structured, systematic program of on-the-job supervised learning;

B. it is clearly identified and commonly recognized throughout an industry;

C. it involves the progressive attainment of manual, mechanical, or technical skills and knowledge which, in accordance with the industry standard for the occupation, would require the completion of a minimum of 2,000 hours of on-the job learning; and

D. it requires of the completion of related instruction to supplement the on-the-job learning.
[11.2.3.22 NMAC - Rp, 11.2.3.22 NMAC, 1/30/2018]

11.2.3.23 STANDARDS OF APPRENTICESHIP:

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

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

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

(2) The

program standards shall contain provisions that address:

(a)
the employment and training of the apprentice in a skilled occupation;

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

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

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

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

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

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

(e)
provisions or organized related and supplemental instruction in technical subjects related to the trade; a minimum of 144 hours for each year of apprenticeship is recommended. This instruction in technical subjects may be accomplished through media such as classroom, occupational or industry courses, electronic media, or other instruction approved by the department

(f)
every apprenticeship instructor shall:

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

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

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

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

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

(j)
a probationary period reasonable in relation to the full apprenticeship term, with full credit given for such period toward completion of apprenticeship; the probationary period cannot exceed twenty-five percent of the length of the program, or one year, whichever is shorter;

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

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

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

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

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

(i)

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

(ii) transfer shall be to the same occupation; and

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

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

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

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

(s) identification of the department;

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

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

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

(w) a statement that the program will be conducted, operated, and administered in conformity with applicable provisions of 11.2.2 NMAC equal opportunity in apprenticeship state plan;

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

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

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

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

[11.2.3.23 NMAC - Rp, 11.2.3.23 NMAC, 1/30/2018]

11.2.3.24 WORK PROCESSES:

A. General policy: An apprenticeship program should contain a sufficiently broad schedule of work processes for the acquirement of reasonable competency in the trade.

B. Development of work processes: Work process schedules should be developed by those responsible for the training of apprentices and in sufficient detail to serve as an outline of the basic elements of the trade to be learned.

[11.2.3.24 NMAC - Rp, 11.2.3.24 NMAC, 1/30/2018]

11.2.3.25 APPRENTICE WAGES:

A. General policy: Wages for apprentices should be calculated so that training, rather than production, is the principal criterion.

B. Apprentice wages under bargaining agreement: Wage rates established for the apprentice under a bargaining agreement shall be recognized.

C. Beginning apprentice rates: The beginning apprentice rates shall equal or exceed those customarily paid to other beginning apprentices in the trade in the locality.

D. Expressing wage rates: Apprentice wage rates may be expressed in terms of cents per hour but preferably in percentages of the journeyworker's rate. The journeyworker's hourly rate as of the effective date of the program shall be reported when submitting programs for review and registration. Where the journeyworker's rate is shown as a weekly or monthly wage, the standard work week hours also shall be shown.

E. Coverage under state and federal wage and hour acts: If sponsors of apprenticeship programs are uncertain as to their coverage under state and federal wage and hour acts and they propose to set up rate schedules under which the apprentice would be paid less than the minimum wages established by these acts, they should be advised to check with their attorney, or with the state or federal agency responsible for the administration of these acts.

[11.2.3.25 NMAC - Rp, 11.2.3.25 NMAC, 1/30/2018]

11.2.3.26 CERTIFICATE OF COMPLETION OF APPRENTICESHIP:

A. General policy: It is the policy to emphasize the significance of the apprentice completion certificate issued by the department.

B. Authentication of requests for completion certificates: A certificate of completion of apprenticeship will be issued to apprentices upon receipt of an electronic request from the appropriate program sponsor. The department shall have in its files some specific evidence that the program sponsor has requested a certificate for the apprentice.

[11.2.3.26 NMAC - Rp, 11.2.3.26 NMAC, 1/30/2018]

11.2.3.27 APPRENTICE AGREEMENT: General policy: The terms and conditions of employment and training of each apprentice shall be stated in a written apprenticeship agreement. The agreement shall contain explicitly or by reference:

A. names and signatures of the contracting parties (apprentice, and the program sponsor or employer), and the signature of a parent or guardian if the apprentice is a minor;

B. the date of birth and social security number of the apprentice;

C. contact information of the program sponsor and the department;

D. a statement of the occupation in which the apprentice is to be trained, and the beginning date and term (duration) of apprenticeship;

E. a statement showing:

(1) the number of hours to be spent by the apprentice in work on the job in a time-based program; or a description of the skill sets to be attained by completion of a competency-based program, including the on-the-job learning component; or the minimum number of hours to be spent by the apprentice and a description of the skill sets to be attained by completion of hybrid program; and

(2) the number of hours to be spent in related instruction in technical subjects related to the occupation, which is recommended not be less than 144 hours per year;

F. a statement setting forth a schedule of the work processes in the occupation or industry division in which the apprentice is to be trained and the approximate time to be spent at each process;

G. a statement setting forth a schedule of the graduated scale of wages to be paid to the apprentice and whether or not the required related instruction is compensated;

H. statements providing:

(1) for a specific period of probation during which the apprenticeship agreement may be cancelled by either party to the agreement upon written notice to the department, without adverse impact on the sponsor;

(2) that, after the probationary period, the agreement may be:

(a) cancelled at the request of the apprentice, or

(b) suspended or cancelled by the sponsor, for good cause, with due notice to the apprentice and a reasonable opportunity for corrective action, and with written notice to the apprentice and to the department of the final action taken;

I. a reference incorporating as part of the agreement the standards of the apprenticeship program as they exist on the date of the agreement and as they exist on the date of the agreement and as they may be amended during the period of the agreement;

J. a statement that the apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training, without discrimination because of race, color, religion, national origin, or sex;

K. contact information (name, address, phone, and email if appropriate) of the appropriate authority designated under the program to receive, process and make disposition of controversies or differences arising out of the apprenticeship agreement when the controversies or differences cannot be adjusted locally or resolved in accordance with the established procedure or applicable collective bargaining provisions.

[11.2.3.27 NMAC - Rp, 11.2.3.27 NMAC, 1/30/2018]

11.2.3.28 PROGRAM COMPLIANCE AND DEREGISTRATION PROCEEDINGS:

A. Operation according to approved standards: After a program sponsor has registered the program's standards with the department, the program shall operate in accordance with these standards. Should an operating procedure be desired that is not in accordance with the existing approved standards, the program sponsor is required to submit a proposal pursuant to the procedures set forth in Subsection B of 11.2.3.23 NMAC.

B. Programs not in compliance with department policies: Should a program sponsor not comply with these policies and procedures, the SAA shall take appropriate action. Deregistration of the program shall be used after reasonable efforts to gain compliance have failed.

C. Deregistration of an apprenticeship program: Deregistration of a program may be effected upon the voluntary action of the sponsor by submitting a request for cancellation of the registration in accordance with Paragraph (1) of this subsection or upon reasonable cause, by the department instituting formal deregistration proceedings in accordance with Paragraph (2) of this subsection.

(1) Deregistration at the request of the sponsor: The department may cancel the registration of an apprenticeship program by written acknowledgment of such request stating the following:

(a) the registration is cancelled at the sponsor's request and effective date

thereof;

(b) that, within 15 days of the date of the acknowledgment, the sponsor shall notify all apprentices of such cancellation and the effective date; that such cancellation automatically deprives the apprentice of individual registration; that the deregistration of the program removes the apprentice from coverage for federal purposes which require the secretary of labor's approval of an apprenticeship program, and that all apprentices are referred to the department for information about potential transfer to other registered apprenticeship programs.

(2) Deregistration by the department upon reasonable cause:

(a) Deregistration proceedings may be undertaken when the apprenticeship program is not conducted, operated, or administered in accordance with the program's registered standards or with the requirements of this part, including but not limited to: failure to provide on-the-job learning; failure to provide related instruction; failure to pay the apprentice a progressively increasing schedule of wages consistent with the apprentices skills acquired; or persistent and significant failure to perform successfully. Deregistration proceedings for violation of equal opportunity requirements must be processed in accordance with the provisions under 11.2.2 NMAC equal employment opportunity in apprenticeship state plan.

(b) For purposes of this section, persistent and significant failure to perform successfully occurs when a program sponsor consistently fails to register at least one apprentice, shows a pattern of poor quality assessment results over a period of several years, demonstrates an ongoing pattern of very low completion rates over a period of several years, or shows no indication of improvement in the areas identified by the SAA during a review process as requiring corrective action.

(c) Where it appears the program is not being operated in accordance with the registered standards or with requirements of this part, the department must notify the program sponsor in writing.

(d) The notice sent to the program sponsor's contact person must:

(i) be sent by registered or certified mail, with return receipt requested;

(ii) state the shortcoming(s) and the remedy required; and

(iii) state that a determination of reasonable cause for deregistration will be made unless corrective action is effected within 30 days.

(e) Upon request by the sponsor for good cause, the 30-day term may be extended for another 30 days; during the period for corrective action, the department must assist the sponsor in every reasonable way to achieve conformity.

(f) If the required correction is not effected within the allotted time, the department must send a notice to the sponsor, by registered or certified mail, return requested, stating the following:

(i) the notice is sent under this paragraph;

(ii) certain deficiencies were called to the sponsor's attention (enumerating them and the remedial measures requested, with the dates of such occasions and letters), and the sponsor has failed or refused to take corrective action; and

(iii) based upon the stated deficiencies and failure to remedy them, a determination has been made that there is reasonable cause to deregister the program and the program may be deregistered unless, within 15 days of the receipt of this notice, the sponsor requests a hearing with the department;

(g) If the sponsor does not request a hearing, the department will deregister the program.

(h) If the sponsor requests a hearing, the department will transmit to the administrator a report containing all pertinent facts and circumstances concerning the noncomformity, including the findings and recommendations for deregistration, and copies of all relevant documents and records. Statements concerning interviews, meetings, and conferences will include the time, date, place and persons present, and the administrator will refer the matter to the office of administrative law judges. An administrative law judge will convene a hearing in accordance with Subsection D of this section.

(i) Every order of deregistration must contain a provision that the sponsor must, within 15 days of the effective date of the order, notify all registered apprentices of the deregistration of the program; the effective date thereof; that such cancellation automatically deprives the apprentice of individual registration; that the deregistration removes the apprentice from coverage for federal purposes which require the secretary of labor's approval of an apprenticeship program; and that all apprentices are referred to the department for information about potential transfer to other registered apprenticeship programs.

D. Hearings for deregistration:

(1) Within 10 days of receipt of a request for a hearing, the administrator of the OA shall contact the department's office of administrative law judges to request the designation of the administrative law judge to preside over the hearing. The administrative law judge shall give reasonable notice of such hearing by registered mail, return receipt requested, to the appropriate sponsor. Such notice will include:

(a) a reasonable time and place of hearing;

(b) a statement of the provisions of 11.2.3.28 NMAC pursuant to which the hearing is to be held; and

(c) a concise statement of the matters pursuant to which the action forming the basis of the hearing is proposed to be taken.

(2) The procedures contained in 29 CFR 18 will apply to the disposition of the request for hearing except that:

(a) the administrative law judge will receive, and make part of the record, documentary evidence offered by any party and accepted at the hearing; copies thereof will be made available by the party submitting the documentary evidence to any party to the hearing upon request;

(b) technical rules of evidence will not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination will be applied, where reasonably necessary, by the administrative law judge conducting the hearing; the administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence.

(3) The administrative law judge should issue a written decision within 90 days of the close of the hearing record. The administrative law judge's decision constitutes final agency action unless, within 15 days from receipt of the decision, a party dissatisfied with the decision files a petition for review with the administrative review board, specifically identifying the procedure, fact, law or policy to which exception is taken. Any exception not specifically urged is deemed to have been waived. A copy of the petition for review shall be sent to the opposing party at the same time. Thereafter, the decision of the administrative law judge remains final agency action unless the administrative review board, within 30 days of the filing of the petition for review, notifies the parties that it has accepted the case for review. The administrative review board may set a briefing schedule or decide the matter on the record. The administrative review board shall decide any case it accepts for review within 180 days of the close of the record. If not so decided, the administrative law judge's decision constitutes final agency action.

E. Reinstatement of program registration: Any apprenticeship program deregistered under Subsection C of 11.2.3.26 NMAC may be reinstated upon presentation of adequate evidence that the apprenticeship program is operating in accordance with this part. Such evidence shall be presented to the SAC for recommendation to the department for reinstatement.

F. Limitations: Nothing in this part or in any apprenticeship agreement shall operate to invalidate:

(1) any apprenticeship provision in any collective bargaining agreement between employers and employees establishing higher apprenticeship standards; or

(2) any special provision for veterans, minority persons, or women in the standards, apprentice qualifications or operation of the program, or in the apprenticeship agreement, which is not otherwise prohibited by law, executive order, or authorized regulation.

[11.2.3.28 NMAC - Rp, 11.2.3.28 NMAC, 1/30/2018]

HISTORY OF 11.2.3 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center under:
SLC 77-1, New Mexico State Apprenticeship Council, Policy Manual, 6/7/77.
SLC 78-1, New Mexico State Apprenticeship Council, Policy Manual, 2/21/78.
SLC 78-2, New Mexico State Apprenticeship Council, Policy Manual, 8/17/78.
SLC (NMSAC) 84-1, New Mexico State Apprenticeship Council, Policy Manual, 7/26/84.

NMAC History:
11 NMAC 2.3, New Mexico State Apprenticeship Council, Policy Manual, 4/9/97.
11 NMAC 2.3, New Mexico State Apprenticeship Council, Policy Manual, 11/26/97.

History of Repealed Material:
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End of Adopted Rules

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