

New Mexico Register

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

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New Mexico Register

Volume XXVIII, Issue 7

April 11, 2017

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Notices of Rulemaking and Proposed Rules

COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING AND RULE HEARING

The New Mexico State Commission of Public Records ("Commission") has scheduled a regular meeting and rule hearing for Tuesday, May 16, 2017, at 10:00 A.M. at the New Mexico State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Melissa Salazar at 476-7926 by May 2, 2017 or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats.

At the hearing the Commission will take oral and written comments related to the rulemaking actions listed below and during the meeting consider approving these rulemaking actions.

Interested individuals may submit written comments regarding the proposed rulemaking actions via email at rmd.cpr@state.nm.us. Written comments must be received no later than 5:00 p.m. on May 2, 2017 for inclusion in the Commission packet. The submission of written comments as soon as possible is encouraged.

Persons offering written comments at the hearing must have seven (7) copies for the Commission to review.

Copies of the proposed rules are available on the Commission website (www.nmcpr.state.nm.us) and at the office of the State Records Administrator located in the Santa Fe State Records Center and Archives at 1205 Camino Carlos Rey, Santa Fe, NM.

A copy of the agenda for the combined meeting and rule hearing is also available on the Commission website and at the office of the State Records Administrator located in the Santa Fe State Records Center and Archives at 1205 Camino Carlos Rey, Santa Fe, NM. The agenda is subject to change up to 72 hours prior to the meeting.

Amend

- 1.13.2 NMAC Fees
- 1.13.10 NMAC Records Storage and Access
- 1.13.30 NMAC Disposition of Public Records and Non-Records
- 1.13.4 NMAC Records Management Requirements for Electronic Messaging
- 1.21.2 NMAC Retention and Disposition of Public

ECONOMIC DEVELOPMENT DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

The Economic Development Department ("EDD or Department") hereby gives notice that the Department will conduct a public hearing as indicated to obtain input on amending the following rule:

5.5.50 NMAC, INDUSTRIAL DEVELOPMENT TRAINING PROGRAM.

The proposed rulemaking actions specific to the Job Training Incentive Program may be obtained from the EDD website <https://gonm.biz/business-resource-center/edd-programs-for-business/job-training-incentive-program> or Sara Gutiérrez at the contact below on April 11, 2017.

A public hearing regarding the rule will be held on Thursday, May 11, 2017 at the CNM Workforce Training Center, 5600 Eagle Rock Ave., NE,

Albuquerque, NM. The time for the hearing on the proposed rule is 9:00 AM MDT.

Interested individuals may testify at the public hearing or submit written comments regarding the proposed rulemaking relating to the Job Training Incentive Program to sara.gutierrez@state.nm.us or Sara Gutiérrez, JTIP Program Manager, New Mexico Economic Development Department, P.O. Box 20003 Santa Fe, New Mexico 87504-5003. Written comments must be received no later than 5:00 pm on Friday, May 5, 2017.

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

PUBLIC EDUCATION, DEPARTMENT OF

NOTICE OF PROPOSED RULEMAKING

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 Tuesday, May 16, 2017, from 1:30 p.m. to 4:00 p.m. (MDT). The purpose of the public hearing is to receive public input on the proposed repeal and replacement of the following state rules:

6.61.2 NMAC, LICENSURE IN ELEMNTARY EDUCATION, GRADES K-8;

6.61.3 NMAC, LICENSURE IN MIDDLE LEVEL EDUCATION, GRADES 5-9;

6.61.4 NMAC, LICENSURE

IN SECONDARY EDUCATION,
GRADES 7-12;

6.61.5 NMAC, LICENSURE FOR
GRADES PRE K-12;

6.61.6 NMAC, LICENSURE IN
SPECIAL EDUCATION PRE K-12;

6.61.7 NMAC, LICENSURE IN
SECONDARY VOCATIONAL-
TECHNICAL EDUCATION;

6.61.8 NMAC, LICENSURE
IN EARLY CHILDHOOD
EDUCATION, BIRTH - GRADE
THREE;

6.61.10 NMAC, TEACHERS OF
STUDENTS WITH BLINDNESS/
VISUAL IMPAIRMENT B-12; and

6.61.11 NMAC, LICENSURE
IN EARLY CHILDHOOD
EDUCATION, BIRTH - PRE-K.

The purpose of each proposed rule change is to align the standards for New Mexico school personnel specific licensure requirements for instructors with the Interstate Teacher Assessment and Support Consortium (InTASC) Model Core Teaching Standards. These InTASC Standards are the accepted standards for entry level teacher preparation and will align with existing classroom observation components in New Mexico's educator evaluation and support system, NMTEACH.

Interested parties may provide comments on the proposed repeal and replacement of these state rules 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.

Copies of the proposed rules may be accessed through the New Mexico Public Education Department's website under the "Public Notices" link at <http://ped.state.nm.us/ped/PublicNotices.html>, 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.

PUBLIC SAFETY, DEPARTMENT OF LAW ENFORCEMENT ACADEMY

NOTICE OF PUBLIC HEARING

The New Mexico Law Enforcement Academy (NMLEA) Board will hold a public hearing to allow public comment on the proposed amendment of Title 10 Public Safety and Law Enforcement, Chapter 29 Law Enforcement Academy of the New Mexico Administrative Code. The Board is proposing amendments to the following: 10.29.1 NMAC - General Provisions, 10.29.4 NMAC - Instructor Certifications, and 10.29.10 NMAC - Public Safety Telecommunicator Minimum Standards of Training.

The hearing will be held on Friday, May 12, 2017, from 9:00 a.m. to 12:00 p.m., at the New Mexico Law Enforcement Academy (NMLEA) Main Building, Classroom 6B, 4491 Cerrillos Road, Santa Fe, NM.

The proposed regulations changes are available on the NMLEA Board's website at: <http://nmlea.dps.state.nm.us/index.php/lea-board/>.

Individuals wishing to testify, or who wish to request a copy of the proposed regulations, should contact: Layla Reyes at the New Mexico Law Enforcement Academy, 4491 Cerrillos Road, Santa Fe, NM 87507, or by calling 505-827-9255.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any NMLEA public hearing, program, or service, please contact: Layla Reyes at the New Mexico Law Enforcement Academy. The Academy requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written comments which must be received by 4:30 p.m. on Friday, May 5, 2017. Please send comments to:

New Mexico Law Enforcement
Academy
c/o Layla Reyes - NMAC
4491 Cerrillos Road
Santa Fe, New Mexico 87507

You may also send comments electronically to: laylad.reyes@state.nm.us

RACING COMMISSION

NOTICE OF RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the New Mexico Racing Commission will hold a Regular Meeting and Rule Hearing on May 12, 2017. The hearing will be held during the Commission's regular business meeting with public session beginning at 9:30 a.m. The meeting will be held at SunRay Park Racetrack, 39 Road 5568, Farmington, NM 87401

The purpose of the Rule Hearing is to consider adoption of the proposed amendments and additions to the following Rules Governing Horse Racing in New Mexico No.15.2.1

NMAC, 15.2.2 NMAC, 15.2.3 NMAC, 15.2.4 NMAC, 15.2.5 NMAC, 15.2.6 NMAC & 16.47.1 NMAC. The comments submitted and discussion heard during the Rule Hearing will be considered and discussed by the Commission during the open meeting following the Rule Hearing. The Commission will vote on the proposed rules during the meeting.

Copies of the proposed rules may be obtained from the NMRC Executive Director, New Mexico Racing Commission, 4900 Alameda Blvd NE, Albuquerque, New Mexico 87113, (505) 222-0700. Interested persons may submit their views on the proposed rules to the commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

Anyone who requires special accommodations is requested to notify the commission of such needs at least five days prior to the meeting.

Executive Director

Dated: March 30, 2017

STATE GAME COMMISSION

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

On Thursday, May 11, 2017, beginning at 9:00 a.m., at the Community Facility on Airpark Road, Clayton Municipal Airport, Clayton, New Mexico, the State Game Commission will meet in public session to hear and consider action as appropriate on the following: Discussion with Senator Pete Campos; Update by Turner Endangered Species Foundation on the Mexican Wolf at Ladder Ranch; Awards of Excellence and Dedication to Wildlife Management; Presentation to the Commission on Penalty Assessment Violations; Revocations;

Reserving Two Elk Licenses for Non-Profit Wish Granting Organization; Final Migratory Bird Rule for 2017-2018 Hunting Seasons; Initiation of Upland Game Rule Development 19.31.5 NMAC for the 2019-2023 Seasons; Final Rule Amendments to the Aquatic Invasive Species Rule 19.30.14 NMAC; Request to Dispose of Vehicles and Other Assets; Fiscal Year 2018 Initiation of Budget Development; and Closed Executive Session.

Copies of proposed rule changes and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504, or from the Department's website. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at www.wildlife.state.nm.us for updated information.

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

End of Notices of Rulemaking and Proposed Rules.

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Adopted Rules

Effective Date and Validity of Rule Filings

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

AGRICULTURE, DEPARTMENT OF

This is an emergency amendment to 21.17.36 NMAC, Section 4, effective 3/29/2017.

21.17.36.4 DURATION:
[3/28/2017] 6/26/2017
[21.17 36.4 NMAC - N/E, 1/27/2017;
A/E, 3/27/2017]

WATER QUALITY CONTROL COMMISSION

TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 1 ENVIRONMENTAL PROTECTION GENERAL PART 6 RULEMAKING PROCEDURES - WATER QUALITY CONTROL COMMISSION

20.1.6.1 ISSUING
AGENCY: New Mexico Water
Quality Control Commission.
[20.1.6.1 NMAC - N, 05/01/17]

20.1.6.2 SCOPE: This part governs the procedures to be followed by the commission, and by participants before the commission, in connection with all rulemaking hearings before the commission, except to the extent this part may be inconsistent with specific procedures in governing law. In cases where this part is inconsistent with any rulemaking procedures specified in governing law, the procedures in governing law apply, rather than the procedures in this part.
[20.1.6.2 NMAC - N, 05/01/17]

20.1.6.3 STATUTORY
AUTHORITY: Subsection E of
Section 74-6-4 NMSA 1978 directs

the commission to adopt, promulgate and publish regulations. Section 74-6-6 NMSA 1978 requires a public hearing prior to the adoption, amendment or repeal of a regulation, and specifies requirements for such a hearing.
[20.1.6.3 NMAC - N, 05/01/17]

20.1.6.4 DURATION:
Permanent.
[20.1.6.4 NMAC - N, 05/01/17]

20.1.6.5 EFFECTIVE
DATE: May 1, 2017, unless a later date is cited at the end of a section.
[20.1.6.5 NMAC - N, 05/01/17]

20.1.6.6 OBJECTIVE: The objectives of this rule are:

- A. to standardize the procedures used in rulemaking proceedings before the commission;
- B. to encourage participation in the hearings conducted by the commission for the promulgation of regulations;
- C. to make possible the effective presentation of the evidence and points of view of parties and members of the general public;
- D. to allow all interested persons a reasonable opportunity to submit data, views or arguments orally or in writing; and
- E. to assure that commission hearings are conducted in a fair and equitable manner.

[20.1.6.6 NMAC - N, 05/01/17]

20.1.6.7 DEFINITIONS:
As used in this part:

- A. "Act" means the Water Quality Act, Sections 74-6-1 through 74-6-17 NMSA 1978.
- B. "Commission administrator" means the department employee designated by the secretary of environment to provide staff

support to the commission.

C. "Commission" means the water quality control commission.

D. "Constituent agency" means any or all agencies of the state defined as such under the act.

E. "Department" means the New Mexico environment department.

F. "Document" means any paper, exhibit, pleading, motion, response, memorandum, decision, order or other written or tangible item that is filed in a proceeding under this part, or brought to or before the commission for its consideration, but does not include a cover letter accompanying a document transmitted for filing.

G. "Exhibit" means any document or tangible item submitted for inclusion in the hearing record.

H. "General public" means any person attending a hearing who has not submitted a notice of intent to present technical testimony.

I. "Governing law" means the statute, including any applicable case law, which authorizes and governs the decision on the proposed regulatory change.

J. "Hearing officer" means the person designated by the commission to conduct a hearing under this part.

K. "Hearing record" means:

- (1) the transcript of proceedings; and
- (2) the record proper.

L. "Participant" means any person who participates in a rulemaking proceeding before the commission.

M. "Party" means the petitioner, any person filing a

notice of intent to present technical testimony, and any person filing an entry of appearance.

N. "Person" means an individual or any entity, including federal, state and local governmental entities, however organized.

O. "Petitioner" means the person who petitioned the commission for the regulatory change that is the subject of the hearing.

P. "Record proper" means all documents related to the hearing and received or generated by the commission prior to the beginning, or after the conclusion, of the hearing, including, but not limited to:

(1) the petition for hearing and any response thereto;
(2) the minutes (or an appropriate extract of the minutes) of the meeting at which the petition for hearing was considered, and of any subsequent meeting at which the proposed regulatory change was discussed;

(3) the notice of hearing;

(4) affidavits of publication;

(5) notices of intent to present technical testimony;

(6) all written pleadings, including motions and responsive pleadings, and orders;

(7) statements for the public record;

(8) the hearing officer's report, if any;

(9) post-hearing submissions, if allowed;

(10) the audio recordings (or an appropriate extract of the recordings) of the meeting(s) at which the commission deliberated on the adoption of the proposed regulatory change; and

(11) the commission's decision and the reasons therefore.

Q. "Regulation" means any rule, regulation or standard promulgated by the commission and affecting one or more persons, besides the commission and the department, except for any order or decision issued in connection with

the disposition of any case involving a particular matter as applied to a specific set of facts.

R. "Regulatory change" means the adoption, amendment or repeal of a regulation.

S. "Service" means personally delivering a copy of the document, exhibit or pleading to the person required by this part to be served; mailing it to that person; or, if that person has agreed, sending it by electronic transmission; if a person is represented by an attorney, service of the document shall be made on the attorney; service by mail is complete upon mailing the document; service by electronic transmission is complete upon transmission of the document.

T. "Technical testimony" means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing.

U. "Transcript of proceedings" means the verbatim record (audio recording or stenographic) of the proceedings, testimony and argument in the matter, together with all exhibits proffered at the hearing, whether or not admitted into evidence, including the record of any motion hearings or prehearing conferences.

[20.1.6.7 NMAC - N, 05/01/17]

20.1.6.8 LIBERAL

CONSTRUCTION: This part shall be liberally construed to carry out its purpose.

[20.1.6.8 NMAC - N, 05/01/17]

20.1.6.9 SEVERABILITY:

If any provision or application of this part is held invalid, the remainder of this part, or its application to other situations or persons, shall not be affected.

[20.1.6.9 NMAC - N, 05/01/17]

20.1.6.10 - 20.1.6.99 [RESERVED]

20.1.6.100 POWERS AND DUTIES OF THE COMMISSION AND HEARING OFFICER:

A. Commission:

The commission shall exercise all powers and duties prescribed under the act and this part not otherwise delegated to the hearing officer or the commission administrator.

(1) The commission may issue procedural orders that either impose additional procedural requirements or simplify the procedures provided in this part. In no event, may the commission eliminate any procedural requirements of the act.

(2) The appointment of a hearing officer does not preclude the commissioners from attending or participating in the proceeding.

B. Hearing officer:

The commission shall designate a hearing officer for each hearing who shall exercise all powers and duties prescribed or delegated under this part. The hearing officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial consideration of issues arising in proceedings governed by this part, including, but not limited to:

(1) conducting hearings under this part;

(2) ruling on motions and procedural requests that do not seek final resolution of the proceeding, and issuing all necessary orders;

(3) administering oaths and affirmations, admitting or excluding evidence, examining witnesses and allowing post-hearing submissions;

(4) making such orders as may be necessary to preserve decorum and to protect the orderly hearing process;

(5) if requested by the commission, preparing and filing a report of the hearing, with recommendations for commission action;

(6) requesting parties to file original documents with

the commission administrator; and
(7) requesting a party to submit a proposed statement of reasons in support of the commission's decision.

C. Qualifications: The hearing officer may be an independent contractor or a commissioner, shall be knowledgeable of the laws of the state and of administrative hearing procedures, and shall not be:

(1) an employee of the department, except for the commissioners themselves or their designees, or unless employed by the department as a hearing officer;

(2) a person who has a personal bias or prejudice concerning a party or a party's lawyer or consultant, or has personal knowledge of disputed facts concerning the proceeding, or is related to a party within the third degree of relationship, or has a financial interest in the proceeding.

D. Notice of hearing officer assignment: If a hearing officer other than a commissioner is assigned, the commission administrator shall notify the parties of the name and address of the hearing officer. The commission administrator shall also, at that time, forward to the hearing officer copies of all documents filed to date.
[20.1.6.100 NMAC - N, 05/01/17]

20.1.6.101 GENERAL PROVISIONS - COMPUTATION OF TIME:

A. Computation of time: In computing any period of time prescribed or allowed by this part, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or legal state holiday, in which event the time is extended until the end of the next day, which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service upon them, and service is by mail, three days is added to the prescribed period.

B. Extension of time:

The commission or hearing officer may grant an extension of time for the filing of any document upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties.

[20.1.6.101 NMAC - N, 05/01/17]

20.1.6.102 GENERAL PROVISIONS - RECUSAL:

No commission member shall participate in any action in which his or her impartiality of fairness may reasonably be questioned, and the member shall recuse himself or herself in any such action by giving notice to the commission and the general public by announcing this recusal on the record. In making a decision to recuse himself or herself, the commission member may rely upon the Governmental Conduct Act, Sections 10-16-1 through 10-16-18 NMSA 1978, the Financial Disclosures Act, Sections 10-16A-1 through 10-16A-8 NMSA 1978, or any other relevant authority.

[20.1.6.102 NMAC - N, 05/01/17]

20.1.6.103 GENERAL PROVISIONS - EX PARTE DISCUSSIONS:

At no time after the commission's determination to hold a public hearing on a petition and before the issuance of the commission's written decision under this part, shall the department, or any other party, interested participant or their representatives discuss *ex parte* the merits of the proceeding with any commission member or the hearing officer.

[20.1.6.103 NMAC - N, 05/01/2017]

20.1.6.104 DOCUMENT REQUIREMENTS - FILING AND SERVICE OF DOCUMENTS:

A. The filing of any document as required by this part shall be accomplished by delivering the document to the commission administrator.

B. Any person filing any document shall:

(1) provide the commission administrator with

the original along with up to 15 copies of the document, provided that the commission administrator may waive the requirement to provide up to 15 copies if an electronic copy of the original is provided in a format acceptable for distribution to the commission members;

(2) serve a copy of the document on each other party. If a party is represented by an attorney, service of the document shall be made on the attorney; and

(3) include a certificate of service, as shown in Section 500 of this rule.

C. Whenever this part requires service of a document, service shall be made by delivering a copy to the person to be served by mailing it, or, if that person has agreed, by sending it by electronic transmission to that person. Agreement to be served by electronic transmission may be evidenced by placing the person's email address on a document filed pursuant to this part. Service by mail is complete upon mailing the document. Service by electronic transmission is complete upon transmission of the document.

D. Form of documents: Unless otherwise ordered by the hearing officer, all documents, except exhibits, shall be prepared on 8 ½ x 11-inch white paper, printed single-sided, and where appropriate, the first page of every document shall contain a heading and caption as shown in Section 500 of this rule.

E. Documents issued by commission or hearing officer: All documents issued by the commission or hearing officer shall be filed with the commission administrator, who shall promptly serve copies of the documents upon all parties.

[20.1.6.104 NMAC - N, 05/01/2017]

20.1.6.105 EXAMINATION OF DOCUMENTS FILED:

A. Examination allowed: Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy any document filed in any rulemaking proceeding

before the commission. Such documents shall be made available by the commission administrator, as appropriate.

B. Cost of duplication: The cost of duplicating documents shall be borne by the person seeking copies of such documents.
[20.1.6.105 NMAC - N, 05/01/17]

20.1.6.106 - 20.1.1.199
[RESERVED]

20.1.6.200 PREHEARING PROCEDURES - PETITION FOR REGULATORY CHANGE:

A. Any person may file a petition with the commission to adopt, amend or repeal any regulation within the jurisdiction of the commission.

B. The petition shall be in writing and shall include a statement of the reasons for the regulatory change. The petition shall cite the relevant statutes that authorize the commission to adopt the proposed rules and shall estimate the time that will be needed to conduct the hearing. A copy of the entire rule, including the proposed regulatory change, indicating any language proposed to be added or deleted, shall be attached to the petition. The entire rule and its proposed changes shall be submitted to the commission in redline fashion, and shall include line numbers. Any document that does not include all the items required to be in a petition shall be returned to the petitioner along with a copy of these rules and a check-off list of required items, and the petitioner will be asked to resubmit their petition in the form required by these rules.

C. The commission shall determine, at a public meeting occurring no later than 90 days after receipt of the petition, whether or not to hold a public hearing on the proposal. Any person may respond to the petition either in writing prior to the public meeting or in person at the public meeting.

D. If the commission determines to hold a public hearing on the petition, it may issue such orders specifying procedures for

conduct of the hearing, in addition to those provided by this part, as may be necessary and appropriate to fully inform the commission of the matters at issue in the hearing or control the conduct of the hearing. Such orders may include requirements for giving additional public notice, holding pre-hearing conferences, filing direct testimony in writing prior to the hearing, or limiting testimony or cross-examination.
[20.1.6.200 NMAC - N, 05/01/17]

20.1.6.201 NOTICE OF HEARINGS:

A. Unless otherwise allowed by governing law and specified by the commission, the commission shall give public notice of the hearing at least 60 days prior to the hearing.

B. Public notice for proposed regulatory changes of general application to the state shall include publication in at least one newspaper of general circulation in the state, publication in the New Mexico register, and such other means of providing notice as the commission may direct or are required by law. Notice for proposed regulatory changes that are confined in effect to a specific geographic area shall also be published in a newspaper of general circulation in the area affected.

C. The commission shall make reasonable efforts to give notice to persons who have made a written request to the commission for advance notice of regulatory change hearings. Requests for such notice shall be addressed to the commission administrator, and shall designate those areas of commission activity which are of interest.

D. Public notice of the hearing shall state:

(1) the subject, including a description of the proposed regulatory change, and the time and place of the hearing;

(2) the statutes, regulations and procedural rules governing the conduct of the hearing;

(3) the manner in which persons may present their

views or evidence to the commission;

(4) the location where persons may secure copies of the proposed regulatory change; and

(5) if applicable, that the commission may make a decision on the proposed regulatory change at the conclusion of the hearing.

[20.1.6.201 NMAC - N, 05/01/17]

20.1.6.202 TECHNICAL TESTIMONY:

A. Any person, including the petitioner, who intends to present technical testimony at the hearing shall, no later than 20 days prior to the hearing, file a notice of intent to present technical testimony. The notice shall:

(1) identify the person for whom the witness(es) will testify;

(2) identify each technical witness the person intends to present, and state the qualifications of that witness, including a description of their educational and work background;

(3) if the hearing will be conducted at multiple locations, indicate the location or locations at which the witnesses will be present;

(4) include a copy of the direct testimony of each technical witness in narrative form, and state the estimated duration of the direct oral testimony of that witness;

(5) include the text of any recommended modifications to the proposed regulatory change; and

(6) list and attach all exhibits anticipated to be offered by that person at the hearing.

B. The hearing officer may enforce the provisions of this section through such action as the hearing officer deems appropriate, including, but not limited to, exclusion of the technical testimony of any witness for whom a notice of intent was not timely filed. If such testimony is admitted, the hearing officer may keep the record open after the hearing to allow responses to

such testimony. The hearing officer may also require that written rebuttal testimony be submitted prior to hearing.

[20.1.6.202 NMAC - N, 05/01/17]

20.1.6.203 ENTRY OF

APPEARANCE: Any person may file an entry of appearance as a party. The entry of appearance shall be filed no later than 20 days before the date of the hearing on the petition. In the event of multiple entries of appearance by those affiliated with one interest group, the hearing officer may consolidate the entries, or divide the service list to avoid waste of resources.

[20.1.6.203 NMAC - N, 05/01/17]

20.1.6.204 PARTICIPATION BY GENERAL PUBLIC:

A. Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer non-technical exhibits in connection with their testimony, so long as the exhibit is not unduly repetitious of the testimony.

B. A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing or submit it at the hearing. Written comment must be mailed or delivered to the commission administrator.

[20.1.6.204 NMAC - N, 05/01/17]

20.1.6.205 LOCATION

OF HEARING: Unless otherwise provided by governing law, the commission shall hold hearings on proposed regulatory changes of statewide application in Santa Fe, and at other places the commission may prescribe. The commission may hold hearings on proposed regulatory changes that are not of statewide application within the area substantially affected by the proposal.

[20.1.6.205 NMAC - N, 05/01/17]

20.1.6.206 PARTICIPATION BY CONFERENCE TELEPHONE OR OTHER SIMILAR DEVICE:

A. A member of the commission may participate in a meeting or hearing of the commission by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting or hearing in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting or hearing are able to hear any member of the commission who speaks at the meeting or hearing. A commission member's participation by such means shall constitute presence in person at the meeting or hearing. A commission member who needs to participate in this manner must notify the commission administrator sufficiently in advance so as to permit the commission administrator to arrange for the appropriate communications equipment.

B. A witness may participate in a hearing of the commission by means of a conference telephone or other similar communications equipment when an emergency or circumstances make it impossible for the witness to attend the hearing in person. A witness who needs to participate in this manner must receive permission from the hearing officer sufficiently in advance of the hearing so as to permit the commission administrator to arrange for the appropriate communications equipment. Each witness participating in this manner must be identified when speaking, all participants must be able to hear each other at the same time, and members of the public attending the hearing must be able to hear any witness who speaks during the hearing.

[20.1.6.206 NMAC - N, 05/01/17]

20.1.6.207 MOTIONS:

A. General: All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion, and state the relief sought. Each motion shall be accompanied by an

affidavit, certificate or other evidence relied upon and shall be served as provided by 20.1.6.104 NMAC.

B. Unopposed motions: An unopposed motion shall state that the concurrence of all other parties was obtained. The moving party shall submit a proposed order approved by all parties for the hearing officer's review.

C. Opposed motions: Any opposed motion shall state either that concurrence was sought and denied, or why concurrence was not sought. A memorandum brief in support of such motion may be filed with the motion.

D. Response to motions: Any party upon whom an opposed motion is served shall have 15 days after service of the motion to file a response. A non-moving party failing to file a timely response shall be deemed to have waived any objection to the granting of the motion.

E. Reply to response: The moving party may, but is not required to, submit a reply to any response within 10 days after service of the response.

F. Decision: Non-dispositive motions may be decided by the hearing officer without a hearing. The hearing officer shall refer any motion that would effectively dispose of the matter to the commission for a decision, and may refer any other motion to the commission. A procedural motion may be ruled upon prior to the expiration of the time for response; any response received thereafter shall be treated as a request for reconsideration of the ruling. The hearing officer shall file all original documents with the commission administrator.

[20.1.6.207 NMAC - N, 05/01/17]

20.1.6.208 - 20.1.6.299 [RESERVED]

20.1.6.300 HEARING PROCEDURES - CONDUCT OF HEARINGS:

A. The rules of civil procedure and the rules of evidence

shall not apply.

B. The hearing officer shall conduct the hearing so as to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome, or burdening the record with unnecessary repetition. The hearing shall proceed as follows.

(1) The hearing shall begin with an opening statement from the hearing officer. The statement shall identify the nature and subject matter of the hearing and explain the procedures to be followed.

(2) The hearing officer may allow a brief opening statement by any party who wishes to make one.

(3) Unless otherwise ordered, the petitioner shall present its case first.

(4) The hearing officer shall establish an order for the testimony of other participants. The order may be based upon notices of intent to present technical testimony, sign-in sheets and the availability of witnesses who cannot be present for the entire hearing.

(5) If the hearing continues for more than one day, the hearing officer shall provide an opportunity each day for testimony from members of the general public. Members of the general public who wish to present testimony should indicate their intent on a sign-in sheet.

(6) The hearing officer may allow a brief closing argument by any person who wishes to make one.

(7) At the close of the hearing, the hearing officer shall determine whether to keep the record open for written submittals in accordance with 20.1.6.304 NMAC. If the record is kept open, the hearing officer shall determine and announce the subject(s) on which submittals will be allowed and the deadline for filing the submittals.

C. If the hearing is conducted at multiple locations, the hearing officer may require the petitioner's witnesses to summarize

their testimony or be available for cross-examination at each location. Other participants are not required to testify at more than one location, and the hearing officer may prohibit a witness from testifying at more than one location.

[20.1.6.300 NMAC - N, 05/01/17]

20.1.6.301 TESTIMONY AND CROSS-EXAMINATION:

A. All testimony will be taken under oath or affirmation which may be accomplished in mass or individually.

B. The hearing officer shall admit any relevant evidence, unless the hearing officer determines that the evidence is incompetent or unduly repetitious. The hearing officer shall require all oral testimony be limited to the position of the witness in favor of or against the proposed rule.

C. Any person who testifies at the hearing is subject to cross-examination on the subject matter of his or her direct testimony and matters affecting his or her credibility. Any person attending the hearing is entitled to conduct such cross-examination as may be required for a full and true disclosure of matters at issue in the hearing. The hearing officer may limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.

[20.1.6.301 NMAC - N, 05/01/17]

20.1.6.302 EXHIBITS:

A. Any person offering an exhibit at hearing other than a document filed and served before the hearing shall provide at least an original and 15 copies for the commission, and a sufficient number of copies for every other party.

B. All exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially. If a person offers multiple exhibits, he shall identify each exhibit with an index tab or by other appropriate means.

C. Large charts and diagrams, models, and other bulky

exhibits are discouraged. If visual aids are used, legible copies shall be submitted for inclusion in the record.

[20.1.6.302 NMAC - N, 05/01/17]

20.1.6.303 TRANSCRIPT OF PROCEEDINGS:

A. A verbatim transcript shall be made of the hearing, including any deliberations. The cost of the original transcript of the proceeding and of providing a copy for each commission member shall be borne by the petitioner.

B. Any person may obtain a copy of the transcript of a proceeding. It shall be obtained directly from the court reporter, and the cost of the transcript shall be paid directly to the source.

[20.1.6.303 NMAC - N, 05/01/17]

20.1.6.304 POST-HEARING SUBMISSIONS:

The hearing officer may allow the record to remain open for a reasonable period of time following the conclusion of the hearing for written submission of additional evidence, comments and arguments, revised proposed rule language, and proposed statements of reasons. The hearing officer's determination regarding post-hearing submissions shall be announced at the conclusion of the hearing. In considering whether the record will remain open, the hearing officer shall consider the reasons why the material was not presented during the hearing, the significance of the material to be submitted and the necessity for a prompt decision.

[20.1.6.304 NMAC - N, 05/01/17]

20.1.6.305 HEARING OFFICER'S REPORT:

If the commission directs, the hearing officer shall file a report of the hearing. The report shall identify the issues addressed at the hearing, identify the parties' final proposals, and the evidence supporting or opposing those proposals, including discussion or recommendations as requested by the commission, and shall be filed with the commission administrator within the time specified by the commission. The

commission administrator shall promptly notify each party that the hearing officer's report has been filed and shall provide a copy of the report along with a notice of any deadline set for comments on that report.
[20.1.6.305 NMAC - N, 05/01/17]

20.1.6.306 DELIBERATION AND DECISION:

A. If a quorum of the commission attended the hearing, and if the hearing notice indicated that a decision might be made at the conclusion of the hearing, the commission may immediately deliberate and make a decision on the proposed regulatory change.

B. If the commission does not reach a decision at the conclusion of the hearing, the commission administrator, following receipt of the transcript, will promptly furnish a copy of the transcript to each commission member that did not attend the hearing and, if necessary, to other commission members, commission counsel and the hearing officer. Exhibits provided to those persons at the time of the hearing need not be supplied again.

C. The commission shall reach its decision on the proposed regulatory change within 60 days following the close of the record or the date the hearing officer's report is filed, whichever is later.

D. If, during the course of its deliberations, the commission determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed regulatory change, the commission may, consistent with the requirements of due process, reopen the hearing for such additional evidence only.

E. The commission shall issue its decision on the proposed regulatory change in a suitable format, which shall include its reasons for the action taken.

F. The commission's written decision is the official version of the commission's action, and the reasons for that action. Other written or oral statements by commission members are not recognized as part of the commission's official decision or

reasons.

[20.1.6.306 NMAC - N, 05/01/17]

20.1.6.307 NOTICE OF COMMISSION ACTION: The commission administrator shall provide notice of the commission's action to each of the parties, to any person heard or represented at the hearing, and to all other persons who have made a written request to the commission for notification of the action taken.

[20.1.6.307 NMAC - N, 05/01/17]

20.1.6.308 - 20.1.6.399 [RESERVED]

20.1.6.400 APPEAL OF REGULATIONS:

A. Appeal of any regulatory change by the commission shall be taken in accordance with governing law.

B. The appellant shall serve a copy of the notice of appeal on the commission and on each party.

C. The appellant shall be responsible for preparation of a sufficient number of copies of the hearing record at the expense of appellant.

D. Unless otherwise provided by governing law, the filing of an appeal shall not act as a stay of the regulatory change being appealed.
[20.1.6.400 NMAC - N, 05/01/17]

20.1.6.401 STAY OF COMMISSION REGULATIONS:

A. Any person who is or may be affected by a rule adopted by the commission may file a motion with the commission seeking a stay of that rule or regulatory change. The motion shall include the reason for, and the legal authority supporting, the granting of a stay. The movant shall file and serve the motion in accordance with the requirements of Section 104 of this part at least 30 days before the meeting at which the commission will consider the motion. The commission chair will decide at which meeting the motion will be heard.

B. Unless otherwise provided by governing law, the

commission may grant a stay pending appeal of any regulatory change promulgated by the commission. The commission may only grant a stay if good cause is shown after a motion is filed and a hearing is held.

C. In determining whether good cause is present for the granting of a stay, the commission, upon at least a two-thirds vote of the members voting shall consider:

(1) the likelihood that the movant will prevail on the merits of the appeal;

(2) whether the moving party will suffer irreparable harm if a stay is not granted;

(3) whether substantial harm will result to other interested persons; and

(4) whether harm will ensue to the public interest.

D. If no action is taken within 60 days after filing of the motion, the commission shall be deemed to have denied the motion for stay.

[20.1.6.401 NMAC - N, 05/01/17]

20.1.6.402 - 20.1.6.499 [RESERVED]

20.1.6.500 PREFERRED FORMAT:

**STATE OF NEW MEXICO
WATER QUALITY CONTROL
COMMISSION**

**IN THE MATTER OF PROPOSED
AMENDMENTS TO _____
NMAC**

**[Name of Petitioner],
Petitioner.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing [name of document] was served by [hand-delivery] [first class mail] [email] to all parties on [date].

[20.1.6.500 NMAC - N, 05/01/17]

HISTORY OF 20.1.6 NMAC:

Pre-NMAC History: The material in this part was derived from

Guidelines for Water Quality Control
Commission Regulation Hearings
(Approved November 10, 1992;
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History of Repealed Material:
[RESERVED]

Other History: [RESERVED]

End of Adopted Rules.

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Issue 8	April 13	April 25
Issue 9	April 27	May 16
Issue 10	May 18	May 30
Issue 11	June 1	June 13
Issue 12	June 15	June 27
Issue 13	June 29	July 11
Issue 14	July 13	July 25
Issue 15	July 27	August 15
Issue 16	August 17	August 29
Issue 17	August 31	September 12
Issue 18	September 14	September 26
Issue 19	September 28	October 17
Issue 20	October 19	October 31
Issue 21	November 2	November 14
Issue 22	November 16	November 28
Issue 23	November 30	December 12
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