

NEW MEXICO 
Commission of Public Records
at the State Records Center and Archives
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New Mexico Register

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

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Telephone: (505) 476-7942; Fax: (505) 476-7910; E-mail: staterules@state.nm.us.

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Notices of Rulemaking and Proposed Rules

PUBLIC RECORDS, COMMISSION OF

NOTICE OF REGULAR MEETING AND OF RULEMAKING

The New Mexico Commission of Public Records (“CPR”) has scheduled a regular meeting and rule hearing for Tuesday, May 21, 2019, at 10:00 A.M. at the New Mexico State Records Center and Archives, which is an accessible facility, at 1209 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 Georgette Chavez at 476-7926 by May 8, 2019, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats.

The CPR may consider the following items of rulemaking at the meeting:

Amend:

1.21.2 NMAC Retention and Disposition of Public Records

Synopsis:

The proposed amendment of 1.21.2 NMAC consists of the following modifications:

Section 844 is being amended to add toxicology to the title and description.

Amend:

1.13.11 NMAC Access to Public Records, Research in the New Mexico Archives

Synopsis:

The proposed amendment of 1.13.11 NMAC is to comply with changes to the Inspection of Public Records Act (“IPRA”) as a result of Senate Bill 118 and consists of the following modifications:

Section 11 is being amended to remove definitional language and

to add language that references IPRA definitions instead;

A new Section 17 is being added to provide parameters for requesting, redacting and releasing law enforcement records in conformance with IPRA.

A summary of the proposed revisions and copies of the full text of the proposed rules may be accessed at the Commission’s website (www.nmcpr.state.nm.us), or by contacting Rick Hendricks at Rick.Hendricks@state.nm.us, or via regular mail at 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505 or 476-7911.

At the hearing the CPR and Administrator will take oral and written comments related to the rulemaking actions listed below and during the meeting consider approving these rulemaking actions. The Commission may vote on the proposed rules during the meeting on May 21, 2019. The State Records Administrator may take action on those rules at the close of the public rulemaking hearing.

Interested persons may submit comments on the proposed rules at the rule hearing or may submit written comments via email at rmd.cpr@state.nm.us. Written comments must be received no later than 5 p.m. on May 10, 2019. If submitting written comments by email, please indicate in the subject line the number of each rule(s) for which you are providing comments. Persons offering written comments at the hearing must have eight (8) copies for the Commission and Administrator to review. Oral comments will also be accepted at the rule hearing, subject to time limitations.

A copy of the agenda for the combined regular meeting and rule hearing is also available on the Commission website and at the office of the State Records Administrator located at the State Records Center and Archives at 1209 Camino Carlos Rey, Santa Fe, NM. The agenda is

subject to change up to 72 hours prior to the meeting. Legal authority for this rulemaking can be found in the Public Records Act, Section 14-3-1, et seq. and in the State Rules Act, Section 14-4-1, et seq. NMSA 1978.

PUBLIC REGULATION COMMISSION

NOTICE OF PROPOSED RULEMAKING - CASE NO. 17- 00186-UT

The New Mexico Public Regulation Commission (the “Commission”) gives notice of its initiation of a proposed rulemaking to repeal and replace **Rule 17.11.24 NMAC, “Quality of Service Standards Applicable to Mid-Size Carriers,”** and to repeal and replace **Rule 17.11.25 NMAC, “Consumer Protection Standards Applicable to Mid-Size Carriers.”** The rules which may be adopted as final rules in this proceeding may include all, part, or none of the language in the proposed rules issued by the Commission. The final rules may also include changes to the titles of Parts 17.11.24 NMAC and 17.11.25 NMAC. The Commission may also consider alternative proposals for amending or replacing these rules.

Summary of the full text of the proposed rules and short explanation of purpose: The Commission is considering repealing and replacing 17.11.24 NMAC and 17.11.25 NMAC in response to the passage of Senate Bill 53 during the 2017 New Mexico Legislative session. Senate Bill 53 made extensive changes to the New Mexico Telecommunications Act (the “Act”), NMSA 1978, Section 63-9A-1 *et seq.* (amended 2017). The changes to the Act became effective on June 16, 2017. The Commission is undertaking this rulemaking proceeding to conform the above rules to the amended Act and to effectuate the purposes of the amended Act. Such amendments include but are not limited to the amended Act’s removal of the “Mid-Size Carrier” designation

and the amended Act's requirement that the Commission "adopt relaxed regulations" regarding local exchange carriers serving fifty thousand or more access lines within the state. Subsection C of Section 63-9A-5 NMSA 1978 (amended 2017).

Constitutional and Statutory Authority: New Mexico Constitution, Article XI, Sec. 2; Paragraph (10) of Subsection B of Section 8-8-4 NMSA 1978 (1998), Section 8-8-15 NMSA 1978 (1999, amended 2001), and Section 63-9A-5 NMSA 1978 (1985, amended 2017).

A copy of the full text of the proposed rules may be obtained from the Rulemaking Proceedings section of the Commission's website at <http://www.nmprc.state.nm.us> under Case No. 17-00186-UT or by calling the Commission's Records Management Bureau at (505) 827-6968.

Written Initial Comments and written Response Comments shall be filed by the deadlines below with the Commission's Record's Management Bureau at P.O. Box 1269, Santa Fe, NM 87504-1269 or by hand delivery to the Commission's Records Management Bureau at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501, as follows: Written Initial Comments not later than **May 17, 2019** and written Response Comments not later than **May 31, 2019**. Comments shall refer to Case No. 17-00186-UT. All written comments will be posted on the Rulemaking Proceedings section of the Commission's website at <http://www.nmprc.state.nm.us> under Case No. 17-00186-UT and also are available for public inspection at the Commission's offices at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501.

A public hearing will be held on **June 19, 2019, beginning at 2:00 p.m.** at the offices of the Commission located in the 4th Floor Hearing Room at 1120 Paseo de Peralta, Santa Fe, NM 87501. The purpose of the hearing is to give interested persons an opportunity to give oral comments. The Commission may limit the time for each comment to five minutes. The record of this case will close on **July 9, 2019**.

Any person with a disability requiring special assistance in order to participate in the hearing should contact Bradford Borman at (505) 827-4048 at least 48 hours prior to the commencement of the hearing.

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.

RACING COMMISSION

Explanatory Paragraph: This is a short-form amendment to 15.2.1 NMAC, Section 9, effective April 9, 2019. In 15.2.1.9 NMAC Subsection A and Paragraphs (1) through (8) and Paragraph (10) of Subsection B were not published as there were no changes. In 15.2.1.9 NMAC Subsection C, Paragraphs (1) and (2), Paragraphs (5) and (6), Paragraphs (8) through (12), Paragraph (14), and Paragraphs (16) through (22) were not published as there were no changes.

15.2.1.9 DUE PROCESS AND DISCIPLINARY ACTION:

B. Proceedings before the stewards:

(9) Appeals. (a)

A person who has been aggrieved by a ruling of the stewards may appeal to the commission. A person who fails to file an appeal by the deadline and in the form required by this section waives the right to appeal the ruling.

(b)

An appeal under this section must be filed not later than 10 days after the date of the ruling. If the deadline falls on a Saturday, Sunday or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday or legal holiday. The appeal must be received by noon, at the main commission offices or with the stewards who issued the ruling and must be accompanied by a fee in the amount of \$500. The fee must be in the form of [~~cash, a cashier's check, money order or personal check.~~] a money order, cashier's check or a corporate check.

(c)

The commission may fine a license holder in the amount up to \$2,500 after considering an appeal if based on the evidence the appeal is frivolous, unreasonable or unnecessary or determined to be an abuse of process or malicious. Failure of an appealing party to appear at a noticed hearing or withdraw their appeal without providing five business days notice prior to the hearing date may result in the non appearing appealing party being fined up to \$1,000.

(d)

An appeal must be in writing on a form prescribed by the commission. The appeal must include the name, address, telephone number and signature of the person making the appeal; and a statement of the basis for the appeal.

(e)

On notification by the commission that an appeal has been filed, the stewards shall forward to the commission the record of the proceeding on which the appeal is based, and a statement of the reasons for their rulings.

(f) If

a person against whom a fine has been assessed files an appeal of the ruling that assesses the fine, the person shall pay the fine in accordance with these rules.

C. Proceedings by the commission:

(3) Subpoenas

and depositions.

(a)

A member of the commission, the agency director, the stewards, the presiding officer of a commission proceeding or other person authorized to perform duties under the act may require by subpoena the attendance

of witnesses and the reproduction of books, records, papers, correspondence and other documents.

(b)

A member of the commission, the agency director, a presiding officer of a commission proceeding or other person authorized by the commission may administer an oath or affirmation to a witness appearing before the commission or a person authorized by the commission.

(c)

Each party is responsible for proper service of any subpoenas it requests and for the payment of witness fees and expenses as provided by this jurisdiction's civil procedures statute.

(d)

On written request by a party, the presiding officer [~~or the agency director~~] may issue a subpoena addressed to a sheriff or any constable to require the attendance of witnesses and the production of books, records, papers or other objects as may be necessary to compel the production of books, records, papers or other objects shall be addressed to the appropriate person, shall be verified and shall specify the books, records, papers or other objects desired and the relevant and material facts to be proved by them.

(e)

The Administrative Procedures Act, Civil Statutes, Article 8, Section 12-8-15 governs the taking and the use of depositions. Rule 1-036 of the New Mexico Rules of Civil Procedure governs admissions of fact and genuineness of documents.

(7) Presiding

officers.

(a)

One or more members of the commission, an administrative law judge, or a duly designated hearing officer may serve as the presiding

officer for a commission proceeding. Objections to the presiding officer must be made in writing to the agency director at least 20 calendar days prior to the hearing. If in any case a combination of objections to a presiding officer(s) would result in the matter not being heard, the removal of the hearing officer shall not be effective.

(b)

The presiding officer may: authorize the taking of depositions; issue subpoenas to compel the attendance of witnesses and the production of papers and documents; administer oaths; receive evidence; rule on the admissibility of evidence and amendments to pleadings; examine witnesses; set reasonable times within which a party may present evidence and within which a witness may testify; permit and limit oral argument; issue interim orders; recess a hearing from day to day and place to place; request briefs before or after the presiding officer files a report or proposal for decision; propose findings of fact and conclusions of law; propose orders and decisions; perform other duties necessary to a fair and proper hearing.

(c)

An administrative law judge designated as the presiding officer must be an attorney licensed to practice in this state.

(d) A

person may not serve as the presiding officer of a proceeding in which the person has an economic interest. A person is considered to have an economic interest in a proceeding if the person, a member of the person's immediate family, or a dependent, business partner, or client of the person has an economic interest in the proceeding.

(13) Reporters and transcripts.

(a)

[At the request of the respondent,] If necessary, the commission shall engage a court reporter to make a stenographic record of a hearing. The commission may allocate the cost of the reporter and transcript among the parties.

(b)

If a person requests a transcript of the stenographic record, the commission may assess the cost of preparing the transcript to the person.

(c)

A party may challenge an error made in transcribing a hearing by noting the error in writing and suggesting a correction not later than 10 days after the date the transcript is filed with the commission. The party claiming errors shall serve a copy of the suggested corrections on each party of record, the court reporter and the presiding officer. If proposed corrections are not objected to before the 15th day after the date the corrections were filed with the commission, the presiding officer may direct that the suggested corrections be made and the manner of making them. If the parties disagree on the suggested corrections, the presiding officer shall determine whether to change the record.

(15) Proposal

for decision.

(a)

Where a hearing officer conducts a hearing, the hearing officer shall [~~within 30 days of the hearing prepare~~] complete a report containing his or her findings of fact, conclusions of law and recommendations for commission action.

(b)

Any commissioner who [~~had~~] did not [~~heard~~] hear the case may not participate in a decision in which the commission rejects, modifies, adds to, or makes substitutions for the findings of fact in a hearing officer's report unless the commission has reviewed all portions of the record that pertain to such findings of fact.

(b) **(c)**

Where the commission itself is the hearing body, the commission shall [~~issue prepare and issue~~] complete a report containing findings of fact and conclusions of law. [~~and order, and, in that case, no~~] No commissioner may participate who has not either heard the case or reviewed the entire record.

(c) **(d)**

The person preparing a proposal

for decision under this section shall [~~serve~~] initiate service of a copy of the [~~proposal~~] hearing officer's report or commission's report on each party of record no later than 31 calendar days after the close of the hearing. [~~A party of record may, not later than 10 working days after the date of service of a proposal for decision, file exceptions to the proposal. A reply to an exception filed under this subsection must be filed not later than five working days after the last day for filing the exceptions. A copy of each exception and reply must be served on all parties of record.]~~

(d) **(e)**

A party of record may, not later than 10 business days after the date of service of a hearing officer's report or commission's report, file exceptions to the report. A reply to an exception filed under this subsection must be filed no later than five business days after the last day for filing the exceptions. A copy of each exception and reply must be served on all parties of record.

(f)

After the expiration of time for filing exceptions and replies, the commission shall consider the proposal for decision in open meeting. The commission may: adopt the proposal for decision, in whole or in part; decline to adopt the proposal for decision, in whole or in part; remand the proceeding for further examination by the same or a different presiding officer; or direct the presiding officer to give further consideration to the proceeding with or without reopening the hearing.

(e) **(g)**

If on remand additional evidence is received which results in a substantial revision of the proposal for decision, a new proposal for decision shall be prepared, unless a majority of the commission, on remand, has heard the case or read the record. A new proposal for decision must be clearly labeled as such and all parties of record are entitled to file exceptions, replies and briefs.

[15.2.1.9 NMAC - Rp, 15 NMAC 2.1.9, 3/15/2001; A, 3/31/2003;

A, 5/30/2003; A, 6/15/2004;
A, 6/30/2009; A, 9/15/2009; A,
12/1/2010; A, 5/1/2013; A, 1/1/2014;
A, 3/16/2015; A, 5/01/2015;
A, 9/16/2015; A, 3/15/2016;
A/E, 6/28/2016; A, 9/16/2016;
A, 12/16/2016; A, 7/01/2017;
A, 3/14/2018; A, 9/26/2018; A,
4/09/2019]

End of Adopted Rules

Other Material Related to Administrative Law

**WORKFORCE
SOLUTIONS,
DEPARTMENT OF****NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Workforce Solutions
Department gives Notice of a Minor,
Nonsubstantive Correction.

Pursuant to the authority granted
under State Rules Act, Subsection D
of Section 14-4-3 NMSA 1978, please
note that the following minor, non-
substantive corrections to spelling,
grammar and format have been made
to all published and electronic copies
of the following rule:

In Subsection D of 11.3.300.302
NMAC, a spelling correction was
made from “las” to “last”;

Paragraph 4 of subsection C of
11.3.300.308 NMAC, has been
grammatically corrected to read, “In
no event shall employer be liable for
more than ten weeks worth of benefits
charges pursuant to 11.3.300.308
NMAC as a penalty for its failure
to respond to the claim in a timely
manner.”

A copy of this Notification will be
filed with the official version of the
above rule.

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

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Submittal Deadlines and Publication Dates

Volume XXX, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 15
Issue 2	January 17	January 29
Issue 3	January 31	February 12
Issue 4	February 14	February 26
Issue 5	February 28	March 12
Issue 6	March 14	March 26
Issue 7	March 28	April 9
Issue 8	April 11	April 23
Issue 9	April 25	May 14
Issue 10	May 16	May 28
Issue 11	May 30	June 11
Issue 12	June 13	June 25
Issue 13	July 5	July 16
Issue 14	July 18	July 30
Issue 15	August 1	August 13
Issue 16	August 15	August 27
Issue 17	August 29	September 10
Issue 18	September 12	September 24
Issue 19	September 26	October 15
Issue 20	October 17	October 29
Issue 21	October 31	November 12
Issue 22	November 14	November 26
Issue 23	December 5	December 17
Issue 24	December 19	December 31

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