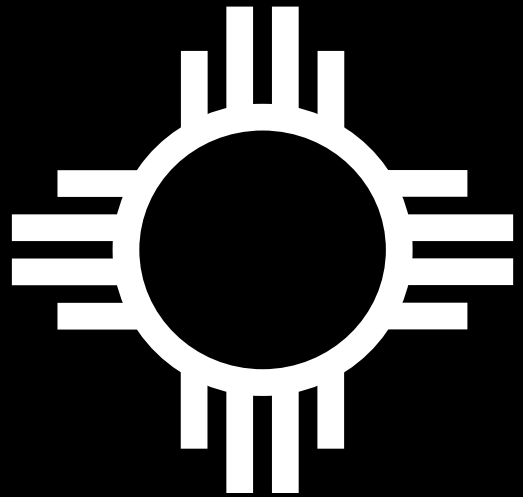


**NEW  
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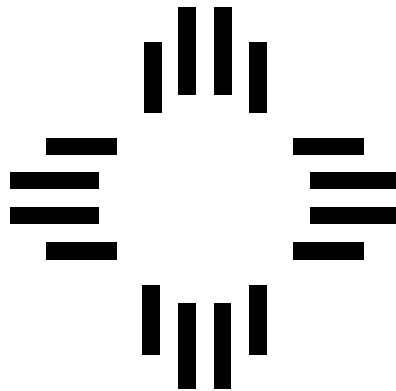
Volume XV  
Issue Number 5  
March 15, 2004



# **New Mexico Register**

**Volume XV, Issue Number 5**

**March 15, 2004**



The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

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Administrative Law Division  
Santa Fe, New Mexico  
2004

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# New Mexico Register

Volume XV, Number 5

March 15, 2004

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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 by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

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Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail [rules@rain.state.nm.us](mailto:rules@rain.state.nm.us).

## Notices of Rulemaking and Proposed Rules

### NEW MEXICO DEPARTMENT OF AGRICULTURE

#### Notice of Hearing

The Lea County Cotton Boll Weevil Control District will hold a public hearing under the Cotton Boll Weevil Control Act, 76-6A-1 to 76-6A-16, NMSA 1978, to consider reducing the assessment rate collected to support cotton boll weevil control within the Lea County district.

The hearing will be held in the Fair Board Meeting Room, located at 101 South Commercial Street, Lovington, New Mexico, beginning at 1:30 p.m. on April 5, 2004.

Written statements in support or opposition, signed by the submitting person, will be accepted if received prior to 5:00 p.m., April 5, 2004. Written statements, inquiries, or requests for copies of the rule should be directed to the Lea County Cotton Boll Weevil Control Committee in care of Mr. John Norris at P.O. Box 2032, Lovington, New Mexico 88260.

### NEW MEXICO DEPARTMENT OF AGRICULTURE

#### Notice of Hearing

The Central Lea County Cotton Boll Weevil Control District will hold a public hearing under the Cotton Boll Weevil Control Act, 76-6A-1 to 76-6A-16, NMSA 1978, to consider reducing the assessment rate collected to support cotton boll weevil control within the Central Lea County district.

The hearing will be held in the Fair Board Meeting Room, located at 101 South Commercial Street, Lovington, New Mexico, beginning at 2:30 p.m. on April 5, 2004.

Written statements in support or opposition, signed by the submitting person, will be accepted if received prior to 5:00 p.m., April 5, 2004. Written statements, inquiries, or requests for copies of the rule should be directed to the Central Lea County Cotton Boll Weevil Control Committee in care of Mr. Ace Hamm at P.O. Box 445, Plains, Texas 79355.

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

#### NOTICE OF PUBLIC HEARING

The Protective Services Division (PSD) will hold a public hearing in Santa Fe on Monday, March 15, 2004 from 1:00 p.m. to 2:00 p.m. in the Public Employees Retirement Association (P.E.R.A.) Building, 1120 Paseo de Peralta, 2nd floor conference room 229, to take comments regarding proposed revisions to the following PSD policies: Intake, Investigations.

The PERA building is accessible to people with disabilities. Written comments are provided the same weight as comments received during the public hearing. Documents are available in different formats to accommodate a particular disability. Anyone seeking such assistance must provide two weeks notice to receive any written material in an alternative format by calling 505-827-8445. If assistance is required to attend the hearing, please call 505-827-8400 to arrange accommodation.

The proposed policy revisions may be reviewed at any Protective Services Division county office. County office locations may be determined by calling 505-827-8400 for location information. The proposed policy revisions may also be reviewed between 8:00 a.m. - 5:00 p.m. (MST) at the PSD Director's Office, Room 254, In the P.E.R.A. building in Santa Fe, NM. Copies of the proposed policies may be obtained by contacting Mark Ruttkay, Manager, CYFD-PSD, P.O. Drawer 5160, Santa Fe, NM 87502-5160, or by calling 505-827-8445. Copies can also be requested through the use of the New Mexico relay system by calling 505-827-7586.

### NEW MEXICO BOARD OF NURSING

### NEW MEXICO BOARD OF NURSING NOTICE OF PUBLIC HEARING

Notice is hereby given that the New Mexico

Board of Nursing will convene a Rules Hearing to amend:

- 16.12.1 NMAC General Provisions
- 16.12.2 NMAC Nurse Licensure
- 16.12.3 NMAC Nursing Education Programs
- 16.12.7 NMAC Trial Program for Medication Aides to Serve Persons in Licensed Nursing Facilities
- 16.12.8 NMAC Trial Program for Medication Aides to Administer Medication in Public Schools

These Hearings will be held at the Board of Nursing Conference Room, 4206 Louisiana NE, Suite A, Albuquerque NM 87109, on Friday, April 16, 2004 at 9:00 a.m.

Any person wishing to present testimony at the Hearings is requested to submit, to the Board of Nursing Office, a written statement of intent (10 copies) to be received no later than April 2, 2004

The Statement shall provide:

Name of Witness:  
Who Witness represents:  
Brief statement of subject matter of testimony; & anticipated length of presentation.

Notice: Any person presenting testimony, who is representing a client, employer or group, must be registered as a lobbyist through the Secretary of State's Office (505) 827-3600 or do so within 10 days of the Public Hearings.

Persons requiring special accommodations at the hearings are asked to call the Board office (841-8340) no later than March 16, 2004 so that arrangements can be made. Hearing impaired persons call TDD 1-800-659-8331.

Drafts of proposed changes may be downloaded from our website: [www.state.nm.us/nursing](http://www.state.nm.us/nursing) or requested through the Board of Nursing office.

### NEW MEXICO OIL CONSERVATION COMMISSION

#### NOTICE OF PUBLICATION

STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION  
SANTA FE, NEW MEXICO

The State of New Mexico, through its Oil Conservation Commission, hereby gives notice that the Commission will conduct a public hearing at 9:00 A.M. on **April 8, 2004** in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, concerning the amendment of 19.15.1 NMAC to adopt a new section to be codified at 19.15.1.21 NMAC. The new section, which applies to the Chihuahuan desert areas of Otero and Sierra Counties, New Mexico, prohibits the use of pits and imposes additional location, construction, operation and testing requirements on injection wells and related facilities used to dispose of produced water. 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, please contact Division Administrator Florene Davidson at (505) 476-3458 or through the New Mexico Relay Network (1-800-659-1779) as soon as possible. Copies of the text of the proposed amendment are available from Ms. Davidson at 505 476-3458 or from the Division's web site at <http://www.emnrd.state.nm.us/ocd/whatsnew.htm>

**Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 1st day of March, 2004.**

**STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION**

**Lori Wrotenbery, Director**

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**End of Notices and  
Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION DIVISION

This is an amendment to 19.15.1 NMAC, Section 7, to be effective 3/31/04. The rest of the rule has corrections made to unnecessary capitalization with no substantive changes.

#### 19.15.1.7 DEFINITIONS:

**A.** Definitions beginning with the letter "A".

(1) Abate or abatement shall mean the investigation, containment, removal or other mitigation of water pollution.

(2) Abatement plan shall mean a description of any operational, monitoring, contingency and closure requirements and conditions for the prevention, investigation and abatement of water pollution.

(3) Adjoining spacing units are those existing or prospective spacing units in the same pool(s) that are touching at a point or line the spacing unit that is the subject of the application.

(4) Adjusted allowable shall mean the allowable production a well or proration unit receives after all adjustments are made.

(5) Allocated pool is one in which the total oil or natural gas production is restricted and allocated to various wells therein in accordance with proration schedules.

(6) Allowable production shall mean that number of barrels of oil or standard cubic feet of natural gas authorized by the division to be produced from an allocated pool.

(7) Aquifer shall mean a geological formation, group of formations, or a part of a formation that is capable of yielding a significant amount of water to a well or spring.

**B.** Definitions beginning with the letter "B".

(1) Back allowable shall mean the authorization for production of any shortage or underproduction resulting from pipeline proration.

(2) Background shall mean, for purposes of ground-water abatement plans only, the amount of ground-water contaminants naturally occurring from undisturbed geologic sources or water contaminants occurring from a source other than the responsible person's facility. This definition shall not prevent the director from requiring abatement of commingled plumes of pollu-

tion, shall not prevent responsible persons from seeking contribution or other legal or equitable relief from other persons, and shall not preclude the director from exercising enforcement authority under any applicable statute, regulation or common law.

(3) Barrel shall mean 42 United States gallons measured at 60 degrees fahrenheit and atmospheric pressure at the sea level.

(4) Barrel of oil shall mean 42 United States gallons of oil, after deductions for the full amount of basic sediment, water and other impurities present, ascertained by centrifugal or other recognized and customary test.

(5) Below-grade tank shall mean a vessel, excluding sumps and pressurized pipeline drip traps, where any portion of the sidewalls of the tank is below the surface of the ground and not visible.

(6) Berm shall mean an embankment or ridge constructed for the purpose of preventing the movement of liquids, sludge, solids, or other materials.

~~[(5)]~~(7) Bottom hole or subsurface pressure shall mean the gauge pressure in pounds per square inch under conditions existing at or near the producing horizon.

~~[(6)]~~(8) Bradenhead gas well shall mean any well producing gas through wellhead connections from a gas reservoir which has been successfully cased off from an underlying oil or gas reservoir.

**C.** Definitions beginning with the letter "C".

(1) Carbon dioxide gas shall mean noncombustible gas composed chiefly of carbon dioxide occurring naturally in underground rocks.

(2) Casinghead gas shall mean any gas or vapor or both gas and vapor indigenous to and produced from a pool classified as an oil pool by the division. This also includes gas-cap gas produced from such an oil pool.

(3) Commission shall mean the oil conservation commission.

(4) Common purchaser for natural gas shall mean any person now or hereafter engaged in purchasing from one or more producers gas produced from gas wells within each common source of supply from which it purchases.

(5) Common purchaser for oil shall mean every person now engaged or hereafter engaging in the business of purchasing oil to be transported through pipelines.

(6) Common source of supply. See pool.

(7) Condensate shall mean the liquid recovered at the surface that results from condensation due to reduced pressure

or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.

(8) Contiguous shall mean acreage joined by more than one common point, that is, the common boundary must be at least one side of a governmental quarter-quarter section.

(9) Conventional completion shall mean a well completion in which the production string of casing has an outside diameter in excess of 2.875 inches.

(10) Correlative rights shall mean the opportunity afforded, as far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practically determined, and so far as can be practically obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for such purpose to use his just and equitable share of the reservoir energy.

(11) Cubic feet of gas or standard cubic foot of gas, for the purpose of these rules, shall mean that volume of gas contained in one cubic foot of space and computed at a base pressure of 10 ounces per square inch above the average barometric pressure of 14.4 pounds per square inch (15.025 psia), at a standard base temperature of 60 degrees fahrenheit.

**D.** Definitions beginning with the letter "D".

(1) Deep pool shall mean a common source of supply which is situated 5000 feet or more below the surface.

(2) Depth bracket allowable shall mean the basic oil allowable assigned to a pool and based on its depth, unit size, or special pool rules, which, when multiplied by the market demand percentage factor in effect, will determine the top unit allowable for the pool.

(3) Director shall mean the director of the oil conservation division of the New Mexico energy, minerals and natural resources department.

(4) Division shall mean the oil conservation division of the New Mexico energy, minerals and natural resources department.

**E.** Definitions beginning with the letter "E".

(1) Exempted aquifer shall mean an aquifer that does not currently serve as a source of drinking water, and which cannot now and will not in the foreseeable future serve as a source of drinking water because: is hydrocarbon producing;

- (a) it is hydrocarbon producing;
- (b) it is situated at a depth or loca-

tion which makes the recovery of water for drinking water purposes economically or technologically impractical; or,

(c) it is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption.

(2) Existing spacing unit is a spacing unit containing a producing well.

**F.** Definitions beginning with the letter "F".

(1) Facility shall mean any structure, installation, operation, storage tank, transmission line, access road, motor vehicle, rolling stock, or activity of any kind, whether stationary or mobile.

(2) Field means the general area which is underlaid or appears to be underlaid by at least one pool; and field also includes the underground reservoir or reservoirs containing such crude petroleum oil or natural gas, or both. The words field and pool mean the same thing when only one underground reservoir is involved; however, field unlike pool may relate to two or more pools.

(3) Fresh water (to be protected) includes the water in lakes and playas, the surface waters of all streams regardless of the quality of the water within any given reach, and all underground waters containing 10,000 milligrams per liter (mg/l) or less of total dissolved solids (TDS) except for which, after notice and hearing, it is found there is no present or reasonably foreseeable beneficial use which would be impaired by contamination of such waters. The water in lakes and playas shall be protected from contamination even though it may contain more than 10,000 mg/l of TDS unless it can be shown that hydrologically connected fresh ground water will not be adversely affected.

**G.** Definitions beginning with the letter "G".

(1) Gas lift shall mean any method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.

(2) Gas-oil ratio shall mean the ratio of the casinghead gas produced in standard cubic feet to the number of barrels of oil concurrently produced during any stated period.

(3) Gas-oil ratio adjustment shall mean the reduction in allowable of a high gas oil ratio unit to conform with the production permitted by the limiting gas-oil ratio for the particular pool during a particular proration period.

(4) Gas transportation facility shall mean a pipeline in operation serving gas wells for the transportation of natural gas, or some other device or equipment in like operation whereby natural gas produced from gas wells connected therewith

can be transported or used for consumption.

(5) Gas well shall mean a well producing gas or natural gas from a gas pool, or a well with a gas-oil ratio in excess of 100,000 cubic feet of gas per barrel of oil producing from an oil pool.

(6) Ground water shall mean interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply.

**H.** Definitions beginning with the letter "H".

(1) Hazard to public health exists when water which is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of such use, one or more of the numerical standards of ~~[20 NMAC 6.2.3103.A]~~ Subsection A of 20.6.2.3103 NMAC, or the naturally occurring concentrations, whichever is higher, or if any toxic pollutant as defined at ~~[20 NMAC 6.2.1101]~~ Subsection VV of 20.6.2.7 NMAC affecting human health is present in the water. In determining whether a release would cause a hazard to public health to exist, the director shall investigate and consider the purification and dilution reasonably expected to occur from the time and place of release to the time and place of withdrawal for use as human drinking water.

(2) High gas-oil ratio proration unit shall mean a unit with at least one producing oil well with a gas-oil ratio in excess of the limiting gas-oil ratio for the pool in which the unit is located.

**I.** Definitions beginning with the letter "I".

(1) Illegal gas shall mean natural gas produced from a gas well in excess of the allowable determined by the division.

(2) Illegal oil shall mean crude petroleum oil produced in excess of the allowable as fixed by the division.

(3) Illegal product shall mean any product of illegal gas or illegal oil.

(4) Inactive well shall be a well which is not being utilized for beneficial purposes such as production, injection or monitoring and which is not being drilled, completed, repaired or worked over.

(5) Injection or input well shall mean any well used for the injection of air, gas, water, or other fluids into any underground stratum.

**J.** Reserved.

**K.** Reserved.

**L.** Definitions beginning with the letter "L".

(1) Limiting gas-oil ratio shall mean the gas-oil ratio assigned by the division to a particular oil pool to limit the volumes of casinghead gas which may be produced from the various oil producing units within that particular pool.

(2) Load oil is any oil or liquid hydrocarbon which has been used in remedial operation in any oil or gas well.

(3) Log or well log shall mean a systematic detailed and correct record of formations encountered in the drilling of a well.

**M.** Definitions beginning with the letter "M".

(1) Marginal unit shall mean a proration unit which is incapable of producing top unit allowable for the pool in which it is located.

(2) Market demand percentage factor shall mean that percentage factor of 100 percent or less as determined by the division at an oil allowable hearing, which, when multiplied by the depth bracket allowable applicable to each pool, will determine the top unit allowable for that pool.

(3) Mineral estate is the most complete ownership of oil and gas recognized in law and includes all the mineral interests and all the royalty interests.

(4) Mineral interest owners are owners of an interest in the executive rights, which are the rights to explore and develop, including oil and gas lessees (i.e., "working interest owners") and mineral interest owners who have not signed an oil and gas lease.

(5) Minimum allowable shall mean the minimum amount of production from an oil or gas well which may be advisable from time to time to the end that production will repay reasonable lifting cost and thus prevent premature abandonment and resulting waste.

(6) Multiple completion (combination) shall mean a multiple completion in which two or more common sources of supply are produced through a combination of two or more conventional diameter casing strings cemented in a common well-bore, or a combination of small diameter and conventional diameter casing strings cemented in a common well-bore, the conventional diameter strings of which might or might not be a multiple completion (conventional).

(7) Multiple completion (conventional) shall mean a completion in which two or more common sources of supply are produced through one or more strings of tubing installed within a single casing string, with the production from each common source of supply completely segregated by means of packers.

(8) Multiple completion (tubingless) shall mean completion in which two or more common sources of supply are produced through an equal number of casing strings cemented in a common well-bore, each such string of casing having an outside diameter of 2.875 inches or less, with the production from each common source of

supply completely segregated by use of cement.

**N.** Definitions beginning with the letter "N".

(1) Natural gas or gas shall mean any combustible vapor composed chiefly of hydrocarbons occurring naturally in a pool classified by the division as a gas pool.

(2) Non-aqueous phase liquid shall mean an interstitial body of liquid oil, petroleum product, petrochemical, or organic solvent, including an emulsion containing such material.

(3) Non-marginal unit shall mean a proration unit which is capable of producing top unit allowable for the pool in which it is located, and to which has been assigned a top unit allowable.

**O.** Definitions beginning with the letter "O".

[(4)](1) Official gas-oil ratio test shall mean the periodic gas-oil ratio test made by order of the division by such method and means and in such manner as prescribed by the division.

[(5)](2) Oil, crude oil, or crude petroleum oil shall mean any petroleum hydrocarbon produced from a well in the liquid phase and which existed in a liquid phase in the reservoir.

[(6)](3) Oil field wastes shall mean those wastes produced in conjunction with the exploration, production, refining, processing and transportation of crude oil and/or natural gas and commonly collected at field storage, processing, disposal, or service facilities, and waste collected at gas processing plants, refineries and other processing or transportation facilities.

[(7)](4) Oil well shall mean any well capable of producing oil and which is not a gas well as defined herein.

[(8)](5) Operator shall mean any person ~~or persons~~ who, duly authorized, is in charge of the development of a lease or the operation of a producing property, or who is in charge of the operation or management of a facility.

[(9)](6) Overage or overproduction shall mean the amount of oil or the amount of natural gas produced during a proration period in excess of the amount authorized on the proration schedule.

[(10)](7) Owner means the person who has the right to drill into and to produce from any pool, and to appropriate the production either for himself or for himself and another.

**P.** Definitions beginning with the letter "P".

(1) Penalized unit shall mean a proration unit to which, because of an excessive gas-oil ratio, an allowable has been assigned which is less than top unit allowable for the pool in which it is located and also less than the ability of the well(s)

on the unit to produce.

(2) Person shall mean an individual or any other entity including partnerships, corporation, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instrumentality of the United States and any of its officers, agents or employees.

(3) Pit shall mean any surface or sub-surface impoundment, man-made or natural depression, or diked area on the surface. Excluded from this definition are berms constructed around tanks or other facilities solely for the purpose of safety and secondary containment.

(4) Playa lake shall mean a level or nearly level area that occupies the lowest part of a completely closed basin and that is covered with water at irregular intervals, forming a temporary lake.

[(3)](5) Pool means any underground reservoir containing a common accumulation of crude petroleum oil or natural gas or both. Each zone of a general structure, which zone is completely separated from any other zone in the structure, is covered by the word "pool" as used herein. "Pool" is synonymous with "common source of supply" and with "common reservoir."

[(4)](6) Potential shall mean the properly determined capacity of a well to produce oil, or gas, or both, under conditions prescribed by the division.

[(5)](7) Pressure maintenance shall mean the injection of gas or other fluid into a reservoir, either to maintain the existing pressure in such reservoir or to retard the natural decline in the reservoir pressure.

[(6)](8) Produced water shall mean those waters produced in conjunction with the production of crude oil and/or natural gas and commonly collected at field storage, processing, or disposal facilities including but not limited to: lease tanks, commingled tank batteries, burn pits, LACT units, and community or lease salt water disposal systems and which may be collected at gas processing plants, pipeline drips and other processing or transportation facilities.

[(7)](9) Producer shall mean the owner of a well or wells capable of producing oil or natural gas or both in paying quantities.

[(8)](10) Product means any commodity or thing made or manufactured from crude petroleum oil or natural gas, and all derivatives of crude petroleum oil or natural gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline, kerosene, benzene, wash oil,

lubricating oil, and blends or mixtures of crude petroleum oil or natural gas or any derivative thereof.

[(9)](11) Proration day shall consist of 24 consecutive hours which shall begin at 7 a.m. and end at 7 a.m. on the following day. The language in this paragraph is different than that which was filed 02-28-97 (effective

[(10)](12) Proration month shall mean the calendar month which shall begin at 7 a.m. on the first day of such month and end at 7 a.m. on the first day of the next succeeding month.

[(11)](13) Proration period shall mean for oil the proration month and for gas the twelve-month period which shall begin at 7 a.m. on January 1 of each year and end at 7 a.m. on January 1 of the succeeding year or other period designated by general or special order of the division.

[(12)](14) Proration schedule shall mean the order of the division authorizing the production, purchase, and transportation of oil, casinghead gas, and natural gas from the various units of oil or of natural gas in allocated pools.

[(13)](15) Proration unit is the area in a pool that can be effectively and efficiently drained by one well as determined by the division or commission (See NMSA 1978 Section 70-2-17.B) as well as the area assigned to an individual well for the purposes of allocating allowable production pursuant to a prorationing order for the pool. A proration unit will be the same size and shape as a spacing unit. All proration units are spacing units but not all spacing units are proration units.

[(14)](16) Prospective spacing unit is a hypothetical spacing unit that does not yet have a producing well.

**Q.** Reserved.

**R.** Definitions beginning with the letter "R".

(1) Recomplete shall mean the subsequent completion of a well in a different pool from the pool in which it was originally completed.

(2) Regulated naturally occurring radioactive material (regulated NORM) shall mean naturally occurring radioactive material (NORM) contained in any oil-field soils, equipment, sludges or any other materials related to oil-field operations or processes exceeding the radiation levels specified in ~~[20 NMAC 3.1., Section 1403]~~ 20.3.14.1403 NMAC.

(3) Release shall mean all breaks, leaks, spills, releases, fires or blowouts involving crude oil, produced water, condensate, drilling fluids, completion fluids or other chemical or contaminant or mixture thereof, including oil field wastes and natural gases to the environment.

(4) Remediation plan shall mean

a written description of a program to address unauthorized releases. The plan may include appropriate information, including assessment data, health risk demonstrations, and corrective action(s). The plan may also include an alternative proposing no action beyond the submittal of a spill report.

(5) Responsible person shall mean the owner or operator who must complete division approved corrective action for pollution from releases.

(6) Royalty interest owners are owners of an interest in the non-executive rights including lessors, royalty interest owners and overriding royalty interest owners. Royalty interests are non-cost bearing.

**S.** Definitions beginning with the letter "S".

(1) Secondary recovery shall mean a method of recovering quantities of oil or gas from a reservoir which quantities would not be recoverable by ordinary primary depletion methods.

(2) Shallow pool shall mean a pool which has a depth range from 0 to 5000 feet.

(3) Shortage or underproduction shall mean the amount of oil or the amount of natural gas during a proration period by which a given proration unit failed to produce an amount equal to that authorized in the proration schedule.

(4) Shut-in shall be the status of a production well or an injection well which is temporarily closed down, whether by closing a valve or disconnection or other physical means.

(5) Shut-in pressure shall mean the gauge pressure noted at the wellhead when the well is completely shut in, not to be confused with bottom hole pressure.

(6) Significant modification of an abatement plan shall mean a change in the abatement technology used excluding design and operational parameters, or relocation of 25% or more of the compliance sampling stations, for any single medium, as designated pursuant to Subsection E, Paragraph (4), Subparagraph (b), Subsubparagraph (iv) of Section 19.15.5.19 NMAC.

(7) Spacing unit is the area allocated to a well under a well spacing order or rule. Under the Oil & Gas Act, NMSA 1978, Section 70-2-12.B(10), the commission has the power to fix spacing units without first creating proration units. See *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 87 NM 286 (1975). This is the area designated on division form C-102.

(8) Subsurface water shall mean ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or may be utilized by vegetation.

**T.** Definitions beginning with the letter "T".

(1) Tank bottoms shall mean that accumulation of hydrocarbon material and other substances which settles naturally below crude oil in tanks and receptacles that are used in handling and storing of crude oil, and which accumulation contains in excess of two (2%) percent of basic sediment and water; provided, however, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet thereto.

(2) Temporary abandonment shall be the status of a well which is inactive and has been approved for temporary abandonment in accordance with the provisions of these rules.

(3) Top unit allowable for gas shall mean the maximum number of cubic feet of natural gas, for the proration period, allocated to a gas producing unit in an allocated gas pool.

(4) Top unit allowable for oil shall mean the maximum number of barrels for oil daily for each calendar month allocated on a proration unit basis in a pool to non-marginal units. The top unit allowable for a pool shall be determined by multiplying the applicable depth bracket allowable by the market demand percentage factor in effect.

(5) Treating plant shall mean any plant constructed for the purpose of wholly or partially or being used wholly or partially for reclaiming, treating, processing, or in any manner making tank bottoms or any other waste oil marketable.

(6) Tubingless completion shall mean a well completion in which the production string of casing has an outside diameter of 2.875 inches or less.

**U.** Definitions beginning with the letter "U".

(1) Underground source of drinking water shall mean an aquifer which supplies water for human consumption or which contains ground water having a total dissolved solids concentration of 10,000 mg/l or less and which is not an exempted aquifer.

(2) Unit of proration for gas shall consist of such multiples of 40 acres as may be prescribed by special pool rules issued by the division.

(3) Unit of proration for oil shall consist of one 40-acre tract or such multiples of 40-acre tracts as may be prescribed by special pool rules issued by the division.

(4) Unorthodox well location shall mean a location which does not conform to the spacing requirements established by the rules and regulations of the division.

**V.** Definitions beginning

with the letter "V". Vadose zone shall mean unsaturated earth material below the land surface and above ground water, or in between bodies of ground water.

**W.** Definitions beginning with the letter "W".

(1) Waste, in addition to its ordinary meaning, shall include:

(a) underground waste as those words are generally understood in the oil and gas business, and in any event to embrace the inefficient, excessive, or improper use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating, or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool, and the use of inefficient underground storage of natural gas;

(b) surface waste as those words are generally understood in the oil and gas business, and in any event to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of natural gas of any type or in any form, or crude petroleum oil, or any product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage, or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing a well or wells, or incident to or resulting from the use of inefficient storage or from the production of crude petroleum oil or natural gas, in excess of the reasonable market demand;

(c) the production of crude petroleum oil in this state in excess of the reasonable market demand for such crude petroleum oil; such excess production causes or results in waste which is prohibited by the Oil and Gas Act; the words "reasonable market demand" as used herein with respect to crude petroleum oil, shall be construed to mean the demand for such crude petroleum oil, for reasonable current requirements for current consumption and use within or outside of the state, together with the demand of such amounts as are reasonably necessary for building up or maintaining reasonable storage reserves of crude petroleum oil or the products thereof, or both such crude petroleum oil and products;

(d) the non-ratable purchase or taking of crude petroleum oil in this state; such non-ratable taking and purchasing causes or results in waste, as defined in Subparagraphs (a), (b), and (c) of this definition and causes waste by violating Section 70-2-16 of the Oil and Gas Act;

(e) the production in this state of natural gas from any gas well or wells, or

from any gas pool, in excess of the reasonable market demand from such source for natural gas of the type produced or in excess of the capacity of gas transportation facilities for such type of natural gas; the words "reasonable market demand," as used herein with respect to natural gas, shall be construed to mean the demand for natural gas for reasonable current requirements, for current consumption and for use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of natural gas or products thereof, or both such natural gas and products.

**[(4)](2)** Water shall mean all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water.

**[(2)](3)** Water contaminant shall mean any substance that could alter if released or spilled the physical, chemical, biological or radiological qualities of water. "Water contaminant" does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954.

**[(3)](4)** Watercourse shall mean any lake bed, or gully, draw, stream bed, wash, arroyo, or natural or human-made channel through which water flows or has flowed.

**[(4)](5)** Water pollution shall mean introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property.

**[(5)](6)** Well blowout shall mean a loss of control over and subsequent eruption of any drilling or workover well or the rupture of the casing, casinghead, or wellhead or any oil or gas well or injection or disposal well, whether active or inactive, accompanied by the sudden emission of fluids, gaseous or liquids, from the well.

**(7)** Wellhead protection area shall mean the area within 200 horizontal feet of any private, domestic fresh water well or spring used by less than five households for domestic or stock watering purposes or within 1000 horizontal feet of any other fresh water well or spring. Wellhead protection areas shall not include areas around water wells drilled after an existing oil or natural gas waste storage, treatment, or disposal site was established.

**(8)** Wetlands shall mean those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a preva-

lence of vegetation typically adapted for life in saturated soil conditions in New Mexico. Constructed wetlands used for wastewater treatment purposes are not included in this definition.

**[(6)](9)** Working interest owners are the owners of the operating interest under an oil and gas lease who have the exclusive right to exploit the oil & gas minerals. Working interests are cost bearing. [1-5-50...2-1-96; A, 7-15-96; Rn, 19 NMAC 15.A.7.1 through 7.84, 3-15-97; A, 7-15-99; 19.15.1.7 NMAC - Rn, 19 NMAC 15.A.7, 5-15-001; A, 3/31/04]

**NEW MEXICO  
DEPARTMENT OF GAME  
AND FISH**

This is an emergency order to 19.31.4 NMAC, Section 19.

**19.31.4.19 E M E R G E N C Y  
ORDER FOR FISH SALVAGE:** Under authority of 19.31.10.18 promulgated by the state game commission on September 15, 1994, I, BRUCE C. THOMPSON, director of the department of game and fish, hereby declare that an emergency exists in Conservancy Park Lake in Bernalillo county to the extent that fish life will be destroyed by drying out of these lakes due to required water releases. Bag limits on sport fish will be unlimited. This relaxation will go into effect at 12:01 a.m., February 27, 2004, and will remain in effect through 11:59 p.m., February 29, 2004.

**NEW MEXICO  
DEPARTMENT OF LABOR  
LABOR AND INDUSTRIAL  
DIVISION**

This is an amendment to 11.1.2 NMAC, Section 11, effective 3/15/2004. This rule was also renumbered and reformatted from 11 NMAC 1.1 to comply with current NMAC requirements.

**11.1.2.11 PROCEDURE TO BE EMPLOYED IN THE PREDETERMINATION OF WAGE RATES ON PUBLIC WORKS:** Authority: Subsections A to G of 11.1.2.11 NMAC adopted pursuant to Section 13-4-11, New Mexico Statutes Annotated, 1978 Compilation.

A. Purpose and scope: The regulations contained in this part set forth the procedure for the determination of prevailing wage rates, on a statewide basis, pursuant to Section 13-4-11, NMSA 1978.

B. Computation of prevailing wage rate and definitions: The prevailing wage rate for laborers and mechanics employed on projects within the street,

highway, utility and light engineering construction classification (type "A") and for laborers and mechanics employed on building projects and heavy engineering projects within the general building (type "B") and heavy engineering construction classification (type "H") and for laborers and mechanics employed on projects determined within the residential building classification (type "C") shall be computed on a statewide basis without regard to zone, incentive, or subsistence pay. However, while zone, incentive, or subsistence pay shall not be considered in determining the statewide base wage rate, it shall be computed and applied on a locality basis in type "B" and type "C" construction in accordance with the same formula utilized to determine the prevailing statewide base wage rate. For the purpose of zone, incentive or subsistence pay determination, "locality basis" shall mean location, municipality or site from which the zone, incentive or subsistence pay data emanated for the survey. Working foreman hours shall be included in the determination of the prevailing wage for that particular craft by surveying hours worked with the majority of the mechanics in that classification paid by that contractor/subcontractor. Where working foremen are the only mechanics on that project, those hours will be surveyed at the predetermined rated issued on that project. Working foremen in groupings for truck drivers, operators, and laborers shall not be included. For each classification the director shall employ the following methodology:

(1) The base wage rate paid in each work classification shall be grouped in ten cent (\$ .10) numerically consecutive intervals, beginning with \$.01 and including \$.105, from which a weighted average of each group shall be taken, (see the following example).

Example:

Rates paid as follows would be grouped in this manner:

256 man hours at \$10.01 =	\$2,562.56
340 man hours at \$10.05 =	\$3,417.00
204 man hours at \$10.10 =	\$2,060.40
800 man hours (for group) into \$8,039.96 =	\$10.05 base wage for group
2,011 man hours at \$10.11 =	\$20,331.21
722 man hours at \$10.16 =	\$7,335.52
1,067 man hours at \$10.20 =	\$10,883.40

3,800 man hours (for group) into  
 $\$38,550.13 =$  \$10.14 base  
 wage for group  
 and so forth

(2) The prevailing wage rate for a given classification on contract work of a similar nature in the state shall be:

(a) The base wage rate (as determined in Paragraph (1) of Subsection B of 11.1.2.11 NMAC above) paid for the majority of man hours worked in said classification, or

(b) In the event that Subparagraph (a) of Paragraph (2) of Subsection B of 11.1.2.11 NMAC is not applicable, then the base wage rate (as determined in Paragraph (1) of Subsection B of 11.1.2.11 NMAC above) paid for the greater number of man hours, provided that such greater number constitutes at least thirty per cent (30%) of the man hours worked in the classification.

(c) In the event that neither Subparagraphs (a) nor (b) of Paragraph (2) of Subsection B of 11.1.2.11 NMAC above is applicable the weighted average in the classification shall be the prevailing rate.

(d) In the event that the prevailing wage rate as determined by the application of Subparagraphs (a) or (b) of Paragraph (2) of Subsection B of 11.1.2.11 NMAC above (whichever is applicable) would result in lowering the prevailing wage as determined from the last survey immediately preceding by more than 3%, the director shall compute the rate under Rule (c) above, and unless application of Rule (c) above would have the effect of further lowering the rate, the prevailing rate determined shall be the rate computed by application of Rule (c) above or the rate as was determined by the last survey preceding, whichever is lower.

(e) Fringe benefits as part of wages, as defined in Section 13-4-12 (A) (2), NMSA, 1978, shall be determined by applying Subparagraph (d) of Paragraph (2) of Subsection B of 11.1.2.11 NMAC above to the total dollar amount of fringe benefits paid by each contractor multiplied by the number of hours for which the total was paid. The fringe benefit figure so determined shall be expressed by a single dollar figure representing the total dollar amount of fringe benefits prevailing as a lump sum, rather than by separate dollar amounts representing each individual category of fringe benefits found to be prevailing.

(3) The term "base wage rate" contemplated in this section, shall mean the straight time hours and hourly rate paid each laborer or mechanic.

(4) The term "weighted average" shall mean the sum of the products of the grouped man hours times group base wage rate divided by the total number of man hours worked in the classification.

(5) The term "similar nature"

shall mean contract work performed on projects as defined in the several Subparagraphs of Subsection B of 11.1.2.9 NMAC of these regulations.

(6) The term "director" shall mean the public official charged by law with the administration of the Public Works Minimum Wage Act.

(7) The term "state" shall mean the state of New Mexico.

C. Obtaining and compiling wage rate information and preparation of wage rate surveys: For the purpose of making wage determinations, the director shall conduct a continuing program for the obtaining and compiling of wage rate information, as required by Section 13-4-11, NMSA 1978, employing the procedures set forth in this Section.

(1) Separate surveys shall be prepared for the street, highway, utility and light engineering classification (type "A"), and for the general building (type "B") and heavy engineering construction classification (type "H") and for the residential construction classification (type "C"), and wage determination shall be issued on the basis thereof.

(2) The annual survey period shall be the month of June of each year. Wage rate decisions issued as a result of this survey and wage determination shall remain effective until superseded beginning fifteen (15) days following the making of the wage determination pursuant to Subsection D of 11.1.2.11 NMAC of these rules and regulations. Each annual survey and wage determination shall be and remain valid and the director shall issue to requesting agencies wage decisions based thereon until such survey and wage determination is superseded by an effective new survey and wage determination. A wage determination based upon a new survey shall not go into effect pending a final disposition of any appeal to the labor and industrial commission, sitting as the appeals board. If no appeal is timely filed pursuant to properly preserved objection as provided in Subsection D of 11.1.2.11 NMAC, infra, such survey and determination shall become effective on the applicable date specified in Paragraph (2) of Subsection C of 11.1.2.11 NMAC, above.

(3) Surveys and wage rate determination shall be on a statewide basis.

(4) Wage rate surveys prepared by the director for the street, highway, utility and light engineering construction classification (type "A"), and for the general building (type "B") and for the residential building construction classification (type "C"), and for heavy engineering construction classification (type "H") shall be compiled from certified weekly payrolls and verified wage information submitted and prepared in accordance with Subsection C of

11.1.2.10 NMAC of these rules and regulations and shall be utilized by the director in making wage rate determinations; provided, the director shall encourage the voluntary submission of wage data by contractors, contractors' associations, labor organizations and public officers. He shall give due regard to such information, voluntarily submitted, together with information obtained from field surveys, conducted in accordance with Section 13-4-11, NMSA 1978, in evaluating the validity and accuracy of certified payrolls and verified wage information incorporated in the director's survey.

(a) Certified weekly payrolls and verified wage information: The director shall compile his survey from the information contained in the certified payrolls and verified information submitted for the survey period prepared in accordance with Subsection C of 11.1.2.10 NMAC of these rules and regulations. Not less than twenty-five (25) days prior to the time scheduled for the hearing specified in Subsection D of 11.1.2.11 NMAC infra, the director shall prepare a detailed statement of the information, if any, which he has excluded from said certified payrolls or verified wage information in preparing his survey. Said statement, together with all certified payrolls and verified wage information, shall be available for inspection by any interested party in the offices of the director, subject to limitations imposed by Subsection F of 11.1.2.10 NMAC, supra. To the extent the director fails to object in said detailed statement, the information contained in said certified payrolls or verified wage information shall be incorporated by the director directly into the survey for the period concerned and the director shall be barred from raising any objection to said information in any subsequent proceeding before the labor and industrial commission, sitting as the appeals board, or otherwise. The information contained in said certified payrolls or verified wage information shall be conclusive upon him as to its validity, accuracy and completeness. This provision shall not prevent any interested party from objecting to information contained in such certified payrolls or verified wage information.

(b) Within the time limits specified in Subparagraph (a) of Paragraph (4) of Subsection C of 11.1.2.11 NMAC, supra, the director may object to the information contained in certified weekly payrolls or verified wage information timely submitted to him and refuse to incorporate it in his survey only on the ground that information contained therein does not accurately state the wages being paid mechanics or laborers employed under said contract or is not in accordance with the wage rates contained in the contract specifications, if any.

(c) The director may omit from

his survey information contained in certified payrolls or in properly prepared and submitted verified wage information only to the extent he has a specific objection as enumerated in Subparagraph (a) of Paragraph (4) of Subsection C of 11.1.2.11 NMAC, supra, thereto.

D. Review of survey results after notice to all interested parties: Survey results shall be reviewed at a meeting with all known interested parties. The time, date and place of said meeting will be established at the discretion of the director. Notice of the subject matter, the time, date and place of the meeting, the manner in which interested persons may present their views, and the method by which copies of the survey results (including lists of contractors and projects covered by the survey) and copies of the director's statement of information excluded from the survey pursuant to Paragraph (4) of Subsection C of 11.1.2.11 NMAC, supra, may be obtained, shall be published once at least thirty (30) days prior to the meeting date in a newspaper of general circulation. Such notice shall also be mailed by the director to all known interested parties at least thirty (30) days prior to the meeting date along with a copy of the survey results (including lists of contractors and projects covered by the survey) and a copy of the labor commissioner's statement of information excluded from the survey pursuant to Paragraph (4) of Subsection C of 11.1.2.11 NMAC, supra. Any objections to the survey results may be communicated to the director by an interested party either orally at such meeting or in writing delivered to the director on or before the date of such meeting, and the director shall make a record of any and all objections and of his rulings thereon prior to making his determination of prevailing wage rates. The director shall notify the objecting party and all other parties in attendance at the meeting of his ruling(s) on objections simultaneously with the making of his wage determination. Objections to the survey results not made by any interested party receiving proper and timely notice of such meeting shall be deemed waived and shall not constitute a ground for appeal unless the basis for such objection shall not have been reasonably discoverable by examination of the certified payrolls and verified wage information upon which the survey results are based, which data and all work papers and other material relating thereto shall be available at the office of the director, not less than thirty (30) days prior to such meeting, for inspection and copying by any interested party. For purposes of this Subsection D of 11.1.2.11 NMAC the term "all interested parties" shall include without limitation the state highway department, incorporated cities and Class A and B coun-

ties and their respective school boards or authorities, state institutions of higher learning and other contracting agencies which with regular frequency undertake public works projects subject to the act, and all other persons (including labor organizations, contractors and contractor associations) who make written request to the director to receive notice as provided in this section.

E. When the director has determined it is appropriate to do so, as an alternative and in lieu of the statewide survey provisions in the section the director shall establish the prevailing wage by reference to bona fide collective bargaining agreements (CBA's). The director shall determine such rates pursuant to this subsection by the following methodology.

(1) The director shall collect and verify all available CBA's for building trades in New Mexico.

(2) The director shall use the rates agreed to in the CBA's to establish the prevailing wage rates for crafts and types of construction as available. If the CBA's reflect different rates for subparts of the state, the director shall likewise establish such rates by zone consistent with their definitions in the CBA's.

(3) If there is no statewide CBA for a particular trade, the director shall refer to wage rates the United States department of labor has established pursuant to the Davis-Bacon Act for New Mexico for that trade.

(4) If there is a CBA for a trade, but that CBA does not establish rates for the same or similar types of construction that these regulations identify as A, B, C, and H, the director shall use that rate to establish the B rate. The director shall thereafter adjust this B rate to the other types of construction by the percentage equal to the percentage difference between the building categories in the rates the United States department of labor has established for all building categories in the same trade.

(5) If there is neither a CBA nor federal Davis-Bacon rate for a particular trade, the director shall determine that rate by reference to the rate a CBA or, secondarily, the United States department of labor pursuant to the Davis-Bacon Act, or, lastly, an applicable national labor agreement has established for the most similar trade.

(6) The rates the director establishes pursuant to this subsection shall be subject to notice, comment, and appeal consistent with Subsection D of this Section

F. Determination of prevailing wage rates: The director shall determine prevailing wage rates applicable in the state for the type of construction proposed based on ~~the~~ survey data, ~~assembled and compiled~~ collective bargaining agree-

ments, federal Davis-Bacon wage rates for New Mexico, applicable national labor agreements, or a combination thereof.

G. Addendum changes: Wage rate corrections or changes to decisions rendered shall not be issued without allowing the requesting agency at least ten (10) days notice before the date bids are to be submitted.

H. Effectiveness of wage rate decisions: Wage rate decisions shall remain effective until superseded; provided that changes to decisions rendered shall not be issued without allowing the requesting agency at least ten (10) days notice before the date bids are to be submitted. New wage rate decisions shall be issued for all contracts on which bids have not been submitted before the date on which a new survey and wage determination becomes effective pursuant to Subsection C of 11.1.2.11 NMAC, supra, provided, that any such new decision shall not supersede any previously issued decision unless such new decision is received by the contracting agency at least ten (10) days prior to the date on which bids are to be submitted. Notwithstanding anything in these regulations to the contrary or apparently to the contrary, the director shall not be required to issue a wage rate decision to a requesting agency unless such agency reasonably expects to advertise the contract for bids and to receive bids within 120 days from the date of its written request.

[5/31/72, 1/14/76, 6/4/79, 3/7/80, 1/29/81, 5/28/81, 11/4/88, 2/8/90, 2/14/94, 8/15/98; 11.1.2.11 NMAC - Rn & A, 11 NMAC 1.1.11, 3/15/2004]

## NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.27 NMAC, Section 7, effective April 1, 2004.

**16.19.27.7 DEFINITIONS:** Dishonorable conduct by a pharmacist intern licensed pursuant to NMSA 61-11-6, or pharmacy technician registered pursuant to NMSA 61-11-6.

A. Dishonorable conduct by a pharmacist intern or pharmacy technician shall mean, among other things, but not to be limited to:

(1) violation of any provision of the Pharmacy Act as determined by the board;

(2) violation of the board of pharmacy regulations as determined by the board;

(3) violation of the Drug and Cosmetic Act as determined by the board;

(4) violation of the Controlled Substances Act as determined by the board;

(5) failure of the licensee to conduct himself professionally in conformity

with all applicable federal, state and municipal laws and regulations to his relationship with the public and other health professionals;

(6) acquiring prescription stock from unlicensed sources;

(7) failure to hold on the strictest confidence all knowledge patrons, their prescriptions and other confidence entrusted or acquired of by him; divulging in the interest of the patron only by proper forms or where required for proper compliance with legal authorities;

(8) participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or welfare;

(9) the solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon;

(10) failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.9.4.12 NMAC;

(11) conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substances Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States;

(12) suspension, revocation, denial, or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States.

**B.** Dishonorable conduct by a facility (business) shall mean, among other things, but not to be limited to:

(1) violation of any provision of the Pharmacy Act as determined by the board;

(2) violation of the board of pharmacy regulations as determined by the board;

(3) violation of the Drug and Cosmetic Act as determined by the board;

(4) violation of the Controlled Substances Act as determined by the board;

(5) failure of the licensee to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public and other health professionals;

(6) acquiring prescription stock from unlicensed sources;

(7) failure to hold on the strictest confidence all knowledge concerning patrons, their prescriptions and other confidence entrusted or acquired of by him; divulging in the interest of the patron only by proper forms, or where required for

proper compliance with legal authorities;

(8) participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or welfare;

(9) the solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon;

(10) failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.9.4.12 NMAC;

(11) conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substance Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States;

(12) suspension, revocation, denial or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States;

(13) failure to correct written deficiencies, documented by drug inspectors during routine inspections;

(14) failure of the business owner or authorized representative to sign the annual self-assessment conducted by the pharmacist-in-charge (see 16.19.6.9.8 NMAC);

**(15) when an error occurs and a patient is harmed, failure of the business owner or authorized representative to provide an appropriate environment (staffing and physical environment) that can provide pharmaceutical care in a way that does not endanger the public.**

**C. "Pharmaceutical care" means the provision of drug therapy and other patient care services related to drug therapy intended to achieve definite outcomes that improve a patient's quality of life, including identifying potential and actual drug-related problems, resolving actual drug-related problems and preventing potential drug-related problems. [Subsection V of Section 61-11-2 NMSA 1978]**

**D. "Dispensing error" means a prescription that was dispensed from the pharmacy differently from what was prescribed.**

**E. "Harm" means temporary or permanent impairment of the physical, emotional or psychological function or structure of the body and/or pain resulting there from requiring intervention.**

**F. "Patient counseling" means the oral communication by the pharmacist of information to a patient or**

**his agent or caregiver regarding proper use of a drug or a device. [Subsection T of Section 61-11-2 NMSA 1978].**

**G. "Physical environment" means the facility layout design, fixtures, and surroundings that affect lighting levels, sound levels, temperature, interruptions, and distractions.**

[16.19.27.7 NMAC - N, 12-01-2003; A, 04-01-2004]

## NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD

### TITLE 11 LABOR AND WORKERS COMPENSATION CHAPTER 21 L A B O R UNIONS/LABOR RELATIONS PART 1 GENERAL PROVI- SIONS

**11.21.1.1 ISSUING AGENCY:** Public Employee Labor Relations Board, 2929 Coors NW, Suite #303, Albuquerque, NM 87120, (505) 831-5422.

[11.21.1.1 NMAC - N, 3-15-04]

**11.21.1.2 SCOPE:** The scope of part 1 of chapter 21 applies to public employers, public employees and labor organizations as defined by the Public Employee Bargaining Act (10-7E-1 to 10-7E-26 NMSA 1978).

[11.21.1.2 NMAC - N, 3-15-04]

**11.21.1.3 S T A T U T O R Y AUTHORITY:** Authority for Part 1 of Chapter 21 is the Public Employee Bargaining Act NMSA 1978 Sections 1 through 26 (10-7E-1 to 10-7E-26 NMSA 1978).

[11.21.1.3 NMAC - N, 3-15-04]

**11.21.1.4 D U R A T I O N :** Permanent.

[11.21.1.4 NMAC - N, 3-15-04]

**11.21.1.5 EFFECTIVE DATE:** March 15, 2004, unless otherwise cited at the end of the section.

[11.21.1.5 NMAC - N, 3-15-04]

**11.21.1.6 OBJECTIVE:** The objective for part 1 of chapter 21 is to establish principles governing implementation of the New Mexico Public Employee Bargaining Act (NMSA 1978, Section 10-7E-1 through 10-7E-26) and to establish fair and expeditious procedures that further the purposes of that act, which are: (1) to guarantee public employees the right to organize and bargain collectively with their employers; (2) to promote harmonious and cooperative relationships between public employers and public employees; and (3) to protect



the public interest by assuring, at all times, the orderly operation and functioning of the state and its political subdivisions. (NMSA 1978, Section 10-7E-2) These rules should be interpreted consistently with the Public Employee Bargaining Act as presently written or as later amended.

[11.21.1.6 NMAC - N, 3-15-04]

#### 11.21.1.7 DEFINITIONS:

**A.** Statutory definition: The terms defined in Section 4 of the act (NMSA 1978, Sec. 10-7E-4) shall have the meanings set forth therein.

**B.** Additional definitions: The following terms shall have the meanings set forth below.

(1) "Act" means the New Mexico Public Employee Bargaining Act (NMSA 1978, Sections 10-7E-1 through 10-7E-26 including any amendments to that statute.

(2) "Amendment of certification" means a procedure whereby an incumbent labor organization certified by the board to represent a unit of public employees or a public employer may petition the board to amend the certification to reflect a change such as a change in the name or the affiliation of the labor organization or a change in the name of the employer.

(3) "Certification of incumbent bargaining status" shall mean a procedure whereby a labor organization recognized by a public employer as the exclusive representative of an appropriate bargaining unit on June 30, 1999 petitions the board for a declaration of bargaining status under Section 24(B) of the act (NMSA 1978, Section 10-7E-24(B).

(4) "Challenged ballot" means the ballot of a voter in a representation election whose eligibility to vote is questioned either by a party to the representation case or by the director.

(5) "Complainant" means an individual, organization, or public employer, that has filed a prohibited practices complaint.

(6) "Confidential employee" means a person who devotes a majority of his time to assisting and acting in a confidential capacity with respect to a person who formulates, determines and effectuates management policies.

(7) "Director" means the director of the public employee labor relations board.

(8) "Document" means any writing, photograph, film blueprint, microfiche, audio or video tape, data stored in electronic memory, or data stored and reproducible in visible or audible form by any other means.

(9) "Probationary employee" for state employees shall have the meaning set forth in the State Personnel Act and accom-

panying regulations; for other public employees, other than public school employees, shall have the meaning set forth in any applicable ordinance, charter or resolution, or, in the absence of such a definition, in a collective bargaining agreement; provided, however, that for non-state employees a public employee may not be considered to be a probationary employee for more than one (1) year after the date he or she is hired by a public employer. If otherwise undefined, the term shall refer to an employee who has held his or her position, or a related position, for less than six months.

(10) "Prohibited practice" means a violation of Section 10-7E-19, 10-7E-20 or 10-7E-21(A) of the act (NMSA 1978, Section 10-7E-19, 10-7E-20 or 10-7E-21(A).

(11) "Public employer" means the state or a political sub-division thereof, including a municipality that has adopted a home rule charter, and does not include a government of an Indian nation, tribe or pueblo, provided that state educational institutions as provided in article 12, Section 11 of the constitution of New Mexico shall be considered public employers other than state for collective bargaining purposes only.

(12) "Public employee" means a regular non-probationary employee of a public employer; provided that, in the public schools, "public employee" shall also include a regular probationary employee.

(13) "Representation case" or "representation proceeding" means any matter in which a petition has been filed with the director requesting a certification or decertification election, or an amendment of certification, or unit clarification.

(14) "Respondent" means a party against whom a prohibited practices complaint has been filed.

(15) "Rules" means the rules and regulations of the board (these rules), including any amendments to them.

(16) "Unit accretion" means the inclusion in an existing bargaining unit of employees who do not belong to any existing bargaining unit and who share a community of interest with the employees in the existing unit and whose inclusion will not render the existing unit inappropriate.

(17) "Unit clarification" means a proceeding in which a party to an existing lawful collective bargaining relationship petitions the board to change the scope and description of an existing bargaining unit; to consolidate existing bargaining units represented by the same labor organization; or to realign existing bargaining units of state employees represented by the same exclusive representative into horizontal units, where the board finds the unit as clarified to

be an appropriate bargaining unit and no question concerning representation arises.

(18) "Unit inclusions or exclusions" means the status of an individual, occupational group, or group of public employees in clear and identifiable communities of interest in employment terms and conditions and related personnel matters, as being within or outside of an appropriate bargaining unit based on factors such as supervisory, confidential or managerial status, the absence thereof, job context, principles of efficient administration of government, the history of collective bargaining, and the assurance to public employees of the fullest freedom in exercising the rights guaranteed by the Public Employee Bargaining Act.

[11.21.1.7 NMAC - N, 3-15-04]

#### 11.21.1.8 COMPUTATION OF

**TIME:** When these rules state a specific number of days in which some action must or may be taken after a given event, the date of the given event is not counted in computing the time, and the last day of the period is deemed to end at close of business on that day. Saturday's, Sundays and state recognized legal holidays observed in New Mexico shall not be counted when computing the time. When the last day of the period falls on a Saturday, Sunday or legal holiday observed in New Mexico, then the last day for taking the action shall be the following business day.

[11.21.1.8 NMAC - N, 3-15-04]

#### 11.21.1.9 EXTENSION OF

**TIME:** A party seeking an extension of time in which to file with the director, the board or a hearing examiner any required or permitted document may file with the director or the hearing examiner, an appropriate written request for an extension. Such a request shall be filed at least three (3) days prior to the due date and shall state the position of all other parties, or that the filing party was unable to reach another party. The director, the board or the hearing examiner may grant an extension for good cause shown and, in granting an extension, may shorten the time requested.

[11.21.1.9 NMAC - N, 3-15-04]

#### 11.21.1.10 FILING WITH THE DIRECTOR OR THE BOARD:

To file a document with the director or the board, the document may be either hand-delivered to the board's office in Albuquerque during its regular business hours, or sent to that office by United States mail, postage prepaid, or by the New Mexico state government inter-agency mail. The director will be responsible for recording the filing of documents to be filed with the board, as well as documents to be filed with the director. A docu-

ment will be deemed filed when it is received by the director. Documents sent to the board via facsimile ("fax") transmission will be accepted for filing as of the date of transmission only if an original is filed by personal delivery or deposited in the mail no later than the first work day after the facsimile is sent.

[11.21.1.10 NMAC - N, 3-15-04]

#### 11.21.1.11 REPRESENTATION

**OF A PARTY:** A party may represent his, her, or itself, or be represented by counsel or other representative. Any representative of a party who is not an employee of the party shall file with the board a signed notice of appearance, stating the name of the party; the title and official number (if available) of the case in which the representative is representing the party, and the name, address and telephone number of the representative. The filing of a pleading containing the above information is sufficient to fulfill this requirement.

[11.21.1.11 NMAC - N, 3-15-04]

#### 11.21.1.12 EX PARTE COMMUNICATIONS:

Except as otherwise provided in this rule, no party to a pending representation, prohibited practices, or factfinding proceeding shall communicate, or attempt to communicate, with a hearing examiner assigned to the case, with the director, or with a board member, concerning any issue in the case, without, at the same time, transmitting the same communication to all other parties to the proceeding. It shall not be a violation of this rule to communicate concerning the status of a case, or to communicate concerning such procedural matters as the location or time of a hearing, the date on which documents are due, or the method of filing. It shall not be a violation of this rule for a party to communicate with the director during the investigatory phase of a representation, prohibited practices, or impasse resolution proceeding. It shall not be a violation of this rule for a party to communicate with anyone concerning any rulemaking proceeding of the board, or to communicate with the director, a mediator, or board member at the director's mediator's, or member's request.

[11.21.1.12 NMAC - N, 3-15-04]

#### 11.21.1.13 DISQUALIFICATION:

No board agent, member nor hearing examiner shall decide or otherwise participate in any case or proceeding in which he or she (a) has a financial interest in the outcome; (b) is indebted to any party, or related to any party or any agent or officer of a party by consanguinity within the third degree; (c) has acted on behalf of any party within two years of the commencement of the case or proceeding; or (d) for some other

reason or prejudice, he or she cannot fairly or impartially consider the issues in the proceeding.

[11.21.1.13 NMAC - N, 3-15-04]

#### 11.21.1.14 MOTION TO DISQUALIFY:

**A.** A motion to disqualify a board agent, member or hearing examiner in any matter, based upon the foregoing criteria, shall be filed with the board, with copies served on all parties, prior to any hearing or the making of any material ruling involving the pending issues.

**B.** Such motion shall set out the basis for the disqualification and all facts in support thereof.

**C.** If the board finds such motion meritorious upon due inquiry, it shall disqualify the board agent, member or hearing examiner and he or she shall withdraw from the proceeding. If the motion is denied, the board shall so rule and the matter shall proceed.

[11.21.1.14 NMAC - N, 3-15-04]

#### 11.21.1.15 RECORDS OF PROCEEDINGS:

All meetings of the board (whether general, special or emergency) and all rulemaking, unit determination, and prohibited practice hearings before the board or a hearing examiner of the board shall be audio-recorded, or, upon order of the board may be transcribed, except that board meetings or portions thereof lawfully closed shall not be recorded or transcribed, unless so directed by the board. Following the board's approval of the minutes of a meeting of the board, the minutes shall become the sole official record of the meeting, and the audio tape of the meeting may be erased. The director shall keep audio tapes of the rulemaking, unit determination, and prohibited practices hearings for a period of at least one year following the close of the proceeding in which the hearing is held, or one year following the close of the last judicial or board proceeding (including any appeal or request for review) related to the case in which the hearing is held, whichever is later, or such longer period as may be required by law. No recording shall be made of any mediation proceeding, settlement discussion, or alternative dispute resolution effort except by agreement of all parties and participating officials. The board's recording or transcript shall be the only official record of a hearing.

[11.21.1.15 NMAC - N, 3-15-04]

#### 11.21.1.16 NOTICE OF HEARING:

**A.** After the appropriate notice or petition is filed in a representation, prohibited practices or impasse resolution case, the director shall hold a status and

scheduling conference with the parties to determine the issues; establish a schedule for discovery, including the issuance of subpoenas, and pretrial motions; and set a hearing date.

**B.** Upon setting a rulemaking hearing, the director or the board shall cause notice of hearing to be issued setting forth the nature of the rulemaking proceeding, the time and place of the hearing, the manner in which interested persons may present their views, and the manner in which interested persons may obtain copies of proposed rules notices of rulemaking hearings shall be sent by regular mail to all persons who have made requests for such notice, and shall be published in at least one newspaper of general circulation in New Mexico at least thirty (30) days prior to commencement of the hearing.

**C.** Upon setting a rulemaking hearing, the director or the board shall cause notice of hearing to be issued setting forth the nature of the rulemaking proceeding, the time and place of the hearing, the manner in which interested persons may obtain copies of proposed rules, notices of rulemaking hearings shall be sent by regular mail to all persons who have made requests for such notice, and shall be published in at least one newspaper of general circulation in New Mexico at least thirty (30) days prior to commencement of the hearing.

**D.** A party to a representation, prohibited practices, or impasse resolution case in which a hearing is scheduled may request postponement of the hearing by filing a written request with the director, and serving the request upon all other parties, at least five (5) days before commencement of the hearing. The requesting party shall state the specific reasons in support thereof. Upon good cause shown, the director shall grant a postponement to a date no more than twenty (20) days later than the previously set hearing date. Only in extraordinary circumstances may the director grant a further postponement, or a postponement to a date more than twenty (20) days after the previously set date.

[11.21.1.16 NMAC - N, 3-15-04]

#### 11.21.1.17 EVIDENCE ADMISSIBLE:

**A.** The technical rules of evidence shall not apply, but, in ruling of the admissibility of evidence, the hearing examiner or board may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

**B.** Irrelevant, immaterial, unreliable, unduly repetitious or cumulative evidence, and evidence protected by the rules of privilege (such as attorney-client,

physician-patient or special privilege) shall be excluded upon timely objection.

**C.** The hearing examiner or board may receive any evidence not objected to, or may, upon the hearing examiner's or board's own initiative, exclude such evidence if it is irrelevant, immaterial, unreliable, unduly repetitious, cumulative or privileged.

**D.** Evidence may be tentatively received by the hearing examiner or board, reserving a ruling on its admissibility until the issuance of a report or decision. [11.21.1.17 NMAC - N, 3-15-04]

**11.21.1.18 MISCONDUCT:** The hearing examiner or body conducting a hearing or official conducting any other proceeding, may exclude or expel from the hearing or proceeding any person, whether or not a party, who engages in violent, threatening, disruptive, or unduly disrespectful behavior. In the event of such exclusion or expulsion of a person for misconduct, the hearing examiner, body or official shall explain on the record the reasons for the exclusion or expulsion and may either proceed in the absence of the excluded person or recess such proceeding and continue at another time, as may be appropriate. [11.21.1.18 NMAC - N, 3-15-04]

**11.21.1.19 SUBPOENAS:**

**A.** Any party to a proceeding in which a notice of hearing has issued may file a written request with the director for the issuance of a subpoena for witness testimony or a subpoena for the production of documents to procure testimony or documents at the hearing. Deadlines for requesting subpoenas shall be established pursuant to the scheduling order agreed to by the parties. A subpoena request shall state the name and number of the case; identify the person(s) or documents sought; and state the general relevance to an issue in the case of the testimony or documents sought. The director may refuse to issue a subpoena where the request fails to meet these requirements, or where it appears to the director that the documents or testimony sought are not relevant to issues in the case. Otherwise, the director shall immediately issue a subpoena to the requesting party.

**B.** The director, a hearing examiner, or the board may issue subpoenas on the initiative of the director, hearing examiner or board, in which case a showing of relevance is not required, and a notice of hearing need not have been issued.

**C.** A person upon whom a subpoena is served may move to quash the subpoena. A motion to quash shall be filed according to the scheduling order, or as permitted by the board, director or the hearing

examiner.

**D.** Any applicable witness and travel fees shall be the responsibility of the subpoenaing party.

[11.21.1.19 NMAC - N, 3-15-04]

**11.21.1.20 EXCHANGE OF DOCUMENTS AND LISTS OF WITNESSES:** Pursuant to the scheduling order, each party shall serve upon all other parties all documents it intends to introduce at the hearing and a list of all witnesses it intends to call, along with a brief statement of the subjects about which each witness is expected to testify. No party may compel discovery other than as provided in this rule and Section 19 (subpoenas), except by a specific order of the board upon good cause shown. The hearing examiner may permit the admission in evidence of witness testimony or of documents not timely supplied under this rule if, in the hearing examiner's judgment, there was sufficient reason for the failure to timely supply the names or documents.

[11.21.1.20 NMAC - N, 3-15-04]

**11.21.1.21 OWNERSHIP AND CONFIDENTIALITY OF SHOWING OF INTEREST:**

Evidence of a showing of interest submitted to the director in support of a representation petition shall remain the property of the party submitting such evidence; shall not become property of the director or the board, shall be kept confidential by the director and the board; and shall be returned to the party that submitted the same upon the close of the case.

[11.21.1.21 NMAC - N, 3-15-04]

**11.21.1.22 BURDEN OF PROOF:**

**A.** Except in unit clarification proceedings, no party shall have the burden of proof in a representation or factfinding proceeding. Rather, the director in the investigatory phase or the hearing examiner shall have the responsibility of developing a fully sufficient record for a determination to be made, and may request any party to present evidence or arguments in any order. In a unit clarification proceeding, a party seeking any change in an existing appropriate unit, or in the description of such a unit, shall have the burden of proof and the burden of going forward with the evidence.

**B.** In a prohibited practices proceeding, the complaining party has the burden of proof and the burden of going forward with the evidence.

[11.21.1.22 NMAC - N, 3-15-04]

**11.21.1.23 MOTIONS AND RESPONSES TO MOTIONS:** All motions and responses to motions, except

those made at a hearing, shall be in writing and shall be served simultaneously upon all parties to the proceeding. All written motions shall be filed and served on all parties pursuant to the scheduling order. Motions and responses made at hearings may be made orally. If a party decides to file a response to a written motion, the response shall be filed and simultaneously served pursuant to the scheduling order.

[11.21.1.23 NMAC - N, 3-15-04]

**11.21.1.24 SERVICE:** Service of papers upon parties may be made by personal delivery or by depositing in United States mail, first class postage prepaid, or by both facsimile ("fax") transmission and, by the next scheduled work day after sending a "fax", either personally delivering the document or depositing it in first class mail, in which case the date of "fax" transmission shall be the date of service. Each document served shall be accompanied by a signed certification stating the name and address of each person served and the date and method of service. The certification may be placed on the document served.

[11.21.1.24 NMAC - N, 3-15-04]

**11.21.1.25 TESTIMONY OF BOARD AGENTS:**

Agents of the board (including the director, investigators, hearing examiner, and board members), whether employees of the board or contractors, may not be compelled to testify in board proceedings.

[11.21.1.25 NMAC - N, 3-15-04]

**11.21.1.26 FORM OF PAPERS:**

All papers required or permitted to be filed with the director, a hearing examiner, or the board shall be on an official form prepared by the director, if available, or on 8 1/2 by 11 white paper, double spaced. All papers shall show at or near the top of the first page the case name and, if available, the case number, and shall be signed.

[11.21.1.26 NMAC - N, 3-15-04]

**11.21.1.27 APPEAL OR REVIEW BY THE BOARD:**

Unless otherwise provided in these rules, appeal or request for review by the board shall be permitted only upon completion of proceedings before a hearing examiner or the director. Review by the board shall be based on the evidence presented or offered at the earlier stages of the proceeding, and shall not be de novo. An interlocutory appeal may be allowed with the permission of the board, director or the hearing examiner.

[11.21.1.27 NMAC - N, 3-15-04]

**11.21.1.28 DIRECTOR'S AUTHORITY:** Except as otherwise provided in these rules, the director shall have

authority to delegate to other board employees or outside contractors any of the authority delegated to the director by these rules. In every case where these rules or the act provide for the appointment of a hearing examiner, the director or the board shall appoint the hearing examiner, and may appoint the director or a board member as the hearing examiner.

[11.21.1.28 NMAC - N, 3-15-04]

#### 11.21.1.29 CLOSING OF

**CASES:** The director shall close a case following completion of all administrative and judicial proceedings related to the case. The director may, after notice to the parties, summarily close any case in which the moving party has taken no action within the previous six months, unless the delay is caused by factors beyond the party's control.

[11.21.1.29 NMAC - N, 3-15-04]

#### 11.21.1.30 PUBLICATION OF

**BOARD DECISIONS:** At the times and in the manner prescribed by the board, the director shall reproduce multiple copies of board decisions, classify and index the decisions, and make tables and indexes of the decisions, as well as compilations of the decisions, available to the public.

[11.21.1.30 NMAC - N, 3-15-04]

#### 11.21.1.31 TIME LIMITS FOR

**BOARD ACTIONS:** Whenever these rules set forth a period of time within which the board, the director, or a hearing officer must take any action, the board, director or hearing examiner may, for good cause, extend for a reasonable time, not to exceed twenty (20) workdays for each extension, the date by which such action must be taken, unless the date is controlled by statute.

[11.21.1.31 NMAC - N, 3-15-04]

#### 11.21.1.32 MEETINGS BY TELEPHONE:

**A.** Pursuant to 10-15-1(C) NMSA, 1978, a member of the board may participate in a meeting of the public employee labor relations board by means of a conference telephone or other similar communications equipment in accordance with the provisions enumerated in Subsections B through E of 11.21.1.32 NMAC.

**B.** This rule shall only apply when it is otherwise difficult or impossible for the member to attend the meeting in person.

**C.** Each member participating by conference telephone must be identified when speaking.

**D.** All participants must be able to hear each other at the same time.

**E.** Members of the public

attending the meeting must be able to hear any member of the board who speaks during the meeting.

[11.21.1.32 NMAC - N, 3-15-04]

#### History of 11.21.1 NMAC:

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

PELRB 1, General Provisions, filed 3-18-93.

**History of Repealed Material:** 11 NMAC 21.1, General Provisions (filed 6-24-96), repealed as a result of the internal duration of rule, stated as 7-1-99.

#### Other History:

PELRB 1, General Provisions, filed 3-18-93 was renumbered and replaced by 11 NMAC 21.1, General Provisions, filed 6-24-96.

11 NMAC 21.1, General Provisions, filed 6-24-96, was replaced by 11.21.1 NMAC, General Provisions, effective 3-15-04.

## NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD

### TITLE 11 LABOR AND WORKERS COMPENSATION CHAPTER 21 L A B O R UNIONS/LABOR RELATIONS PART 2 REPRESENTATION PROCEEDINGS

#### 11.21.2.1 ISSUING AGENCY:

Public Employee Labor Relations Board, 2929 Coors NW, Suite #303, Albuquerque, NM, 87120, (505) 831-5422.

[11.21.2.1 NMAC - N, 3-15-04]

**11.21.2.2 SCOPE:** The scope of Part 2 of Chapter 21 applies to public employers, public employees and labor organizations as defined by the Public Employee Bargaining Act (10-7E-1 to 10-7E-26 NMSA 1978).

[11.21.2.2 NMAC - N, 3-15-04]

#### 11.21.2.3 STATUTORY

**AUTHORITY:** Authority for Part 1 of Chapter 21 is the Public Employee Labor Relations Act NMSA Sections 1 through 26 (10-7E-1 to 10-7E-26 NMSA 1978).

[11.21.2.3 NMAC - N, 3-15-04]

#### 11.21.2.4 DURATION:

Permanent.

[11.21.2.4 NMAC - N, 3-15-04]

#### 11.21.2.5 EFFECTIVE DATE:

March 15, 2004, unless otherwise cited at

the end of the section.

[11.21.2.5 NMAC - N, 3-15-04]

**11.21.2.6 OBJECTIVE:** The objective of Part 2 of Chapter 21 is to establish a standard for uniform petition filings in an easily understood form in which all pertinent information is given to the public employee labor relations board to determine an appropriate bargaining unit.

[11.21.2.6 NMAC - N, 3-15-04]

#### 11.21.2.7 DEFINITIONS:

[Reserved]

[11.21.2.7 NMAC - N, 3-15-04]

#### 11.21.2.8 COMMENCEMENT

**OF CASE:** A representation case is commenced by filing a representation petition with the director on a form prescribed by the director. The form shall include, at a minimum, the following information: the petitioner's name, address, phone number, state or national affiliation, if any, and representative, if any; the name, address and phone number of the public employer or public employers whose employees are affected by the petition; a description of the proposed appropriate bargaining unit and any existing recognized or certified bargaining unit; the geographic work locations, occupational groups, and estimated numbers of employees in the proposed and any existing bargaining unit; a statement of whether or not there is a collective bargaining agreement in effect covering any of the employees in the proposed or any existing bargaining unit and, if so, the name, address and phone number of the labor organization that is party to such agreement; a statement of what action the petition is requesting; and a signed declaration by the person filing the petition that its contents are true and correct to the best of his or her knowledge. In addition, a petition seeking a certification or decertification election, shall be supported by a thirty percent showing of interest in the existing or proposed bargaining unit. A petition shall contain a signed declaration by the person filing the petition that its contents are true and correct to the best of his or her knowledge and, in the case of a decertification petition that he or she is a member of the labor organization to whom the decertification petition applies.

[11.21.2.8 NMAC - N, 3-15-04]

#### 11.21.2.9 SERVICE OF PETITION:

Upon filing a petition, the petitioner shall serve it upon the employer and any incumbent labor organization. Within ten (10) days of the filing of a petition, the director shall cause notice of the filing of the petition to be sent to any other interested party.

[11.21.2.9 NMAC - N, 3-15-04]

**11.21.2.10 FILING OF COLLECTIVE BARGAINING AGREEMENT:** Along with a representation petition, the petitioner shall file with the director a copy of any collective bargaining agreement, then in effect or recently expired, covering any of the employees in the petitioned-for unit.

[11.21.2.10 NMAC - N, 3-15-04]

**11.21.2.11 SHOWING OF INTEREST:** With the petition and at the same time the petition is filed, the petitioner shall deposit with the director a showing of interest consisting of signed, dated statements, which may be in the form of cards or a petition, by at least thirty (30) percent of the employees in the proposed unit stating, in the case of a petition for a certification election, that each such employee wishes to be represented for the purposes of collective bargaining by the petitioning labor organization, and, in the case of a petition for a decertification election, that each such employee wishes a decertification election. Each signature shall be separately dated. So long as it meets the above requirements, a showing of interest may be in the form of signature cards or a petition or other writing, or a combination of written forms. No showing of interest need be filed in support of a petition for amendment of certification or unit clarification.

[11.21.2.11 NMAC - N, 3-15-04]

**11.21.2.12 INFORMATION REQUESTED OF PARTIES:**

**A.** Within ten (10) days of the filing of a representation petition, the director shall by letter request of any party that appears to have an interest in the proceeding, including any public employees involved and any incumbent labor organizations, its position with respect to the appropriateness of the bargaining unit petitioned for; a statement of any issues of unit inclusion or exclusion that the party believes may be in dispute, and any other issue that could affect the outcome of the proceeding.

**B.** From any public employer involved, the director, within ten (10) days of the filing of a representation petition, shall also request a list of the employees who would be eligible to vote if the petitioned-for unit were found to be appropriate, based on the payroll period that ended immediately preceding the filing of the petition. The public-employer shall be instructed to file such a list within ten (10) days of the director's request. The board shall make the list available to the parties.

[11.21.2.12 NMAC - N, 3-15-04]

**11.21.2.13 INITIAL INVESTIGATION OF PETITION:** After a petition

has been filed, the director shall investigate the petition. The investigation shall include the following steps and shall be completed within thirty (30) days of the filing of the petition.

**A.** The director shall check the showing of interest (if applicable) against the list of eligible employees in the proposed unit filed by the public employer to determine whether the showing of interest has been signed and dated by a sufficient number of employees and that the signatures are sufficiently current. If signatures submitted for a showing of interest meet the requirements set forth in these rules, they shall be presumed valid unless the director is presented with clear and convincing evidence that they were obtained by fraud, forgery or coercion. In the event that evidence of such fraud, forgery or coercion is presented to the director, the director shall investigate the allegations as expeditiously as possible and shall keep the showing of interest confidential during the investigation. The director shall dismiss any petition supported by an improper or insufficient showing of interest, consistent with Section 23 (opportunity to present additional showing), and shall explain in writing the basis of the dismissal. The director's determination as to the sufficiency of a showing of interest is an administrative matter solely within the director's authority and shall not be subject to questions or review.

**B.** The director shall determine the facial validity of the petition, including the facial appropriateness of the petitioned-for unit and may request the petitioner to amend a facially inappropriate petition. In the absence of an appropriate amendment, the director shall dismiss a petition asking for an election in, or a clarification to, a facially inappropriate unit, or that is otherwise facially improper, in which case he shall explain his reasons in writing.

**C.** The director shall determine whether there are significant issues of unit scope unit inclusion or exclusion, labor organization or public employer status; a bar to the processing of the petition; or other matters that could affect the proceedings. The director shall make the determination pursuant to the provisions of 10-7E-13(C) and 10-7E-24 of the Public Employee Bargaining Act.

[11.21.2.13 NMAC - N, 3-15-04]

**11.21.2.14 SETTLEMENT/STIPULATION OF UNIT ISSUES:** If the director finds that there are significant issues affecting the proceeding that are or may be in dispute, the director shall confer with all parties to attempt to resolve the issues and to enter into a written stipulation stating the agreement. Any such stipulation shall be subject

to approval of the board upon review, which may be requested by the board or sought by the director.

[11.21.2.14 NMAC - N, 3-15-04]

**11.21.2.15 NOTICE OF FILING OF PETITION:** Unless the director has determined that there is need for a representation hearing pursuant to Section 19, then within thirty (30) days of receipt of a petition, the director shall issue a notice stating that the petition has been filed, naming the petitioner, stating the unit petitioned-for, and stating the procedures for intervention as set forth in Section 16, below, including the date by which an intervenor must file its petition and showing of interest. The director shall issue sufficient copies of the notice to each employer involved, and each such employer shall post such copies in places where notices to employees are normally posted. The notices shall remain posted continuously for a least five days.

[11.21.2.15 NMAC - N, 3-15-04]

**11.21.2.16 INTERVENTION:**

**A.** At any time within ten (10) days after the employer's posting of the notice of filing of petition, a labor organization other than the petitioner may file with the director an intervenor's petition seeking to represent some or all of the employees in the petitioned-for unit. The intervenor's petition shall contain the same information set forth in Section 8 above.

**B.** The intervenor's petition shall be accompanied by a showing of interest showing that at least thirty (30%) of the employees in the petitioned-for unit wish to be represented by the intervenor for purposes of collective bargaining. The showing of interest shall otherwise meet the requirements set forth in Section 11, above.

**C.** An intervenor that has presented a sufficient showing of interest in the unit found to be appropriate shall be placed on the ballot and shall be considered a party to the proceeding.

**D.** Upon application, an incumbent labor organization shall have automatic intervenor status if it is not the petitioner, pursuant to the provisions of 10-7E-24(B) of the Public Employee Bargaining Act.

[11.21.2.16 NMAC - N, 3-15-04]

**11.21.2.17 CONSENT ELECTION:** Where the parties are in agreement on all issues required to be resolved in order to proceed to an election, and the director is satisfied that the issues are so resolved, including unit scope, are acceptable to the board; the director shall draw up a consent election agreement to be signed by all parties and by the director. Consent election agreements are subject to board review and

may be set aside by the board on its own initiative. If a consent election agreement is not set aside at the board's next regular meeting or the following regular meeting, the director shall proceed to an election on the basis of the agreement.

[11.21.2.17 NMAC - N, 3-15-04]

**11.21.2.18 INVESTIGATION, REPORT, NOTICE OF HEARING:**

**A.** In the absence of a consent election agreement, the director shall investigate the outstanding issues and shall issue and serve a report and direction of election, a report and dismissal of petition, or a notice of hearing within forty-five (45) days of the posting of the notice of filing of petition. If there is a dispute between the parties regarding unit composition, or the director is satisfied that the issues can best be resolved in a hearing, the director shall issue and serve a notice of hearing without first conducting a further investigation. A hearing concerning unit composition, where the parties are in dispute on that issue, shall be set for a date not later than thirty (30) days following the director's notice of hearing or the director's receipt of notice of the dispute, whichever is sooner.

**B.** A report and direction of election or a report and dismissal of petition shall be subject to board review under the procedures set forth in Section 22 below. The issuance of a notice of hearing shall not be subject to board review.

[11.21.2.18 NMAC - N, 3-15-04]

**11.21.2.19 REPRESENTATION HEARING:**

**A.** In the absence of a consent election agreement, and where there are significant unit issues that, in the director's view, should be resolved in a hearing, the director shall issue a notice of hearing.

**B.** Except in cases where the board appoints the hearing examiner, the director shall appoint the hearing examiner, and may appoint himself or herself to serve as hearing examiner.

**C.** The hearing examiner shall take evidence sufficient to make a full and complete record on all unresolved unit issues and any other issues necessary to process the petition. Details such as the time, date and place of the election, and whether there will be manual or mail ballots or a combination, shall not be resolved through the hearing process, but shall be resolved instead through the pre-election conference process described in Section 25.

**D.** The hearing examiner may examine witnesses, call witnesses, and call for introduction of documents.

[11.21.2.19 NMAC - N, 3-15-04]

**11.21.2.20 BRIEFS:** If any party

requests permission to file a post-hearing brief, the hearing examiner shall permit all parties to file briefs and shall set a time, for the filing of briefs which normally shall be no longer than ten (10) days following the close of the hearing. Briefs shall be filed with the director and copies shall be served on all parties.

[11.21.2.20 NMAC - N, 3-15-04]

**11.21.2.21 HEARING EXAMINER REPORTS:** The hearing examiner shall issue his or her report following the close of the hearing. Except in extraordinary circumstances, which shall be set forth in the report, the report shall be issued no longer than fifteen (15) days following the close of the hearing or the submission of post-hearing briefs, whichever is later. The report shall make findings of fact, conclusions of law, and recommendations for the determination of issues, and shall adequately explain the hearing examiner's reasoning. The hearing examiner shall serve the report on all parties and the board.

[11.21.2.21 NMAC - N, 3-15-04]

**11.21.2.22 BOARD REVIEW OF HEARING EXAMINER REPORTS AND DIRECTOR DECISIONS:**

**A.** Within ten (10) days after service of the hearing examiner's report, or, in a case where no hearing has been held, within 10 days after the issuance of a director's decision, any party may file a request for board review of the hearing examiner's or the director's recommended disposition. The request for review shall state the specific portion of the hearing examiner's or director's recommended disposition to which exception is taken and the factual and legal basis for such exception. The request may not rely on any evidence not presented to the hearing examiner or director. The request must be served on all other parties.

**B.** Within ten (10) days after service of a request for review, any other party may file and serve on all parties a response to the request for review.

**C.** Whether or not a party has filed a request for review, the board, within sixty (60) days, shall review any recommended disposition regarding the scope of a bargaining unit made by the director or a hearing examiner. In addition, the board shall review any other issue properly raised by a party in a request for review. The board shall conduct its review on the basis of the existing record and may, in its discretion, hear oral argument.

**D.** Within sixty (60) days following review, the board shall issue its decision ordering an election, dismissing the petition, setting a further hearing, or otherwise disposing of the case. The board

may adopt or incorporate in and attach to its decision all or any portion of the hearing examiner's report or director's decision.

[11.21.2.22 NMAC - N, 3-15-04]

**11.21.2.23 OPPORTUNITY TO PRESENT FURTHER SHOWING OF INTEREST:**

**A.** When the director finds that the petitioner or an intervenor has submitted an insufficient showing of interest in the unit petitioned for, the director shall notify the petitioner or intervenor, and that party shall have the opportunity to submit an additional showing of interest. The director shall then review the additional showing of interest to determine whether the total showing of interest submitted by the party is sufficient to sustain its petition or intervention.

**B.** In the event that the director, hearing examiner or board determines that a unit other than the unit petitioned for is appropriate and it appears to the board or director that the showing of interest filed by the petitioner or an intervenor is insufficient in the unit found appropriate the director shall notify the petitioner or intervenor and give such party a reasonable amount of time in which to file an additional showing if the party fails to file a sufficient showing within that time, the director shall dismiss the petition or deny intervenor status.

[11.21.2.23 NMAC - N, 3-15-04]

**11.21.2.24 ELIGIBILITY TO VOTE:**

**A.** Employees in the bargaining unit shall be eligible to vote in the election if they were employed during the last payroll period preceding date of the consent election agreement or the direction of election issued by the director or the board, and are still employed in the unit on the date of the election.

**B.** Employees in the bargaining unit who are eligible to vote but who will be absent on the day of voting because of hospitalization, temporary assignment away from normal post of duty, leave of absence, vacation at a location more than fifty (50) miles distant from the polling place, or other legitimate cause, may request an absentee ballot from the director. Such a request must be received by the director at least ten (10) days before the election, in which case the director, after preliminarily determining the employee's eligibility to vote, shall provide the employee with a ballot to be submitted to the director by mail. To be counted, an absentee ballot must be received by the director at least one day before the ballot count. The director shall establish procedures to permit an absentee ballot to be challenged, as provid-

ed in Section 30, below.

**C.** The employer or employer's whose employees comprise the bargaining unit shall submit to the director and to all other parties a list of all employees eligible to vote in the election no later than ten (10) days before the commencement of the election balloting. Employees whose names do not appear on the list but who believe they are eligible to vote may cast ballots through the challenged ballot procedure set forth in Section 30, below. [11.21.2.24 NMAC - N, 3-15-04]

**11.21.2.25 PRE-ELECTION CONFERENCE:** At a reasonable time at least fifteen (15) days before the election, the director shall conduct a pre-election conference with all parties to resolve such details as the polling location(s), the use of manual or mail ballots or both, the hours of voting, the number of observers permitted, and the time and place for counting the ballots. The director shall notify all parties by mail of the time and place of the pre-election conference, at least five (5) days in advance of the conference. The conference may proceed in the absence of any party. The director will attempt to achieve agreement of all parties on the election details, but in the absence of agreement, shall determine the details. In deciding the polling location(s), the use of manual or mail participation in the election by employees in the bargaining unit. There shall be a strong preference for on-site balloting. [11.21.2.25 NMAC - N, 3-15-04]

**11.21.2.26 NOTICE OF ELECTION:**

**A.** The director shall issue and serve on the parties a notice of election setting forth all of the details of the election, as described in Section 25 above, no later than ten (10) days before the election. The notice of election shall also describe the bargaining unit whose members are eligible to vote and shall describe the challenged ballot procedure. The notice shall include a sample ballot.

**B.** The director shall provide a sufficient number of copies of the notice of election to each employer whose employees are eligible to vote so that the employer may post a notice of election in all lounges or common areas frequented by unit employees and in all places where notices to employees are commonly posted. The employer shall post the notices in all such areas at least ten (10) days before the election and shall take reasonable measure to assure that they are not removed, covered, altered or defaced. [11.21.2.26 NMAC - N, 3-15-04]

**11.21.2.27 BALLOTS AND**

**VOTING:**

**A.** All voting shall be by secret ballot prepared by the director, position on the ballot shall be determined randomly. Ballots in an initial election shall include a choice of "no representation."

**B.** All elections shall be conducted by the director, whether by mail in ballots or on-site elections.

**C.** Any voter who arrives at a polling area before the polls close will be permitted to vote.

**D.** Public employers whose employees are eligible to vote in an election shall allow their employees in the voting unit sufficient time away from their duties to cast their ballots and shall allow their employees who have been selected as election observers sufficient time away from their duties to serve as observers. This rule does not impose on public employers an obligation to change the work schedules of employees to accommodate voting hours. [11.21.2.27 NMAC - N, 3-15-04]

**11.21.2.28 ELECTIONEERING:** No electioneering shall be permitted within 50 feet of any room in which balloting is taking place. [11.21.2.28 NMAC - N, 3-15-04]

**11.21.2.29 OBSERVERS:** Each party shall be entitled to an equal number of observers to observe and assist in each polling area, and to witness the counting of ballots. The director has complete discretion to determine the number of observers. Observers shall not be supervisory or managerial employees or labor organization employees. However, representatives of the parties in addition to the observers may observe the counting of ballots. [11.21.2.29 NMAC - N, 3-15-04]

**11.21.2.30 CHALLENGED BALLOTS:**

**A.** Any party to an election, through its observer, or the director, may challenge the eligibility to vote of any person who presents himself or herself at the polls, and shall state the reason for the challenge. The director shall challenge any voter whose name does not appear on the list of employees eligible to vote.

**B.** The director shall furnish "challenge envelopes" on the outside of each challenge envelope, the director shall write the name and job classification of the challenged voter, the name of the party making the challenge, and the reason for the challenge.

**C.** Following the voting and before the votes are counted, the director shall attempt to resolve the eligibility of challenged voters by agreement of the parties. The ballots of challenged voters who

are agreed eligible shall be mixed with the other ballots and counted.

**D.** Challenged ballot envelopes containing unresolved challenged ballots shall not be opened and the challenges shall not be investigated unless, after the other ballots are counted, the challenged ballots could be determinative of the outcome of the election.

**E.** If the challenged ballots could be determinative of the outcome of the election, the director shall declare the vote inconclusive; shall, as soon as possible, investigate the challenged ballots to determine voter eligibility; and shall issue a report thereon or a notice of hearing within fifteen (15) days of the election. Any party may request board review of the director's report, following the procedures set forth in Section 22 above.

**F.** Following resolution of determinative challenged ballots, the director shall count the ballot of voters found to be eligible, adding the results of the earlier count and issuing a revised tally of ballots. [11.21.2.30 NMAC - N, 3-15-04]

**11.21.2.31 TALLY OF BALLOTS:** Immediately following the counting of ballots, the director shall serve a tally of ballots upon one representative of each party. The tally shall show the number of votes cast for each labor organization listed on the ballot, the number of votes cast for no representation, the number challenged ballots, and the percentage of employees in the unit who cast ballots. The tally shall also state whether the results are conclusive, and, if so, what the conclusive vote is. If the tally shows that fewer than forty percent (40%) of the employees in the unit voted, or that the choice of "no representation" received fifty percent (50%) or more of the valid votes cast, then the tally shall reflect that no collective bargaining representation was selected. [11.21.2.31 NMAC - N, 3-15-04]

**11.21.2.32 RUN-OFF ELECTIONS:** In an election where there are three or more choices on the ballot, if no ballot choice receives a majority of the valid votes cast, and at least forty percent (40%) of eligible voters voted, the director shall set a run-off election in which voters will be permitted to cast ballots for the two choices that received the highest number of votes. A new tally shall be issued and served following the counting of the votes of a run-off election. A run-off election must be conducted within the fifteen (15) day statutory period following completion of the initial election. [11.21.2.32 NMAC - N, 3-15-04]

**11.21.2.33 CERTIFICATION: If**

no objections are filed pursuant to Section 34, below, then within ten (10) days following service of the final tally, the director shall issue a certification of representative, showing the name of the labor organization selected and setting forth the bargaining unit, or a certification of results, showing that no labor organization was selected as bargaining representative.

[11.21.2.33 NMAC - N, 3-15-04]

#### **11.21.2.34 OBJECTIONS:**

Within five (5) days following the service of a tally of ballots, a party may file objections to conduct affecting the result of the election. The director shall, within thirty (30) days of the filing of such objections, investigate the objections and issue a report thereon. Alternatively, the director may schedule a hearing on the objections within thirty (30) days of the filing of the objections. A determination to hold a hearing is not reviewable by the board and shall follow the same procedures set forth in Section 19(2)(3), and (4), Section 20 and Section 21 above. A party adversely affected by the director's or hearing examiner's report may file a request for review with the board under the same procedures set forth in Section 22, above. If the director, hearing examiner or board finds that the objections have merit and that conduct improperly interfered with the results of the election, then the results of the election may be set aside and a new election ordered. In that event, the director in his or her discretion may retain the same period for determining eligibility to vote as in the election that was set aside, or may establish a new eligibility period for the new election.

[11.21.2.34 NMAC - N, 3-15-04]

#### **11.21.2.35 AMENDMENT OF**

**CERTIFICATION:** A petition for amendment of certification may be filed at any time by an exclusive representative or an employer to reflect such a change as a change in the name of the exclusive representative or of the employer, or a change in the affiliation of the labor organization. The director shall dismiss such a petition within thirty (30) days of its filing if the director determines that it raises a question concerning representation. If the director finds sufficient facts to show that the amendment should be made, after giving all parties notice and an opportunity to submit their views, the director shall issue an amendment of certification within thirty (30) days of the filing of the petition. The director's decision dismissing the petition or issuance of amended certification may be appealed to the board pursuant to the procedures set out in Section 22, above.

[11.21.2.35 NMAC - N, 3-15-04]

#### **11.21.2.36 CERTIFICATION OF INCUMBENT BARGAINING STATUS:**

A labor organization that was recognized by a public employer as the exclusive representative of an appropriate bargaining unit on June 30, 1999 shall be recognized as the exclusive representative of the unit. Such labor organization may petition for declaration of bargaining status under Section 24(B) of the act by submitting a petition accompanied by a showing of majority support within that unit such a petition for certification of incumbent based on prior recognition shall not raise an issue of representation. The director shall investigate the petition and, within thirty (30) days of the filing of the petition, shall issue a report and certification, a report and dismissal, or a notice of hearing. A determination by the director certifying the petitioner or dismissing the petitioner shall be appealable to the board under the procedures set forth in Section 22, above.

[11.21.2.36 NMAC - N, 3-15-04]

#### **11.21.2.37 UNIT CLARIFICATION:**

**A.** Except as provided in Section 24(A) of the act, where the circumstances surrounding the creation of an existing collective bargaining unit are alleged to have changed sufficiently to warrant a change in the scope and description of that unit, or a merger or realignment of previously existing bargaining units represented by the same labor organization, either the exclusive representative or the employer may file with the director a petition for unit clarification. Such a petition seeking realignment of existing units into horizontal units may be filed and processed only when it relates to state employees.

**B.** Upon the filing of a petition for unit clarification, the director shall investigate the relevant facts, and shall either set the matter for hearing or shall issue a report recommending resolution of the issues within thirty (30) days of the filing of the petition. In the director's investigation or through the hearing, the director or hearing examiner shall determine whether a question concerning representation exists and, if so, shall dismiss the petition.

**C.** If the director or hearing examiner determines that no question concerning representation exists and that the petitioned-for clarification is justified by the evidence presented, the director or hearing examiner shall issue a report clarifying the unit within thirty (30) days of the filing of the petition if no hearing is determined necessary, or within thirty (30) days of the hearing if a hearing is determined necessary. If the director determines that a question concerning representation exists,

he or she shall dismiss the petition.

**D.** A director or hearing examiner determination on a unit clarification petition shall be appealable to the board under the same procedures set forth in Section 22, above.

[11.21.2.37 NMAC - N, 3-15-04]

#### **11.21.2.38 ACCRETION**

**A.** The exclusive representative of an existing collective bargaining unit, or the employer of employees who belong to an existing collective bargaining unit may petition the board to include in the unit employees who do not belong, at the time the petition is filed, to any existing bargaining unit, who share a community of interest with the employees in the existing unit, and whose inclusion in the existing unit would not render that unit inappropriate.

**B.** If the number of employees in the group sought to be accreted is less than ten percent (10%) of the number of employees in the existing unit, the board shall presume that their inclusion does not raise a question concerning representation requiring an election, and the petitioner may proceed by filing a unit clarification petition under these rules. Such a unit clarification petition to be processed, must be accompanied by a showing of interest demonstrating that no less than thirty percent (30%) of the employees in the group sought to be accreted wish to be represented by the exclusive representative as part of the existing unit. No group of employees may be accreted to an existing unit without an election if the board determines that such group would constitute a separate appropriate bargaining unit.

**C.** If the number of employees in the group sought to be accreted is greater than ten percent (10%) of the number of employees in the existing unit, the board shall presume that their inclusion raises a question concerning representation, and the petitioner may proceed only by filing a petition for an election under these rules. Such a petition, in an accretion situation, must be accompanied by a showing of interest demonstrating that no less than thirty percent (30%) of the employees in the group sought to be accreted wish to be represented by the exclusive representative as part of the existing unit.

[11.21.2.38 NMAC - N, 3-15-04]

#### **11.21.2.39 VOLUNTARY RECOGNITION:**

**A.** A labor organization representing greater than majority support of employees in an appropriate collective bargaining unit and a public employer, after a petition for certification has been filed, may enter into a voluntary recognition



agreement in which the employer recognized the labor organization as the exclusive representative of all of the employees in the unit. Such petition shall be accompanied by a showing of majority support, which shall be verified in accordance with the procedures of Section 11, above.

**B.** Prior to board approval of any voluntary recognition, the director shall post notice of filing of petition in the manner provided for in Section 15, above. The director shall also give notice to any individuals or labor organizations that register with the director to be informed of such petitions.

**C.** If an intervenor does not file a petition for intervention within ten (10) days then the board shall consider the petition for approval of the voluntary recognition if accompanied by consent of the employer.

**D.** The board shall treat a voluntary recognition relationship so established and approved the same as a relationship established through board election and certification, unless the board finds the agreed-to bargaining unit to be inappropriate. In that event, the board may require the filing and processing of a petition as provided for in these rules, and the conduct of an election, before recognizing the relationship.

**E.** If an intervenor files a proper petition pursuant to Section 16 above, within the ten (10) day time period, then the board may not approve a voluntary recognition, and the director shall proceed in the manner set forth for representation petitions as provided in Section 10 to 14 and 17 to 34 above.

[11.21.2.39 NMAC - N, 3-15-04]

**11.21.2.40 PETITION WITHDRAWAL:** The petitioner in a representation proceeding may request permission of the director to withdraw the petition at any time prior to an initial election. The director may grant such a withdrawal request only after soliciting the positions of all parties and, in his or her discretion, may decline to approve the withdrawal request.  
[11.21.2.40 NMAC - N, 3-15-04]

**11.21.2.41 SEVERANCE PETITION:** A severance petition is a representation petition filed by a labor organization that seeks to sever or slice a group of employees who comprise one of the occupational groups listed in 10-7E-13 NMSA from an existing unit for the purpose of forming a separate, appropriate unit. It must be accompanied by a thirty (30%) percent showing of interest among the employees in the petitioned-for unit. It may be filed no earlier than ninety (90) days and no later than sixty (60) days before the expira-

tion date of a collective bargaining agreement or may be filed at any time after the expiration of the third year of a collective bargaining agreement with a term of more than three (3) years.

[11.21.2.41 NMAC - N, 3-15-04]

**History of 11.21.2 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records-state records center and archives: PELRB 2, Representation Proceedings, filed 3-18-93.

**History of Repealed Material:** 11 NMAC 21.2, Representation Proceedings (filed 6-24-96), repealed as a result of the internal duration of rule, stated as 7-1-99.

**Other History:**

PELRB 2, Representation Proceedings, filed 3-18-93 was renumbered and replaced by 11 NMAC 21.2, Representation Proceedings, filed 6-24-96.

11 NMAC 21.2, Representation Proceedings, filed 6-24-96, was replaced by 11.21.2 NMAC, Representation Proceedings, effective 3-15-04.

## NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD

### TITLE 11 LABOR AND WORKERS COMPENSATION CHAPTER 21 LABOR UNIONS/LABOR RELATIONS PART 3 PROHIBITED PRACTICES PROCEEDINGS

**11.21.3.1 ISSUING AGENCY:** Public Employee Labor Relations Board, 2929 Coors NW, Suite #303, Albuquerque, NM, 87120, (505) 831-5422.  
[11.21.3.1 NMAC - N, 3-15-04]

**11.21.3.2 SCOPE:** The scope of Part 3 of Chapter 21 applies to public employers, public employees and labor organization as defined by the Public Employee Bargaining Act (10-7E1 to 10-7E-26 NMSA 1978).  
[11.21.3.2 NMAC - N, 3-15-04]

**11.21.3.3 STATUTORY AUTHORITY:** Authority for Part 1 of Chapter 21 is the Public Employee Labor Relations Act NMSA Sections 1 through 26 (10-7E-1 to 10-7E-26 NMSA 1978).  
[11.21.3.3 NMAC - N, 3-15-04]

**11.21.3.4 DURATION:**

Permanent.

[11.21.3.4 NMAC - N, 3-15-04]

**11.21.3.5 EFFECTIVE DATE:** March 15, 2004, unless otherwise cited at the end of the section.

[11.21.3.5 NMAC - N, 3-15-04]

**11.21.3.6 OBJECTIVE:** The objective of Part 3 of Chapter 21 is to set forth an efficient and effective investigative process for collection and evaluating information to determine whether public employers, public employees or labor organizations have engaged in activities or conduct that constitutes a violation of the Public Employee Bargaining Act (10-7E-1 to 10-7E-26 NMSA 1978).

[11.21.3.6 NMAC - N, 3-15-04]

**11.21.3.7 DEFINITIONS:** [RESERVED]

[11.21.3.7 NMAC - N, 3-15-04]

**11.21.3.8 COMMENCEMENT OF CASE:**

**A.** A prohibited practices case shall be initiated by filing with the director a complaint on a form furnished by the director. The form shall set forth, at a minimum, name, address and phone number of the public employer, labor organization, or employee against whom the complaint is filed (the respondent) and of its representative if known, the specific section of the act claimed to have been violated; the name, address, and phone number of the complainant; a concise description of the facts constituting the asserted violation; and a declaration that the information provided is true and correct to the knowledge of the complaining party. The complaint shall be signed and dated, filed with the director, and served upon the respondent.

**B.** When an individual employee files a prohibited practices complaint alleging a violation of Section 19(F), 19(H), 20(C), or 20 (D) of the act, an interpretation given to the collective bargaining agreement by the employer and the exclusive representative shall be presumed correct.

[11.21.3.8 NMAC - N, 3-15-04]

**11.21.3.9 LIMITATIONS PERIOD:** Any complaint filed more than six (6) months following the conduct claimed to violate the act, or more than six (6) months after the complainant either discovered or reasonably should have discovered each conduct, shall be dismissed.

[11.21.3.9 NMAC - N, 3-15-04]

**11.21.3.10 FILING OF ANSWER:**

**A.** Within fifteen (15) days

after service of a complaint, the respondent shall file with the director and serve upon the complainant its answer admitting, denying or explaining each allegation of the complaint. For purposes of this rule, the term "allegation" shall mean any statement of fact or assertion of law contained in a complaint. No particular form is required either to state allegations or to answer them.

**B.** If a respondent in its answer admits or fails to deny an allegation of the complaint, the director, hearing examiner or board may find the allegation to be true.

[11.21.3.10 NMAC - N, 3-15-04]

**11.21.3.11 DEFAULT DETERMINATION:** If a respondent fails to file a timely answer, the director shall serve on the parties a determination of violation by default, based upon the allegations of the complaint and any evidence submitted in support of the complaint.

[11.21.3.11 NMAC - N, 3-15-04]

**11.21.3.12 SCREENING / INVESTIGATION:**

**A.** Upon receipt of a complaint, the director shall screen the complaint for facial adequacy. If the complaint is facially deficient, the director shall advise the complainant of the deficiency and give the complainant an opportunity to amend the complaint within five (5) days. Absent an amendment curing a facially deficient complaint, the director shall dismiss the complaint, stating the reasons in writing and serving the dismissal on the parties. A complaint that is facially untimely pursuant to Section 9 shall be dismissed.

**B.** After screening a complaint, the director shall investigate the allegations. The director need not await the filing of an answer before commencing the investigation. At the director's request, the complainant shall immediately present to the director all evidence available to the complainant in support of the complaint, including documents and the testimony of witnesses.

**C.** If a complainant fails to timely produce evidence in support of its complaint pursuant to the director's request, or fails to produce evidence that in the director's opinion is sufficient to support the allegations of the complaint, the director shall request the complainant withdraw the complaint within five (5) days and, absent such withdrawal, shall dismiss the complaint stating the director's reasons in writing and serving the dismissal on all parties.

[11.21.3.12 NMAC - N, 3-15-04]

**11.21.3.13 APPEAL TO BOARD OF DIRECTOR'S DISMISSAL:**

**A.** The director's decision

to dismiss a complaint shall be subject to board review by the complainant filing with the board and serving upon the other parties a notice of appeal within ten (10) days following service of the dismissal decision. In its appeal, the complainant shall state the particular findings or conclusions of the director to which it takes exception and shall identify specific evidence that the complainant presented or offered to the director which supports the complainant's position on appeal.

**B.** Within ten (10) days after service of a notice of appeal, any other party may file and serve a response to the appeal.

**C.** The board may consider the case on the papers filed with it or, in its discretion, may also hear oral argument. The board shall issue its decision affirming the director's dismissal, ordering further investigation, or setting a hearing as soon as feasible following its consideration of the appeal but in any event no later than its next or the following regular meeting. The board may approve and incorporate in its decision all or any part of the director's dismissal decision.

[11.21.3.13 NMAC - N, 3-15-04]

**11.21.3.14 NOTICE OF HEARING:** If the director, following investigation and the filing of an answer, believes that there is sufficient evidence that the respondent has committed a prohibited practice to warrant a hearing, the director shall designate a hearing examiner, set a hearing, and serve a notice of the hearing upon all parties. The director shall dismiss the complaint or set a hearing within thirty (30) days of filing of the complaint. A hearing shall be scheduled within forty-five (45) days of the filing of the complaint.

[11.21.3.14 NMAC - N, 3-15-04]

**11.21.3.15 PRE-HEARING SETTLEMENT EFFORTS:**

**A.** Following service of a notice of hearing and before commencement of the hearing, the director shall attempt to settle the complaint with the parties. If the parties achieve a settlement, they shall reduce it to writing and submit it to the director for approval.

**B.** If the complaint cannot be settled by the parties prior to the hearing, the matter shall proceed to hearing. However, the complaint may be settled by the parties at any time prior to hearing.

**C.** The director or hearing examiner may submit a proposed settlement agreement to the board for its approval before the settlement becomes final.

**D.** The complainant may withdraw the complaint at any time prior to hearing, without approval by the director or

the board. After commencement of the hearing, the complaint shall not be withdrawn or settled without the approval of the hearing examiner. After a hearing examiner's report has been issued, a complaint may not be withdrawn without board approval.

[11.21.3.15 NMAC - N, 3-15-04]

**11.21.3.16 PROHIBITED PRACTICES HEARINGS:**

**A.** In the absence of an approved settlement agreement, the hearing examiner shall conduct a formal hearing, assigning the burden of proof and the burden of going forward with the evidence to the complainant, as stated in 11.21.1.22 NMAC.

**B.** The hearing examiner, in his or her discretion, may examine witnesses, call witnesses, or call for the introduction of documents.

[11.21.3.16 NMAC - N, 3-15-04]

**11.21.3.17 BRIEFS:** The filing of post-hearing briefs shall be permitted on the same basis as provided by 11.21.1.20 NMAC for briefs in representation cases.

[11.21.3.17 NMAC - N, 3-15-04]

**11.21.3.18 HEARING EXAMINER REPORTS:** The hearing examiner shall issue his or her report within the same time limits and following the same requirements provided in 11.21.1.21 NMAC for hearing examiner reports in representation cases.

[11.21.3.18 NMAC - N, 3-15-04]

**11.21.3.19 APPEAL TO BOARD OF HEARING EXAMINER'S RECOMMENDATION:**

**A.** Any party aggrieved by the hearing officer's recommendation may obtain board review by filing with the board and serving on the other parties a notice of appeal within ten (10) days following service of the hearing officer's report. The notice of appeal shall specify which findings, conclusions, or recommendations to which exception is taken and shall identify the specific evidence presented or offered at the hearing that supports each exception.

**B.** Any other party may file a response to notice of appeal within ten (10) days of service of the notice of appeal.

**C.** The board may determine an appeal on the papers filed or, in its discretion, may also hear oral argument. The board shall decide the appeal and issue its decision within sixty (60) days of the notice of appeal. The board may issue a decision adopting, modifying, or reversing the hearing examiner's recommendations or taking other appropriate action. The board may incorporate all or part of the hearing examiner's report in its decision.

**D.** If notice of appeal is not filed within the time set out in Subsection A of 11.21.3.19 NMAC, the hearing examiner's report and recommended decision shall be transmitted immediately to the board which may pro forma adopt the hearing examiner's report and recommended decision as its own. In that event, the report and decision so adopted shall be final and binding upon the parties but shall not constitute binding board precedent. [11.21.3.19 NMAC - N, 3-15-04]

**11.21.3.20 RELIEF FROM PROHIBITED PRACTICES DETERMINATION:** A party may move to set aside a default determination entered against it within thirty (30) days after the service thereof. Said motion shall be served upon all other parties and shall set out in detail the reasons in support thereof. Upon finding good cause for the motion and within thirty (30) days of the filing of such motion, the director or board shall order such further proceeding as it deems appropriate. The failure to act within thirty (30) days after the filing of such motion shall constitute a denial of the motion. [11.21.3.20 NMAC - N, 3-15-04]

**11.21.3.21 ADMINISTRATIVE AGENCY DEFERRAL:** Where the board becomes aware that a complainant has initiated another administrative or legal proceeding based on essentially the same facts and raising essentially the same issues as those raised in the complaint, the board may take any of the following actions, at the board's discretion:

**A.** The board may hold the proceedings under the act in abeyance pending the outcome of the other proceeding.

**B.** The board may go forward with its own processing. In so doing, the board may request that the other proceedings be held in abeyance pending outcome of the board proceeding. In the event that the resolution of the proceedings in such other forum is contrary to the act, or all issues raised before the board are not resolved, the board may proceed under the provisions of 11.21.3 NMAC.

**C.** For purposes of this rule, "board" shall mean the board or the director. [11.21.3.21 NMAC - N, 3-15-04]

**11.21.3.22 ARBITRATION DEFERRAL:**

**A.** If the subject matter of a prohibited practices complaint requires the interpretation of a collective bargaining agreement; and the parties waive in writing any objections to timeliness or other procedural impediments to the processing of a grievance, and the director determines that

the resolution of the contractual dispute likely will resolve the issues raised in the prohibited practices complaint, then the director may, on the motion of any party, defer further processing of the complaint until the grievance procedure has been exhausted and an arbitrator's award has been issued.

**B.** Upon its receipt of the arbitrator's award, the complaining party shall file a copy of the award with the director, and shall advise the director in writing that it wishes either to proceed with the prohibited practice complaint or to withdraw it. The complaining party shall simultaneously serve a copy of the request to proceed or withdraw upon all other parties.

**C.** If the complaining party advises the director that it wishes to proceed with the prohibited practices complaint, or if the board on its own motion so determines, then the director shall review the arbitrator's award. If in the opinion of the director, the issues raised by the prohibited practices complaint were fairly presented to and fairly considered by the arbitrator, and the award is both consistent with the act and sufficient to remedy any violation found, then the director shall dismiss the complaint. If the director finds that the prohibited practice issues were not fairly presented to, or were not fairly considered by, the arbitrator, or that the award is inconsistent with the act, or that the remedy is inadequate, then the director shall take such other action as he or she deems appropriate. Among such other actions, the director may accept the arbitrator's factual findings while substituting his or her own legal conclusions and/or remedial requirements.

**D.** In the event that no arbitrator's award has been issued within one year following deferral under this rule, then the director may, after notice, dismiss the complaint.

**E.** The director's decision either to dismiss or further process a complaint pursuant to this rule may be appealed to the board under the procedure set forth in 11.21.3.13 NMAC. Interim decisions of the director under this rule, including the initial decision to defer or not to defer further processing of a complaint pending arbitration, shall not be appealable to the board. [11.21.3.22 NMAC - N, 3-15-04]

**History of 11.21.3 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records-state records center and archives: PELRB 3, Prohibited Practices Proceedings, filed 3-18-93.

**History of Repealed Material:** 11 NMAC 21.3, Prohibited Practices Proceedings

(filed 6-24-96), repealed as a result of the internal duration of rule, stated as 7-1-99.

**Other History:**

PELRB 3, Prohibited Practices Proceedings, filed 3-18-93 was renumbered and replaced by 11 NMAC 21.3, Prohibited Practices Proceedings, filed 6-24-96. 11 NMAC 21.3, Prohibited Practices Proceedings, filed 6-24-96, was replaced by 11.21.3 NMAC, Prohibited Practices Proceedings, effective 3-15-04.

## NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**TITLE 11 LABOR AND  
WORKERS COMPENSATION  
CHAPTER 21 L A B O R  
UNIONS/LABOR RELATIONS  
PART 4 IMPASSE RESOLU-  
TION**

**11.21.4.1 ISSUING AGENCY:** Public Employee Labor Relations Board, 2929 Coors NW, Suite #303, Albuquerque, New Mexico (505) 831-5422. [11.21.4.1 NMAC - N, 3-15-04]

**11.21.4.2 SCOPE:** The scope of Part 1 of Chapter 21 applies to public employers, public employees and labor organization as defined by the Public Employee Bargaining Act (10-7E-1 to 10-7E-26 NMSA 1978). [11.21.4.2 NMAC - N, 3-15-04]

**11.21.4.3 STATUTORY AUTHORITY:** Authority for Part 1 of Chapter 21 is the Public Employee Labor Relations Act NMSA Sections 1 through 26 (10-7E-1 to 10-7E-26 NMSA 1978). [11.21.4.3 NMAC - N, 3-15-04]

**11.21.4.4 DURATION:** Permanent. [11.21.4.4 NMAC - N, 3-15-04]

**11.21.4.5 EFFECTIVE DATE:** March 15, 2004, unless otherwise cited at the end of the section. [11.21.4.5 NMAC - N, 3-15-04]

**11.21.4.6 OBJECTIVE:** The objective of Part 4 of Chapter 21 is to explain the process in which a public employer or exclusive representative at the state or local level may request third party assistance for mediation to address a collective bargaining negotiation impasse arising under the Public Employee Bargaining Act (10-7E-1 to 10-7E-26 NMSA 1978). [11.21.4.6 NMAC - N, 3-15-04]

**11.21.4.7 DEFINITIONS:**  
[RESERVED]  
[11.21.4.7 NMAC - N, 3-15-04]

**11.21.4.8 STATE BARGAINING MEDIATION:** In collective bargaining negotiations involving the state and an exclusive representative of state employees, if the parties have failed to reach agreement by October 1 of the year in which bargaining commenced, either party may file a request with the director for mediation services. If the parties have not agreed on a mediator, the director shall, as quickly as possible, request the federal mediation and conciliation service to provide a mediator. The mediator shall provide services until the parties have reached agreement or the mediator believes mediation is no longer helpful, or November 1, whichever occurs first.  
[11.21.4.8 NMAC - N, 3-15-04]

**11.21.4.9 STATE BARGAINING ARBITRATION:**

**A.** If an impasse occurs, either party may request from the board or local board that an arbitrator from the federal mediation and conciliation service be appointed. A list of seven (7) arbitrator's will be provided to the parties, the parties shall alternately strike names from the list. Who strikes first shall be determined by coin toss. The arbitrator shall render a final, binding, written decision resolving unresolved issues pursuant to Subsection E of Section 17 of the Public Employee Bargaining Act and the Uniform Arbitration Act. (44-7(A)-1 to 44-7(A)-32 NSMA 1978)

**B.** The arbitrator's decision shall be limited to a selection of one of the two parties complete, last, best offer.

**C.** The cost of an arbitrator and the arbitrator's related costs conducted pursuant to the sub-section shall be shared equally by the parties.

**D.** The decision of the arbitrator shall be subject to judicial review pursuant to the standards set forth in the Uniform Arbitration Act.

**E.** A public employer other than the state may enter into a written agreement with the exclusive representative setting forth an alternative impasse resolution procedure.

**F.** In the event that an impasse continues after the expiration of a contract, the existing contract will continue in full force and effect until it is replaced by a subsequent written agreement.  
[11.21.4.9 NMAC - N, 3-15-04]

**11.21.4.10 LOCAL BARGAINING: PROCEDURES ESTABLISHED BY AGREEMENT:** If parties other than

the state and an exclusive representative of public employees have entered into a written agreement setting forth procedures for the resolution of collective bargaining impasses between them, the parties shall follow those procedures.  
[11.21.4.10 NMAC - N, 3-15-04]

**11.21.4.11 LOCAL BARGAINING MEDIATION:** In the absence of a written agreement between non-state parties, stating their impasse resolution procedures, if the parties reach impasse, they may proceed to mediation with the assistance of an agreed-upon mediator, or, if they have not agreed upon a mediator, either party may file a request with the director for the assignment of a mediator. Upon receiving such a request, the director shall request the federal mediation and conciliation service to provide a mediator.  
[11.21.4.11 NMAC - N, 3-15-04]

**11.21.4.12 LOCAL BARGAINING: FACTFINDING:**

**A.** If, sixty (60) days following commencement of mediation, the parties have not reached agreement, either may file a request with the director to assign a factfinder to the negotiations. The director, after receiving such a request, shall assign a factfinder and shall issue a notice of factfinding hearing. The factfinder may be one agreed to by the parties or one selected from the list provided by the director, in accordance with the procedure set forth in Subsection A of 11.21.4.9 NMAC.

**B.** No longer than fifteen (15) days following the close of the hearing, the factfinder shall serve upon the director and the parties a written report making findings and stating his or her recommendations for the resolution of the issues that caused the impasse.

**C.** If the parties have not entered into a collective bargaining agreement within ten (10) days following their receipt of the factfinder's report, the director shall publish the report by making a copy of it available to the parties, the elected officials of the local governing body, and local news media.  
[11.21.4.12 NMAC - N, 3-15-04]

**11.21.4.13 MEDIATION AND FACTFINDING FEES:** All fees of mediation and/or factfinding shall be shared equally by the parties.  
[11.21.4.13 NMAC - N, 3-15-04]

**History of 11.21.4 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records-state records center and archives: PELRB 4, Impasse Resolution Proceedings,

filed 3-18-93.

**History of Repealed Material:** 11 NMAC 21.4, Impasse Resolution Proceedings (filed 6-24-96), repealed as a result of the internal duration of rule, stated as 7-1-99.

**Other History:**

PELRB 4, Impasse Resolution Proceedings, filed 3-18-93 was renumbered and replaced by 11 NMAC 21.4, Impasse Resolution Proceedings, filed 6-24-96.

11 NMAC 21.4, Impasse Resolution Proceedings, filed 6-24-96, was replaced by 11.21.4 NMAC, Impasse Resolution, effective 3-15-04.

## NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**TITLE 11 LABOR AND  
WORKERS COMPENSATION  
CHAPTER 21 L A B O R  
UNIONS/LABOR RELATIONS  
PART 5 APPROVAL OF  
LOCAL BOARDS**

**11.21.5.1 ISSUING AGENCY:**  
Public Employee Labor Relations Board,  
2929 Coors NW, Suite #303, Albuquerque,  
NM 87120, (505) 831-5422.  
[11.21.5.1 NMAC - N, 3-15-04]

**11.21.5.2 SCOPE:** The scope of Part 5 of Chapter 21 applies to public employers and labor organizations as defined by the Public Employee Bargaining Act (1-7E-1 to 10 7E-26 NMSA 1978).  
[11.21.5.2 NMAC - N, 3-15-04]

**11.21.5.3 STATUTORY AUTHORITY:** Authority for Part 5 of Chapter 21 is the Public Employee Labor Relations Act NMSA Sections 1 through 26 (10-7E-1 to 1-7E-26 NMSA 1978).  
[11.21.5.3 NMAC - N, 3-15-04]

**11.21.5.4 DURATION:**  
Permanent.  
[11.21.5.4 NMAC - N, 3-15-04]

**11.21.5.5 EFFECTIVE DATE:**  
March 15, 2004, unless otherwise cited at the end of the section.  
[11.21.5.5 NMAC - N, 3-15-04]

**11.21.5.6 OBJECTIVE:** The objective of Part 5 Chapter 21 is to identify and process information necessary for a public employer other than the state to file an application with the public employee labor relations board to obtain approval for establishing and operating a local labor board and post-approval reporting require-

ments.

[11.21.5.6 NMAC - N, 3-15-04]

**11.21.5.7 DEFINITIONS:**

[RESERVED]

[11.21.5.7 NMAC - N, 3-15-04]

**11.21.5.8 APPLICATION:** Any public employer other than the state that wishes to create a local public employee labor relations board shall file an application for approval with the state board.

[11.21.5.8 NMAC - N, 3-15-04]

**11.21.5.9 ABATEMENT:** The board shall abate, for a period of sixty (60) days, the processing of any matter filed with it which would come within the cognizance of the local board whose application is pending approval. All limitations periods, whether applicable to representation or prohibited practice matters, shall be tolled during the pendency of any such application.

[11.21.5.9 NMAC - N, 3-15-04]

**11.21.5.10 LETTER OF INTENT:**

A public employer may file with the board a letter of intent to establish a local board within the meaning of the act. In the event such a letter of intent is filed, the processing of any matter thereafter filed with the board, which would fall within the cognizance of such local board, shall be abated for thirty (30) days during which period the public employer shall file a formal application for approval of a local board as provided in 11.21.5.8 NMAC.

[11.21.5.10 NMAC - N, 3-15-04]

**11.21.5.11 CRITERIA FOR REVIEW:**

The board shall review all application for approval of local boards in light of the requirements of Section 10 of the act (NMSA 10-7E-10) and upon a finding that the application for the local board meets the statutory standards shall approve such application and remand to the local board any proceedings held in abeyance.

[11.21.5.11 NMAC - N, 3-15-04]

**11.21.5.12 CORRECTION FOLLOWING REVIEW:**

In the event that an application demonstrates that the local board does not meet the standards of Section 10 of the act (NMSA 10-7E-10) the application shall be rejected and returned to the public employer. Thereupon, the public employer shall have a period of the balance of the sixty (60) days, or an additional ten (10) days from receipt of the notice of rejection, whichever is later, in which it may make such changes as are necessary to qualify for approval and then may resubmit its application, or may take such other action as it may deem to be appropriate. Any matters then pending before the board relevant

to that public employer shall be processed in accordance with the board's procedures.

[11.21.5.12 NMAC - N, 3-15-04]

**11.21.5.13 CONTENTS OF APPLICATION:**

The application for approval shall include, at a minimum, the following:

**A.** the name of the local public employer;

**B.** the name, address and phone number of the local governing body;

**C.** a certified copy of the ordinance; resolution, or charter amendment creating, or which will create the proposed local board;

**D.** a description of the composition of the local board and the method of appointment of the members to the local board;

**E.** a statement or representation that the term of the local board members shall not exceed one year, and a representation that a local board member may serve an unlimited number of terms;

**F.** a description of the manner in which vacancies to the local board shall be filled;

**G.** a statement or representation that no local board member shall hold or seek any other public office or public employment or be an employee of any organization representing public employees or public employers;

**H.** a representation that all compensation to local board members shall be in accordance with the provisions of the New Mexico Per Diem and Mileage Act.

[11.21.5.13 NMAC - N, 3-15-04]

**11.21.5.14 REVIEW OF LOCAL BOARD APPLICATIONS BY THE BOARD:**

Upon receiving an application for approval of a local board, the board shall conduct an administrative review of the application and at a properly noticed public meeting or hearing, shall formally consider and approve or disapprove the application. Public notice of such meetings or hearings shall be provided as required by law. In considering an application for approval of a local board, the board shall approve such application upon finding that the local board meets the requirements of Section 10 of the act (NMSA 10-7E-10). The board may require that the ordinance, resolution or charter amendment creating the local board be amended as necessary in order to meet the requirements of Section 10 (NMSA 10-7E-10) and to be approved.

[11.21.5.14 NMAC - N, 3-15-04]

**11.21.5.15 POST-APPROVAL REPORTING REQUIREMENTS:**

Following board approval of a local board, the local board, or the public employer that

created it, shall file with the board any amendments to the ordinance, resolution, or charter amendment, creating the local board which are relevant to Section 10 of the act (NMSA 10-7E-10). Upon a finding by the board that the local board no longer meets the requirements of Section 10 of the act (NMSA 10-7E-10), the local board shall be so notified and be given a period of thirty (30) days to come into compliance or prior approval shall be revoked.

[11.21.5.15 NMAC - N, 3-15-04]

**11.21.5.16 REVOCATION OF APPROVAL OF LOCAL BOARD:**

Upon the issuance of a final order or judgment by a court of competent jurisdiction, find that a local board is not in compliance with the act, all matters theretofore pending before the local board shall be removed to and come under the jurisdiction of the board.

[11.21.5.16 NMAC - N, 3-15-04]

**History of 11.21.5 NMAC:**

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

PELRB 5, Approval of Local Boards, filed 3-18-93.

**History of Repealed Material:** 11 NMAC 21.5, Approval of Local Boards (filed 6-24-96), repealed as a result of the internal duration of rule, stated as 7-1-99.

**Other History:**

PELRB 5, Approval of Local Boards, filed 3-18-93 was renumbered and replaced by 11 NMAC 21.5, Approval of Local Boards, filed 6-24-96.

11 NMAC 21.5, Approval of Local Boards, filed 6-24-96, was replaced by 11.21.5 NMAC, Approval of Local Boards, effective 3-15-04.

**NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

**TITLE 11 LABOR AND WORKERS COMPENSATION  
CHAPTER 21 L A B O R  
UNIONS/LABOR RELATIONS  
PART 6 C O N C U R R E N T  
PENDING RELATED CASES**

**11.21.6.1 ISSUING AGENCY:** Public Employee Labor Relations Board, 2929 Coors NW, Suite #303, Albuquerque, New Mexico 87120, (505) 831-5422.  
[11.21.6.1 NMAC - N, 3-15-04]

**11.21.6.2 SCOPE:** The scope of Part 6 of Chapter 21 applies to public

employers, public employees and labor organizations as defined by the Public Employee Bargaining Act (10-7E-1 to 10-7E-26 NMSA 1978).

[11.21.6.2 NMAC - N, 3-15-04]

**11.21.6.3 STATUTORY AUTHORITY:** Authority for Part 6 of Chapter 21 is the Public Employee Labor Relations Act NMSA Sections 1 through 26 (10-7E-1 to 10-7E-26 NMSA 1978).

[11.21.6.3 NMAC - N, 3-15-04]

**11.21.6.4 DURATION:** Permanent.

[11.21.6.4 NMAC - N, 3-15-04]

**11.21.6.5 EFFECTIVE DATE:** March 15, 2004, unless otherwise cited at the end of the section.

[11.21.6.5 NMAC - N, 3-15-04]

**11.21.6.6 OBJECTIVE:** The objective of 11.21.6 NMAC is to clarify other rules and to identify the methods used by the public employee labor relations board for handling inter-related matters in situations not expressly governed by other rules such as processing and adjudication concurrently pending representation petitions, prohibited practice complaint proceedings, and applications for local boards.

[11.21.6.6 NMAC - N, 3-15-04]

**11.21.6.7 DEFINITIONS:** [RESERVED]

[11.21.6.7 NMAC - N, 3-15-04]

**11.21.6.8 RELATED MATTERS:** When two or more related matters as set forth below are currently pending before the board, the following procedures shall apply irrespective of the order of filing. The provisions of 11.21.6 NMAC are intended to clarify other rules and to provide for the board's handling of inter-related matters in situations not expressly covered by other rules, however, in the event of a conflict between this and any previously adopted rule, this rule supersedes any contrary provision of any order rule.

[11.21.6.8 NMAC - N, 3-15-04]

**11.21.6.9 LETTER OF INTENT AND/OR APPLICATIONS FOR APPROVAL OF LOCAL BOARDS AND REPRESENTATION PETITIONS:**

Where a letter of intent and/or application for approval of a local board and a representation petition(s) involving the same public employer are pending before the board, the director, in his/her discretion, may abate the processing of the representation petition(s) as provided for in 11.21.5 NMAC. In no event, shall the processing of a representation petition be abated when

either a notice of hearing pursuant to 11.21.2.19 NMAC or a notice of election pursuant to 11.21.2.26 NMAC has issued.

[11.21.6.9 NMAC - N, 3-15-04]

**11.21.6.10 LETTER OF INTENT AND/OR APPLICATIONS FOR APPROVAL OF LOCAL BOARDS AND PROHIBITED PRACTICE COMPLAINTS:**

Where a letter of intent and/or application for approval of a local board is pending and a prohibited practice complaint is filed alleging that the public employer's ordinance, resolution or charter amendment, providing for bargaining for its employees violates the relevant provisions of the Public Employee Bargaining Act, the board shall abate consideration of the approval of the local board until such time that the prohibited practice complaint has been disposed of pursuant to the provisions of 11.21.3 NMAC. The board, in its discretion, may consolidate for purposes of hearing and decision the application for approval of the local board and the prohibited practice complaint. Where a local ordinance, resolution or charter amendment specifically authorizes the local board to decide whether its enabling ordinance, resolution or charter amendment violates the relevant provisions of the Public Employee Bargaining Act and a joint request to transfer the prohibited practice complaint to the jurisdiction of the local board is submitted, the board shall forthwith consider the application for approval of the local board pursuant to the relevant provisions of 11.21.5 NMAC and upon the approval of the local board, the board shall transfer the prohibited practice complaint to the local board.

[11.21.6.10 NMAC - N, 3-15-04]

**11.21.6.11 LETTERS OF INTENT AND/OR APPLICATIONS FOR APPROVAL OF LOCAL BOARDS AND IMPASSE RESOLUTION PROCEEDINGS:**

Where a letter of intent and/or application for approval of a local board and a request to invoke the board's impasse resolution proceedings involving the same public employer are pending before the board, the director, in his/her discretion, may abate the processing of the impasse resolution request. In no event, shall action on such request be abated when the director has requested in writing the services of a mediator.

[11.21.6.11 NMAC - N, 3-15-04]

**11.21.6.12 MEANING OF TERM:**

For purposes of this Part 6 the term "pending before the board" is meant to include matters pending before the director and matters pending before the board.

[11.21.6.12 NMAC - N, 3-15-04]

**History of 11.21.6 NMAC:**

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

PELRB 6, Concurrently Pending Cases, filed 3-18-93.

**History of Repealed Material:** 11 NMAC 21.6, Concurrently Pending Related Cases (filed 6-24-96), repealed as a result of the internal duration of rule, stated as 7-1-99.

**Other History:**

PELRB 6, Concurrently Pending Cases, filed 3-18-93 was renumbered and replaced by 11 NMAC 21.6, Concurrently Pending Related Cases, filed 6-24-96.

11 NMAC 21.6, Concurrently Pending Related Cases, filed 6-24-96, was replaced by 11.21.6 NMAC, Concurrently Pending Related Cases, effective 3-15-04.

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**NEW MEXICO PUBLIC  
REGULATION  
COMMISSION  
UTILITY DIVISION**

NMPSC Rule 640, Purchased Gas Adjustment Clauses for Gas Utilities, filed 9-2-92, is repealed effective 3-15-04.

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**NEW MEXICO PUBLIC  
REGULATION  
COMMISSION  
UTILITY DIVISION**

**TITLE 17 PUBLIC UTILITIES  
AND UTILITY SERVICES  
CHAPTER 10 GAS SERVICES  
PART 640 PURCHASED GAS  
ADJUSTMENT CLAUSES FOR GAS  
UTILITIES**

**17.10.640.1 ISSUING AGENCY:** New Mexico Public Regulation Commission.

[17.10.640.1 NMAC - N, 3-15-04]

**17.10.640.2 SCOPE:** This rule applies to all natural gas utilities subject to the commission's jurisdiction.

[17.10.640.2 NMAC - N, 3-15-04]

**17.10.640.3 STATUTORY AUTHORITY:** NMSA 1978 Sections 8-8-15 and 62-8-7.

[17.10.640.3 NMAC - N, 3-15-04]

**17.10.640.4 DURATION:** Permanent.

[17.10.640.4 NMAC - N, 3-15-04]

**17.10.640.5 EFFECTIVE DATE:**

March 15, 2004, unless a later date is cited at the end of a section.

[17.10.640.5 NMAC - N, 3-15-04]

**17.10.640.6 OBJECTIVE:** The purpose of this rule is to establish a procedure by which a natural gas utility may propose a purchased gas adjustment clause (PGAC) that the commission will review pursuant to Subsection E of NMSA 1978 Section 62-8-7. The PGAC is intended to ensure the stability of the utility's annual earnings consistent with the utility's duty to provide adequate service at just and reasonable rates. The PGAC mechanism also is designed to aid in the levelization of the gas cost factor reflected in the PGAC component of the customer's bill.

[17.10.640.6 NMAC - N, 3-15-04]

**17.10.640.7 DEFINITIONS:** In addition to the definitions contained in NMSA 1978 Section 62-3-3, as used in this rule, unless otherwise specified:

**A. annual reconciliation factor** means a computed surcharge or credit factor in the PGAC used to collect any revenue shortfall in the PGAC or to refund any excess revenue collected through the PGAC;

**B. annual reconciliation factor implementation period** means that twelve consecutive months comprising the period set forth in the utility's PGAC for the implementation of its annual reconciliation factor;

**C. annual reconciliation period** means the historical period of twelve consecutive months used for purposes of determining the PGAC balancing account under-collection or over-collection;

**D. annual reconciliation report** means a report setting out all costs and revenues applicable to the utility's PGAC and including the calculation of the annual reconciliation factor;

**E. attorney general** means the attorney general of the state of New Mexico and the representatives and consultants of the attorney general's office;

**F. balancing account** means the account containing the current cumulative over-collected or under-collected gas costs or such other costs as ordered by the commission;

**G. balancing account adjustment factor** means a mechanism employed within the gas cost factor statement that allows the utility to make adjustments to the balancing account to manage the utility's balancing account as necessary;

**H. basic gas cost factor** means an interim factor developed during the calculation of the gas cost factor statement that considers all of the normal, recurring gas cost elements;

**I. billing cycle** means a regular periodic interval during which certain customers of the utility are billed. For purposes of this rule, the billing cycle shall be deemed to begin on the day of preparation of bills for mailing for the utility's first billing cycle in which the gas cost factor will become effective;

**J. billing factor** means the gas cost factor applicable for a billing period;

**K. billing period** means that period of time that encompasses the date of the first billing cycle through the date of the last billing cycle;

**L. gas costs** mean those types of costs defined by the utility in its PGAC tariff as approved by the commission for recovery through the utility's PGAC. No gas costs of customers of the utility not subject to the PGAC shall be included in the utility's PGAC calculations;

**M. gas cost factor** means the gas cost billing rate used in the utility's billing process for recovery of gas costs not included in the base rates;

**N. gas cost factor statement (GCFS)** means the filing required by a utility before an adjustment can be made in its gas cost factor;

**O. gas supply plan** means a planning report that sets forth the steps to provide a reliable gas supply at just and reasonable rates consistent with market conditions, regulatory requirements and other authorized purposes;

**P. general service gas cost factor** means the factor determined within the gas cost factor statement that is billed directly to sales service customers for gas costs. This factor is the sum of the basic gas cost factor, the balancing account adjustment factor, the producer/supplier surcharge or refund factor, the annual reconciliation factor, any other surcharge or refund factor authorized by the commission, and the factor for taxes and commission inspection and supervision fees, if applicable;

**Q. lowest reasonable cost** means gas supply procured at the lowest cost available at the time a gas contract is entered into or a purchase is made, consistent with supply reliability and operational needs of the utility;

**R. month** means a calendar month;

**S. planning period** means a period of twelve consecutive months or longer, beginning and ending in the months specified in the utility's PGAC;

**T. producer/supplier surcharge or refund factor** means a factor utilized to return refunds collected from suppliers or to surcharge additional items billed by suppliers that are not recognized

elsewhere in the gas cost factor statement;

**U. purchased gas adjustment clause (PGAC)** means the mechanism that allows the utility to set gas cost billing rates for the purpose of recovering gas costs on a continuing basis and allows for levelization of the gas cost factor reflected in the PGAC component of the customer's bill;

**V. sales customer** means a customer of a utility who purchases gas from the utility rather than from a marketer, broker or other supplier;

**W. staff** means all persons employed by or representing the utility division of the commission;

**X. tariff** means the filed rate schedule, including rates, rules, and forms, setting forth the obligations of the utility and its customers;

**Y. verification period** means that time as established by this rule between the receipt of a gas cost factor statement by the commission and the first day of the first billing cycle in which the proposed gas cost factor will be placed in effect;

**Z. transportation customer** means a customer of the utility who purchases gas from a marketer, broker or supplier other than the utility and/or obtains only transmission and/or distribution services from the utility;

**AA. year** means a consecutive twelve-month period as defined in the utility's PGAC.

[17.10.640.7 NMAC - N, 3-15-04]

#### **17.10.640.9 APPLICATION FOR APPROVAL OF PGAC:**

**A.** Any gas utility without an approved PGAC that requests to use a PGAC for the recovery of gas costs must file an initial application with the commission. The filing requirements for the initial application are set forth in this section and in 17.10.640.12 NMAC.

**(1)** The utility's initial application for use of a PGAC shall include, at a minimum, the following:

**(a)** a detailed description and justification of the gas cost factor calculation methodology the utility proposes to use as a basis for the PGAC;

**(b)** proposed PGAC tariff provisions, which shall contain the specific methodology for calculation of the gas cost factor as provided for in 17.10.640.12 NMAC;

**(c)** identification of the specific months in which the utility proposes to begin and end its annual reconciliation period, as provided for in Subsection C of 17.10.640.13 NMAC, identification of the specific months in which the utility proposes to begin and end its annual reconciliation

factor implementation period, as provided for in Subsection E of 17.10.640.13 NMAC, and identification of the annual date proposed for the filing of the utility's gas supply plan and the beginning and ending months proposed for the utility's planning period, as provided for in Subsections B and D of this section;

(d) sufficient financial and other necessary information and data to identify and justify the inclusion and recovery of allowable gas costs through the utility's PGAC, including a demonstration that no amounts to be recovered under the operation of the PGAC are included in other tariffs or charges for service; and

(e) an initial gas supply plan, as provided for in Subsection B of this section.

(2) Sworn testimony and exhibits explaining the utility's proposal and demonstrating that its proposed PGAC complies with this rule shall accompany an initial application for approval to use a PGAC.

(3) The utility may submit portions of its gas supply plan and initial application under seal as provided for in Paragraph 3 of Subsection B of this section.

**B.** Any gas utility seeking commission approval to use a PGAC shall file with its initial application pursuant to Subsections A and C of this section a gas supply plan that describes the utility's plans to meet customer demands for supply and transportation services throughout its service area and shows that its procurement policies are designed to ensure that gas supplies are purchased at the lowest reasonable cost. Any utility intending to continue using its approved PGAC shall file a gas supply plan annually pursuant to Subsection D of this section.

(1) The utility's gas supply plan shall include, at a minimum, the following:

(a) for the utility's planning period, information on the utility's procurement related plans, including supply sources, projected significant system modifications or improvements, types and durations of contracts, generic pricing provisions, storage arrangements, and arrangements for processing, gathering, and transportation by others of utility-owned gas supply;

(b) for the utility's planning period, information on projected demands for sales and transportation services;

(c) a description of foreseeable market or regulatory developments that may affect the plans described in the gas supply plan; and

(d) any other matters as may be ordered by the commission.

(2) An officer of the utility shall verify the gas supply plan.

(3) The utility may submit under seal any portions of its gas supply plan that reveal its contracted portfolio, its major

suppliers, transportation volumes, or its contract pricing, on a contract-by-contract basis, to the extent the utility deems specific information to be confidential. The utility also may seek a protective order under Subsection B of 17.1.2.8 NMAC for other portions of its gas supply plan it considers confidential, but the utility shall have the burden of proving its right to such protection. Any information submitted under seal pursuant to this Paragraph shall remain under seal for a period of two (2) years, after which time it shall become public unless the utility seeks and obtains further protection from the commission. Information submitted under seal shall be available for review by the commission and its designated representatives and by any person who has entered into a confidentiality agreement with the utility in a form approved by commission order.

**C.** An initial PGAC application shall be filed with the commission and shall be reviewed and approved as provided herein.

(1) A utility filing an initial PGAC application shall contemporaneously with such filing mail a copy of such application to the attorney general and notification of its filing to the intervenors in the utility's most recent general rate case.

(2) A utility's initial PGAC application and proposed PGAC shall be deemed approved thirty (30) days after the filing of the application unless otherwise ordered by the commission.

(3) Any person or staff may file a request for a hearing on an initial PGAC application no later than twenty (20) days after the filing of the application. The request for hearing shall set forth clearly the grounds for requiring a hearing and shall indicate whether the proposed hearing shall be limited to specific issues. Upon receipt of a request for hearing, or upon its own motion, the commission may order a hearing, upon reasonable notice, on the initial PGAC application and may suspend the operation of the PGAC proposed in the application, pursuant to NMSA 1978 Section 62-8-7.

(4) The commission may approve all or part of the initial PGAC application. Approval of the application shall constitute approval of the utility's use of the proposed PGAC unless otherwise provided in the commission's order.

(5) A utility operating with an approved PGAC shall continue to use its approved PGAC until the commission orders otherwise.

**D.** A utility operating with an approved PGAC shall file an annual gas supply plan pursuant to Subsection B of this section on or before the date specified for such filing pursuant to Subsection A of this

section and Paragraph 5 of Subsection A of 17.10.640.12 NMAC. If the utility fails to timely file its annual gas supply plan as required by this subsection, the commission may terminate the utility's PGAC and the utility automatically shall be subject to sanctions in accordance with NMSA 1978 Sections 62-12-4 through 62-12-6.

(1) A utility filing an annual gas supply plan shall contemporaneously with such filing mail a copy of the report to the attorney general.

(2) An annual gas supply plan filed pursuant to this rule shall not be deemed approved by the commission.

(3) Staff, the attorney general, or any other interested party may file a request for a hearing no later than twenty (20) days after the filing of the annual gas supply plan. The request for hearing shall set forth clearly the grounds for requiring a hearing and shall indicate whether the proposed hearing shall be limited to specific issues. Upon receipt of a request for hearing or upon its own motion, the commission may order a hearing, upon reasonable notice, on any or all of the issues identified and on continued use of the PGAC, and may suspend the operation of any changes to the utility's procurement program as described in the gas supply plan, pursuant to NMSA 1978 Section 62-8-7.

**E.** If a utility determines that a deviation from its most recently filed gas supply plan is required to achieve its portfolio's purposes or the objectives of this rule, the utility shall file an update with the commission which explains the deviation from the plan. Such deviation shall be subject to the hearing provisions set forth in Subsection D of this section.

[17.10.640.9 NMAC - N, 3-15-04]

**17.10.640.10 AFFILIATE TRANSACTIONS:** Any utility intending to include a transaction with an affiliate in its PGAC shall comply with the requirements of 17.6.450 NMAC, Affiliate Transactions. [17.10.640.10 NMAC - N, 3-15-04]

**17.10.640.11 CONTINUATION FILING:**

**A.** Each utility operating with a PGAC as part of its tariff shall file an application for continued use of its PGAC at intervals of no more than four (4) years. The application must address the considerations described in Paragraphs (1) through (4) of Subsection E of NMSA 1978 Section 62-8-7. A utility may elect to satisfy this requirement by presenting evidence and testimony either in a rate case or in a discrete filing.

**B.** If the utility fails to timely file its continuation filing as required by Subsection A of this section, the com-



mission may terminate the utility's PGAC and the utility automatically shall be subject to sanctions in accordance with NMSA 1978 Sections 62-12-4 through 62-12-6. [17.10.640.11 NMAC - N, 3-15-04]

#### **17.10.640.12 PGAC TARIFF AND GAS COST FACTOR STATEMENT:**

**A. Tariff filing.** The information required by Paragraphs 3 through 6 of Subsection A of this section may be included in a utility-specific rule or rate. Each utility shall file a tariff, subject to commission approval, that includes at a minimum the following:

(1) a general description of the PGAC and its applicability to customers;

(2) a provision that rate changes shall be effectuated through the filing of a gas cost factor statement as provided for in Subsection B of this section;

(3) the detailed methodology for the calculation of the gas cost factor, including the accounting methodology used to ensure that the effects that transportation imbalances may have on PGAC gas costs are substantially neutralized;

(4) specific identification and definition of all terms applicable to sales customers utilized in the calculation of the gas cost factor, including but not limited to the recovery of unaccounted for gas and any fuel and power used in connection with the transportation and processing of gas;

(5) identification of the annual date for the filing of the gas supply plan as provided for in Subsections B and D of 17.10.640.9 NMAC and of the beginning and ending months of the planning period as defined in Subsection S of 17.10.640.7 NMAC; and

(6) identification of the annual reconciliation period as provided for in Subsection C of 17.10.640.13 NMAC and the annual reconciliation factor implementation period as provided in Subsection E of 17.10.640.13 NMAC.

**B. Gas cost factor statement.** The format for a utility's gas cost factor statement, including definitions, shall be submitted with its application for approval of a PGAC as provided in Section 9 of 17.10.640 NMAC. The GCFS shall include all data necessary for the commission to review and verify the calculation of the resulting commodity billing factor. Each factor or term used, not previously described in this rule, shall be specifically defined in each utility's PGAC. The time period over which gas usage shall be billed using the requested rate shall be specified in the GCFS. Each GCFS filed shall be certified by an officer of the utility. The GCFS shall include, if applicable, calculations of the following:

(1) an actual or estimated basic

gas cost factor;

(2) a producer/supplier surcharge or refund factor;

(3) a balancing account adjustment factor;

(4) an annual reconciliation factor;

(5) any other surcharge or refund factor authorized by the commission;

(6) a factor for inspection and supervision fees and taxes to be applied to revenues generated by the resulting billing factor;

(7) a general service gas cost factor resulting from the summation of the above components; and

(8) the amount and the duration of such refund or surcharge, if an optional methodology for passing refunds or surcharges through the PGAC as authorized by Subsection C of this section is implemented by the utility.

**C. Tariff revisions.** At any time that the commission orders changes in the utility's PGAC or the utility proposes changes in its PGAC, the utility shall file a revised tariff as provided for in Subsection A of this section, to the extent that the utility's approved tariff provisions require revisions. The utility's revised tariff shall be deemed approved thirty (30) days after the filing of the revised tariff unless the commission orders otherwise.

**D. Filing verification and factor effective date.** The utility shall file a gas cost factor statement as provided for herein to begin a verification period which shall be no less than fifteen (15) calendar days unless otherwise directed by the commission. The effective date for the new general service gas cost factor shall be deemed to be the first day of the first billing cycle containing the first day of the month in the subsequent calendar month. Unless otherwise directed by the commission, no change in the utility's general service gas cost factor shall be made except at the beginning of a billing cycle. General service gas cost factors will be applied to calendar month consumption. Calendar month consumption may be determined and applied on a pro rata basis if a utility employs a billing cycle application whereby a billing cycle covers portions of two (2) or more months. The commission shall act upon a utility's gas cost factor statement filing within the fifteen (15) day verification period, otherwise the filing is deemed approved.

**E. Gas cost factor hearings.** Staff or any interested party may file a complaint or challenge to the propriety of any costs and revenues included in the utility's PGAC within sixty (60) days of any filing by the utility made pursuant to NMSA 1978 Section 62-10-1. Upon receipt of a

complaint or challenge, or upon its own motion pursuant to NMSA 1978 Section 62-10-1, the commission may direct the utility to respond within thirty (30) days. Upon receipt of the utility's response, the commission may require a formal hearing. Pending a hearing, the commission may allow the costs to be placed into the PGAC subject to refund, suspend the inclusion of costs in the PGAC, or take any other reasonable action designed to protect the interests identified in NMSA 1978 Section 62-3-1. To the extent allowed by law, the commission in its discretion may order refunds of amounts collected or surcharges for amounts not collected under the provisions of this rule to the customers of a gas utility when the commission determines, after notice and hearing, that the utility over-collected or under-collected such amounts. Unless otherwise ordered by the commission, formal hearings will not be held prior to the effective date of any adjustment determined in accordance with the provisions of an approved PGAC.

**F. Circumstances materially impacting the cost of gas.** The utility shall describe and explain any circumstances that materially impact its cost of gas in its gas cost factor statement. Unless specifically approved by the commission, the utility shall justify the reasonableness of any costs incurred due to these circumstances prior to the inclusion of any gas costs in their PGAC. If the commission determines to hold a hearing, it shall provide five (5) days' prior notice to the utility, public, attorney general, and intervenors of record in the utility's most recently filed general rate case.

[17.10.640.12 NMAC - N, 3-15-04]

#### **17.10.640.13 ANNUAL PGAC RECONCILIATION:**

**A. Annual reconciliation.** Each utility filing an application for a PGAC or operating with a PGAC under the terms of this rule shall provide for an annual reconciliation of allowable gas costs incurred to billed gas costs as recorded on the books and records of the utility. A utility's proposal for the annual reconciliation shall be consistent with the general provisions described below.

**B. Purpose.** The purpose of the annual reconciliation report is to:

(1) substantiate the appropriateness of the amount of the over-collected or under-collected PGAC dollars remaining in the PGAC balancing account at the end of the annual reconciliation period; and

(2) to establish the annual reconciliation factor for refunding or surcharging customers for that period's PGAC balancing account amount, unless the utility utilizes another commission-approved method for refunding or surcharging customers.

**C. Reconciliation methodology.** In general, the PGAC balancing account amount shall consist of the difference between allowable gas costs incurred during the annual reconciliation period and gas costs billed during the same period. The PGAC balancing account amount shall also contain all applicable amounts included by order of the commission. The reconciliation process shall substantiate the PGAC balancing account amount and shall be performed utilizing the amounts recorded on the books and records of the utility applicable to the annual reconciliation period. The annual reconciliation shall cover a period of twelve (12) consecutive historical months. The specific period that comprises the annual reconciliation period shall be applied for in the utility's initial application filing for a PGAC. The specific period may be changed by commission order.

**D. Annual reconciliation report.** An annual reconciliation report shall be filed with the commission no later than four (4) months following the end of the annual reconciliation period. The annual reconciliation report shall be certified by an officer of the company to be true, correct, and in compliance with the reconciliation methodology determined herein. The annual reconciliation report shall generally consist of, but not be limited to, the following.

**(1) Agreed-upon procedures.** A report by an independent auditor, who shall perform agreed-upon procedures pursuant to Statement on Standards for Attestation Engagements (SSAE) No. 10 and No. 11, or successor auditing standards, shall be submitted with the annual reconciliation report. The auditor's report shall set forth the procedures and findings of the review.

**(2) Schedule of gas purchases by account number.** A summary schedule shall be submitted detailing all applicable gas purchase dollars and volumes expensed for the annual reconciliation period by account number as prescribed in the applicable uniform system of accounts. The schedule shall also include, but not be limited to, expenses associated with gas storage-related transactions, exchange transactions, and transactions related to the transportation of PGAC-related gas purchases.

**(3) Schedule of gas purchases by supplier.** A summary schedule shall be submitted detailing all applicable gas purchase dollars and volumes expensed for the annual reconciliation period by supplier. Purchases from suppliers totaling less than 3% of total purchase costs for the period shall be summed in an "All Others" category.

**(4) Schedules of PGAC revenues.** Schedules shall be submitted sum-

marizing gas sales dollars and volumes billed and other PGAC revenues collected and attributable to the annual reconciliation period.

**(5) Schedule of costs and revenues billed.** A schedule shall be submitted summarizing the above schedules of costs and billed revenues, gas related taxes, reconciling items, and other applicable amounts for the annual reconciliation period resulting in the total amount under-collected or over-collected from customers. This over-collected or under-collected amount shall include an interest charge or credit at the rate specified by NMSA 1978 Section 62-13-13, or at such other rate as may be approved by the commission.

**(6) Calculation of the annual or other commission-approved reconciliation methodology.** A schedule shall be submitted detailing the calculation of the factor to be utilized in refunding or surcharging the over-collected or under-collected amount.

**E. Untimely filing of annual reconciliation report.** If the utility fails to timely file its annual reconciliation report as required by Subsection D of this section, the commission may terminate the utility's PGAC and the utility automatically shall be subject to sanctions in accordance with NMSA 1978 Sections 62-12-4 through 62-12-6.

**F. Annual reconciliation factor.** The annual reconciliation factor shall be calculated by dividing the over-collection or under-collection amount by the estimated sales volumes in the annual reconciliation factor implementation period. The specific period of time that comprises the annual reconciliation factor implementation period shall be applied for in the utility's initial application filing for a PGAC, and the specific period may be changed by commission order.

[17.10.640.13 NMAC - N, 3-15-04]

**17.10.640.14 EXTRAORDINARY CIRCUMSTANCES:** Notwithstanding the provisions of this rule and specifically Subsection C of 17.10.640.12 NMAC, the commission may direct the utility to alter its collections through the PGAC as provided herein.

**A. Under-collection or over-collection situation.** The utility may apply to the commission or the commission may order a hearing on its own motion whenever the utility or the commission has good reason to believe, on the basis of information available to it at the time, that the presently effective gas cost factor or the gas cost factor adjustment proposed in any gas cost factor statement filed pursuant to Subsection D of 17.10.640.12 NMAC would result in a substantial under-collec-

tion or over-collection of revenue.

**B. Substantial gas cost factor adjustments.** The utility may apply to the commission or the commission may order a hearing on its own motion whenever the utility or the commission becomes aware of an extraordinary circumstance under which the gas cost factor adjustment calculated in accordance with this rule will result in a substantial change in the level of the PGAC in the following billing period and excessive fluctuations in the gas cost factor adjustments for future billing periods.

**C. Mitigation of concerns.** After notice and hearing, the commission may order the utility to place in effect, for such period of time as the commission may direct, a specified increase or decrease in the amount of the gas cost factor or take any other action appropriate to the public interest to mitigate the concerns identified in Subsections A and B of this section.

[17.10.640.14 NMAC - N, 3-15-04]

**17.10.640.15 EXEMPTION OR VARIANCE:**

**A.** A utility may file a written application for an exemption or variance from this rule or its approved PGAC, which shall be verified by an officer of the utility. The utility's application for an exemption or variance shall:

- (1) describe the need for a variance;
- (2) set out the effect of complying with this rule or the approved PGAC on the utility and its customers as a result of the condition;
- (3) identify any section of this rule or the approved PGAC for which the exemption or variance is requested;
- (4) define the result which the request will have if granted;
- (5) state how the exemption or variance will meet the objectives of this rule; and
- (6) state why the requested relief is a reasonable alternative.

**B.** A utility filing an application for an exemption or variance shall contemporaneously with such filing mail copies of such application to the attorney general and the intervenors in the utility's most recent general rate case.

**C.** An application by any utility for an exemption or a variance shall stay the application of the affected portion of this rule or its PGAC for that utility for a period of sixty (60) days from the filing of the request, during which time the commission may grant or deny the exemption or variance, require that the utility file additional information in support of the request, or set the matter for hearing. The stay shall be extended automatically if the commis-

sion has not taken the above-noted action within sixty (60) days after the filing of the application for variance or exemption.  
[17.10.640.15 NMAC - N, 3-15-04]

**17.10.640.16 TERMINATION OF PGAC:** If the commission orders termination of the PGAC, the utility shall perform an annual reconciliation in accordance with the methodology prescribed in 17.10.640.13 NMAC for the period of time between the end of the period included in its last annual reconciliation report and the date of termination of the PGAC. The utility shall file with the commission a final reconciliation report consistent with the requirements of the annual reconciliation report under Subsection D of 17.10.640.13 NMAC and shall calculate and collect or refund a final reconciliation factor consistent with the requirements of Subsection E of 17.10.640.13 NMAC.  
[17.10.640.16 NMAC - N, 3-15-04]

**HISTORY OF 17.10.640 NMAC:**

**Pre-NMAC history:** The material in this part was derived from that previously filed with the state records center and archives. PSC - GO 36 (General Order No. 36) Rules and Regulations Governing Natural Gas Utilities Purchased Gas Adjustment Clauses, filed 12-24-80. NMPSC Rule 640, Purchased Gas Adjustment Clauses For Gas Utilities, (NMPSC Case No. 2086), filed 6-30-88. NMPSC Rule 640, Purchased Gas Adjustment Clauses For Gas Utilities, (NMPSC Case No. 2360), filed 9-2-92.

**History of repealed material:**

NMPSC Rule 640, Purchased Gas Adjustment Clauses For Gas Utilities, (NMPSC Case No. 2360), repealed 3-15-04.

**Other history:**

NMPSC Rule 640, Purchased Gas Adjustment Clauses For Gas Utilities, (NMPSC Case No. 2360), filed 9-2-92, replaced by 17.10.640 NMAC, Purchased Gas Adjustment Clauses For Gas Utilities, effective 3-15-04.

**NEW MEXICO  
SECRETARY OF STATE**

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION  
CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS  
PART 18 ADMINISTRATIVE COMPLAINT PROCEDURE**

**1.10.18.1 ISSUING AGENCY:** Office of the Secretary of State  
[1.10.18.1 NMAC - N, 03-15-2004]

**1.10.18.2 SCOPE:** This rule applies to any statewide special election, general election, primary election, county-wide election or election to fill vacancies in the office of United States representative and regular or special school district elections as modified by the School Election Law (Sections 1-22-1 to 1-22-19 NMSA 1978).  
[1.10.18.2 NMAC - N, 03-15-2004]

**1.10.18.3 STATUTORY AUTHORITY:** Election Code, Section 1-2-1 NMSA 1978, Section 1-2-2.1 NMSA 1978, Public Law 107-252, The Help America Vote Act of 2002. The issuing authority shall adopt rules for an administrative procedure for hearing complaints on violations of Title III of the Help America Vote Act of 2002, including provisions relating to voting system standards, provisional voting procedures, voter registration procedures and operational standards of the statewide voter registration system.  
[1.10.18.3 NMAC - N 03-15-2004]

**1.10.18.4 DURATION:** Permanent  
[1.10.18.4 NMAC - N, 03-15-2004]

**1.10.18.5 EFFECTIVE DATE:** March 15, 2004 unless a later date is cited at the end of a section.  
[1.10.18.5 NMAC - N, 03-15-2004]

**1.10.18.6 OBJECTIVE:** The Election Code (Section 1-1-1 through 1-24-4 NMSA 1978) was amended by Chapter 356, Laws 2003. The purpose of the amendment is compliance with the provisions of PL 107-252, effective October 29, 2002, which requires New Mexico to establish a state-based administrative complaint procedure to remedy grievances under Title III of the Help America Vote Act.  
[1.10.18.6 NMAC - N, 03-15-2004]

**1.10.18.7 DEFINITIONS:** Unless otherwise defined below, the terms used in these procedures share the same definitions and meanings as the HAVA Act.

**A. "Administrative procedures"** means the procedures stated in this rule. These procedures will be available in alternative languages and formats.

**B. "Bureau"** means the New Mexico secretary of state's bureau of elections.

**C. "Complaint form"** means a template form created by the bureau that will be available in hard copy in county clerk's offices. A copy will also be made available by mail and available on the office of the secretary of state's website.

**D. "HAVA"** means the Help America Vote Act of 2002 (Public Law

107-252).

**E. "HAVA Title III"** means the section of Public Law 107-252 titled "Uniform and Nondiscriminatory Election Technology and Administration Requirements".

**F. "HAVA Title III violation"** means an act contrary to a party's statutory rights regarding voting systems standards, provisional voting procedures, voter registration procedures, and operational standards of the statewide voter registration system as found in NMSA 1978, Section 1-2-2.1 and HAVA Title III. It does not mean non-Title III election law matters, such as a candidate's ballot access or campaign reporting requirements.  
[1.10.18.7 NMAC - N, 03-15-2004]

**1.10.18.8 INITIATING A COMPLAINT:**

**A.** Any person who believes a HAVA Title III violation has occurred, is occurring, or is about to occur may file a written complaint, on the bureau's complaint form, that states the name of the alleged violator and a specific description of the alleged HAVA Title III violation.

**B.** The complaint must be signed and sworn or affirmed by the complainant and it must be notarized.

**C.** The complainant may check a box on the complaint requesting an on-the-record hearing or no hearing.

**D.** If the bureau determines that the complaint is incomplete, the bureau shall promptly notify the complainant who may be permitted to amend the complaint, in the sole discretion of the bureau.

**E.** If the bureau receives duplicative or repetitive complaints, the bureau may consolidate these for assessment, investigation and resolution purposes.  
[1.10.18.8 NMAC - N, 03-15-2004]

**1.10.18.9 INVESTIGATION OF A COMPLAINT:**

**A.** The bureau shall aspire to complete an initial investigation within thirty (30) days of the bureau's receipt of the complaint. If the complaint is made against the bureau, a representative of the district attorney shall aspire to complete an initial investigation within the same time period.

**B.** The investigation may include the following steps as deemed appropriate under the circumstances: sending an acknowledgement letter to the complainant; seeking a response from the election official against whom a complaint is made; providing the complainant with a copy of any response received from the election official against whom a complaint

is made and give the complainant an opportunity to reply; engaging in informal resolution with the parties through a meeting, teleconference, or other means; or dismissing the complaint based on its clear failure to allege a Title III violation.

C. All written documents that are part of these administrative procedures, including the investigation, are public documents unless otherwise provided by law.

[1.10.18.9 NMAC - N, 03-15-2004]

#### **1.10.18.10 HEARING ON A COMPLAINT:**

A. If the complainant requests a hearing and the bureau does not dismiss the complaint, the bureau will appoint a hearing officer to conduct a hearing on-the-record.

B. If the complainant did not request a hearing and the bureau does not dismiss the complaint, the bureau shall make a final determination in accordance with the remedies provision of these administrative procedures.

C. If the complaint is made against the bureau, the office of the secretary of state shall provide a neutral hearing officer who has no working or personal relationship with the office of the secretary of state.

D. For all other complaints, the office of the secretary of state shall provide a hearing officer. It may be, but is not limited to, an employee of the office of the secretary of state.

E. The bureau shall provide a time, date and location for the hearing and shall send written notice to complainant and alleged violator at least fifteen (15) days prior to the hearing. If there is an expedited hearing, the hearing officer shall provide telephonic and facsimile notice.

F. Upon written request to another party, any party may ask to obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing and inspect and copy any documents that the other party will or may introduce in evidence at the hearing. The party to whom such a request is made should comply with it within ten (10) days after the receipt of the request. The hearing officer, however, has no statutory power to force the parties to comply with these requests.

G. If there is a hearing on the record, the record will include, at a minimum: the written complaint; written responses to the complaint; documentation provided in support of or in defense of the complaint; and written or audio record or any hearing or pre-hearing proceedings conducted by the hearing officer with regard to the complaint.

H. The hearing officer has the discretion to grant continuances, to take testimony or to examine witnesses. The hearing officer may also hold conferences before or during the hearing for the settlement or simplification of the issues.

I. The hearing officer may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The hearing officer may, in his discretion, exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

J. The bureau shall provide a tape recording of any on-the-record hearing. If a party wants a court reporter, that party must pay the cost.

K. If a person who has requested a hearing does not appear, and no continuance has been granted, the hearing officer may hear the evidence of such witnesses as may have appeared, and the hearing officer may proceed to consider the matter and dispose of it on the basis of the evidence before it. Where, because of accident, sickness or other cause, a person fails to appear for a hearing that he has requested, the person may, within ten (10) days, apply in writing to the hearing officer to reopen the proceeding, and the hearing officer upon finding sufficient cause shall immediately fix a time and place for a hearing and give the person notice as required above.

[1.10.18.10 NMAC - N, 03-15-2004]

#### **1.10.18.11 REMEDIES:**

A. The hearing officer shall make a final determination regarding the complaint within ninety (90) days after the complaint has been filed with the bureau unless the complainant agrees in writing to extend the deadline.

B. If a party, agency or hearing officer would like to extend the deadline, it must receive written approval from the complainant. If the complainant does not give approval, the complainant will automatically proceed to alternative dispute resolution as found in the New Mexico Governmental Dispute Act, NMSA 1978, Sections 12-8A-1 through 12-8A-5. The office of the secretary of state, if not a party, must adopt the agreement reached by the parties to the alternative dispute resolution procedure within sixty (60) days after the complaint is referred to resolution.

C. The final determination shall be in writing and shall be sent by return receipt requested mail to the complainant and alleged violator.

D. The final determination may dismiss the case or provide a remedy appropriate to the violation. In no event shall the remedy involve either the payment

of money to the complainant or a finding that an election official is subject to civil penalties. An appropriate remedy may include, but is not limited to any or all of the following: written finding that Title III has been violated; a plan for rectifying the particular violation, an assurance that additional training will be provided to election officials so as to ensure compliance with HAVA Title III and the New Mexico Election Code; and a commitment to better inform voters of their rights.

E. By posting a notice on its website and by distributing news releases as it deems appropriate, the office of the secretary of state shall publicize the results of its assessment and investigation of the complaint that results in a finding that a Title III violation has or has not occurred.

[1.10.18.11 NMAC - N, 03-15-2004]

#### **1.10.18.12 RIGHT OF APPEAL:**

These procedures do not grant a statutory right of review.

[1.10.18.12 NMAC - N, 03-15-2004]

HISTORY of 1.10.18 NMAC: [Reserved]

### **NEW MEXICO DEPARTMENT OF TRANSPORTATION AVIATION DIVISION**

This is an amendment to 18.11.7 NMAC, Sections 1, 5, 7, and 8. This action also renumbers 18.11.7 NMAC named, Requirements Governing the Salvage of Abandoned Aircraft, from 18 NMAC 11.7, Requirements Governing the Salvage of Abandoned Aircraft to conform to the current New Mexico Administrative Code (NMAC) requirements, effective 03/15/04.

#### **18.11.7.1 ISSUING AGENCY:**

The New Mexico [~~State Highway and Transportation~~] Department of Transportation, Aviation Division [~~550 Pacheco Street 87505, P.O. Box 1149, Santa Fe, NM 87504 1149, 505 827 1525~~].

[11/30/98; 18.11.7.1 NMAC - Rn & A, 18 NMAC 11.7.1, 03/15/04]

#### **18.11.7.5 EFFECTIVE DATE:**

November 30, 1998, unless a later date is cited at the end of [~~this section or paragraph~~] a section.

[11/30/98; 18.11.7.5 NMAC - Rn & A, 18 NMAC 11.7.5, 03/15/04]

#### **18.11.7.7 DEFINITIONS:**

[~~NMSHTD Means The New Mexico State Highway and Transportation Department.~~]

A. NMDOT-means the New Mexico department of transportation.

B. Aviation division -

means the aviation division of the NMDOT.  
[11/30/98; 18.11.7.7 NMAC - Rn & A, 18 NMAC 11.7.7, 03/15/04]

**18.11.7.8 APPLICATION:**

A. Application for an aircraft salvage permit shall be made on a form provided by the aviation division and shall include information pertinent to the aircraft location and land owner. The application shall include applicant's certification that the aircraft is abandoned as defined in NMSA 1978, Section 64-5-1; that applicant has not been issued a permit for the same aircraft, has not defaulted on a previous permit and agrees to the terms and conditions of the permit as determined by the division.

B. The date the application is filed and the date land owner is notified shall be entered on the application. The filing date shall be the date that the application is received in the aviation division office. The notification date is the date notice is received by the land owner by certified mail.

[11/30/98; 18.11.7.8 NMAC - Rn & A, 18 NMAC 11.7.8, 03/15/04]

**NEW MEXICO  
DEPARTMENT OF  
TRANSPORTATION  
AVIATION DIVISION**

This is an amendment to 18.11.9 NMAC, Sections 1, 5, 6, 7 and 8. This action also renumbers 18.11.9 NMAC named, Governing the Approval of Grants, from 18 NMAC 11.9, Governing the Approval of Grants to conform to the current New Mexico Administrative Code (NMAC) requirements, effective 03/15/04.

**18.11.9.1 ISSUING AGENCY:**

The New Mexico ~~[State Highway and Transportation]~~ Department of Transportation, Aviation Division ~~[-P.O. Box 1149, Santa Fe, NM 87504 1149, 505 827-1525].~~

[11/30/98; 18.11.9.1 NMAC - Rn & A, 18 NMAC 11.9.1, 3/15/04]

**18.11.9.5 EFFECTIVE DATE:**

November 30, 1998, unless a later date is cited at the end of ~~[this]~~ a section ~~[or paragraph]~~.

[11/30/98; 18.11.9.5 NMAC - Rn & A, 18 NMAC 11.9.5, 3/15/04]

**18.11.9.6 OBJECTIVE:**

The purpose of this rule is to establish procedures for the implementation of NMSA 1978, Section 64-1-11 through 64-1-17, regulations governing the approval of grants by the ~~[NMSHTD]~~ NMDOT, aviation division.

[11/30/98; 18.11.9.6 NMAC - Rn & A, 18 NMAC 11.9.6, 3/15/04]

**18.11.9.7 DEFINITIONS:**

~~[A.] [NMSHTD Means The New Mexico State Highway and Transportation Department.]~~

A. NMDOT - means the New Mexico department of transportation.

B. Aviation division - means the aviation division of the NMDOT.

~~[B.]~~ C. Sponsor - means the authority responsible for the airport for which the grant is requested.

[11/30/98; 18.11.9.7 NMAC - Rn & A, 18 NMAC 11.9.7, 3/15/04]

**18.11.9.8 PROJECT ELIGIBILITY:**

Airports with regularly scheduled airline service utilizing aircraft with seating capacity in excess of ~~[30]~~60 passengers, or a maximum payload capacity of more than ~~[seven thousand five hundred]~~ fifteen thousand pounds are not eligible for state funding. Airports on private land are not eligible for state funding unless the landowner files a written agreement with the aviation division director permitting public use of the facility without limit as to time. Airports receiving state funds shall not charge landing fees for aircraft except for aircraft used in ~~[scheduled air service or commercial aircraft in excess of 18,000 pounds]~~ commercial activities for compensation.

[11/30/98; 18.11.9.8 NMAC - Rn & A, 18 NMAC 11.9.8, 3/15/04]

**End of Adopted Rules Section**

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**Other Material Related to Administrative Law**

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**NEW MEXICO  
DEPARTMENT OF  
TRANSPORTATION  
AVIATION DIVISION**

**NMAC Chapter Name Change**

By request of the New Mexico Department of Transportation, Aviation Division, the Commission of Public Records considered and approved the change of the name of Chapter 11 of Title 18 NMAC from "Airports" to "Aviation." This name change will take effect upon the next official filing of a new rule, amendment or repeal in Chapter 11 of Title 18 NMAC.

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**End of Other Related  
Material Section**

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## SUBMITTAL DEADLINES AND PUBLICATION DATES

2004

Volume XV	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 30
Issue Number 3	February 2	February 13
Issue Number 4	February 16	February 27
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 3	May 14
Issue Number 10	May 17	May 28
Issue Number 11	June 1	June 15
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Issue Number 20	October 15	October 29
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 14
Issue Number 24	December 15	December 30

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