

NEW MEXICO 
Commission of Public Records
at the State Records Center and Archives
Your Access to Public Information

New Mexico Register

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

Volume XXXII - Issue 7 - April 6, 2021

COPYRIGHT © 2021
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

The New Mexico Register

Published by the Commission of Public Records,
Administrative Law Division

1205 Camino Carlos Rey, Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507.

Telephone: (505) 476-7941; Fax: (505) 476-7910; E-mail: staterules@state.nm.us.

The *New Mexico Register* is available free at <http://www.srca.nm.gov/new-mexico-register/>

New Mexico Register

Volume XXXII, Issue 7

April 6, 2021

Table of Contents

Notices of Rulemaking and Proposed Rules

ECONOMIC DEVELOPMENT DEPARTMENT

Notice of Proposed Rulemaking.....317

HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

Notice of Public Hearing.....317

MEDICAL ASSISTANCE DIVISION

Notice of Rulemaking.....318

PUBLIC REGULATION COMMISSION

Notice of Proposed Rulemaking Case No. 19-00168-UT.....319

TRANSPORTATION, DEPARTMENT OF

Notice of Termination for Proposed Rulemaking.....319

Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

FINANCE AUTHORITY

COLONIAS INFRASTRUCTURE BOARD

2.91.2 NMAC A Review and Selection of Colonias Infrastructure Projects.....321

HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

8.281.400 NMAC A Recipient Policies.....321

8.290.400 NMAC A Recipient Policies.....324

PUBLIC EDUCATION DEPARTMENT

6.12.14 NMAC A/E Covid 19 School Reentry Requirements.....328

PUBLIC REGULATION COMMISSION

1.2.2 NMAC A Public Regulation Commission Rules of Procedure.....330

Other Material Related to Administrative Law

HEALTH, DEPARTMENT OF

3/15/2021 Amended Public Health Order.....345

STATE AUDITOR, OFFICE OF THE

Notice of Minor, Nonsubstantive Correction.....353

Notices of Rulemaking and Proposed Rules

ECONOMIC DEVELOPMENT DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The Economic Development Department (EDD) will be hosting a virtual meeting and rule hearing on Thursday, May 6, 2021 beginning at 9:00am. For instructions on how to virtually attend this meeting, visit the Department's website at: <https://gonm.biz/business-development/edd-programs-for-business/job-training-incentive-program/> The purpose of the public hearing is to receive public input on the proposed amendment to 5.5.50 NMAC, Industrial Development Training Program (Job Training Incentive Program) and address additional changes that may have been suggested by the Industrial Training Board or other interested parties during the public comment period.

Rule Change Information: The purpose of this rule change is to consider adding language that addresses remote work and retaining current COVID-19 language in policy. Additionally, a revision to STEP-UP policy to eliminate the cap on the number of employees an urban company has for eligibility.

Statutory Authorization: Section 21-19-7 NMSA 1978 grants the Industrial Training Board the authority to promulgate and enforce rule.

Public comment: Interested individuals are strongly encouraged to submit written comments regarding the proposed rulemaking relating to the Job Training Incentive Program to Patrick Gannon, JTIP Program Manager, at patrick.gannon@state.nm.us. Written comments must be received no later than 5:00 pm on Tuesday, May 4, 2021. The EDD encourages the early submission of

written comments. Individuals may also testify at the public hearing.

Copies of the proposed changes may be accessed through EDD's website <https://gonm.biz/business-development/edd-programs-for-business/job-training-incentive-program/> or from Patrick Gannon at the contact above.

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

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The United States Department of Agriculture proposed regulations on March 17, 2020, in compliance with the 2018 Agriculture Act. These regulation changes take effect March 8, 2021. The Department is promulgating proposed regulations to the for the Supplemental Nutrition Assistance Program (SNAP) administered by the Human Services Department (HSD), including its authority to promulgate regulation, and is governed by Chapter 9, Article 8, NMSA (Repl. 1983). Proposed amendments to sections 12, 13, and 14 of 8.139.410 NMAC are being proposed to gain compliance with regulations mentioned above. Changes in 8.139.410.12D NMAC are being proposed to clarify notification to customer who gain compliance prior to the end of the adverse action period. Changes in 8.139.410.12D(1) NMAC to update the correct CFR citation. Changes in 8.139.410.13 NMAC is broadening the types of reimbursable expenses for those participating in the Employment and

Training Program (E&T). Changes in 8.139.410.14B NMAC are updating the Good Cause requirements for Able-Bodied Adults Without Dependents (ABAWD) to align with current federal policies.

The NMHSD is amending the rule to comply with the CFR. The rule will be amended under the statutory authority of the food stamp program as authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011-2036). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282 and 45 CFR Parts 200-299. State authority for administering the food stamp program is contained in Chapter 27 NMSA, 1978. Administration of the Human Services Department (HSD), including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983).

A public hearing to receive testimony on this proposed rule, pursuant to Section 14-4-5.6 NMSA 1978, will be held on Friday, May 7, 2021 from 9:00am-10:00am. The hearing will be held virtually through GoTo Meeting at this link: <https://global.gotomeeting.com/join/752378941>. Anyone wishing to join via phone may call +1 (872) 240-3212, Access Code: 752-378-941. Written comment may be dropped off during the scheduled hearing time at the HSD Administrative Services Division (ASD) conference room, 1474 Rodeo Road, Santa Fe, NM 87505 if the individual wishes to provide written comment during the scheduled hearing; this drop off site will be for write.

The Human Services Register Vol. 44 No. 04 outlining the proposed regulations are available on the HSD's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-registers.aspx>. Individuals wishing to testify or to request a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Santa Fe, New Mexico 87504-2348,

or by calling 505-827-7250 or 505-827-7254.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at 505-827-6201 or through the New Mexico Relay system, at 711 or toll free at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing, Friday, May 7, 2021. The agency shall post all written comments on its website, if one exists, as soon as practicable and no more than 3 business days following receipt to allow for public review. All written comments received by the agency shall also be available for public inspection at the main office of the agency. Please send comments to:

Human Services Department
P.O. Box 2348,
Santa Fe, New Mexico 87504-2348

You may send comments electronically to: HSD-isdrules@state.nm.us

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to repeal and replace the New Mexico Administrative Code (NMAC) rule 8.312.3 NMAC, *Long Term Care Services – Nursing Services, Cost Related*

Reimbursement of Nursing Facilities and amend 8.311.3 NMAC, Hospital Services, Methods and Standards for Establishing Payment - Inpatient Hospital Services. The proposed rule changes are to provide a retention period that is in accordance with 42 CFR 425.314 subpart (b)(2) and to provide a defined period in which the financial and statistical records must be retained.

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

Notice Date: April 6, 2021
Hearing Date: May 20, 2021
Adoption Date: Proposed as September 1, 2021
Technical Citations: 42 CFR 425.314 subpart (b)(2)

The Department is proposing to amend the rules as follows:

8.312.3 NMAC

Section 8 is being amended to include the Department's current mission statement.

Section 11, Subsection D, Paragraph (1) is being amended to provide a more defined retention period by replacing the "period of not less than four years" with "10 years".

Section 11, Subsection D, Paragraph (2) is being amended to provide a more defined retention period by replacing the "period of not less than three years" with "10 years".

Throughout the rule amendments are made to comply with NMAC rule formatting requirements.

8.311.3 NMAC

Section 8 is being amended to include the Department's current mission statement.

Section 14, Subsection D, Paragraph (1) is being amended to provide a more defined retention period by replacing the "period of not less than four years" with "10 years".

Section 14, Subsection D, Paragraph (2) is being amended to provide a

more defined retention period by replacing the "period of not less than three years" with "10 years".

The register for the proposed amendments to these rules will be available April 20, 2021 on the HSD web site at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> or at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx>. If you do not have Internet access, a copy of the proposed rules may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement these rules effective September 1, 2021. A public hearing to receive testimony on these rules will be held via conference call on Thursday, May 20, 2021 at 10 a.m., Mountain Time (MT). **Conference phone number: 1-800-747-5150.**
Access Code: 2284263.

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on May 20, 2021. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a

special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-1337. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

PUBLIC REGULATION COMMISSION

NOTICE OF PROPOSED RULEMAKING CASE NO. 19-00168-UT

The New Mexico Public Regulation Commission (the “commission”) gives notice of its initiation of a proposed rulemaking to amend sections of (or alternatively repeal and replace) **Rule 17.7.2 NMAC “Energy Efficiency”**. The rules which may be adopted as the final rules in this proceeding may include all, part, or none of the language in the proposed rules issued by the commission. The commission may also consider alternative proposals for amending or replacing the current rules.

Concise explanatory statement: The commission is considering amending sections of rule 17.7.2 NMAC. The commission is considering changes to many sections of the rule. In particular, the commission is considering changes regarding changes to the Energy Efficiency Rule in conformance with the 2019 amendments to the Efficient Use of Energy Act.

Constitutional and statutory authority: New Mexico Constitution, Article XI, Sec. 2; Paragraph 10 of Subsection B of Section 8-8-4 NMSA 1978 (1998), Section 8-8-15 NMSA 1978 (1999, amended 2001), and Sections 8-8-16, 62-3-1, 62-8-6 and 62-17-1 *et. seq.*, NMSA 1978.

A copy of the full text of the proposed rules may be obtained from the Rulemaking Proceedings section of the Commission’s website at <http://www.nmprc.state.nm.us> under Case No. 19-00168-UT or by calling Isaac Sullivan-Leshin in the Office of General Counsel at (505) 670-4830.

Written initial comments and written response comments shall be filed by the deadlines below in accordance with NMPRC rules of procedure 1.2.2 NMAC. For information as to how to file at the time of filing, please contact Melanie Sandoval, the commission’s records bureau chief at (505) 470-8538 or melanie.sandoval@state.nm.us. Written initial comments shall be filed no later than **May 21, 2021** and written response comments shall be filed no later than **June 4, 2021**. Comments shall refer to Case No. 19-00168-UT. All written comments will be posted on the commission’s website within three days of their receipt by the records bureau.

A public hearing will be held on **June 21, 2021, beginning at 2:00 p.m.** via Zoom platform. Any member of the public who wishes to make a comment at the hearing must contact Isaac Sullivan-Leshin at (505) 670-4830 or Isaac.Sullivan-Leshin@state.nm.us by no later than 12:00 pm on June 18, 2021 in order to be placed upon the public comment listing and to receive the Zoom invitation. The Zoom invitation will include a call-in number for those participants who are unable to access the Zoom platform via computer. The purpose of the hearing is to give interested persons an opportunity to give oral comments. The commission may limit the time for each comment to five minutes.

The record of this case will close on **July 5, 2021**.

Any person with a disability requiring special assistance in order to participate in the hearing should contact Mr. Jim Williamson at (505) 467-9116 or Jim.Williamson@state.nm.us.

[nm.us](http://www.nm.us) at least 48 hours prior to the commencement of the hearing.

TRANSPORTATION, DEPARTMENT OF

NOTICE OF TERMINATION FOR PROPOSED RULEMAKING

The New Mexico Department of Transportation hereby provides notice terminating the public rule hearing previously scheduled for Friday, April 23, 2021, during which the Department was to consider the repeal and replacement of 17.4.2 NMAC, requirements for occupancy of state highway system right-of-way by utility facilities. The Department may take up new rulemaking upon and shall issue notice as required by NMSA 1978, Section 14-4-1 *et. seq.* The Department issues this termination notice in accordance with Subsection C of NMSA 1978, Section 14-4-5.

End of Notices of Rulemaking and Proposed Rules

This Page Intentionally Left Blank

Adopted Rules

Effective Date and Validity of Rule Filings

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

FINANCE AUTHORITY COLONIAS INFRASTRUCTURE BOARD

This is an amendment to 2.91.2 NMAC, Sections 11 and 14, effective 4/06/2021.

2.91.2.11 QUALIFIED PROJECT FINANCING: The authority may recommend structured financial assistance packages that include loans, grants and any other type of assistance authorized by the authority [~~and the board~~]. The structure, terms and conditions of the financial assistance will be determined by the authority in accordance with the policies jointly established by the board and the authority. Any variance from the policies in connection with financial assistance for any qualified project shall be approved by the authority [~~and the board~~]. Financial assistance for qualified projects may be pooled, at the sole discretion of the authority, under policies jointly established by the board and authority. [2.91.2.11 NMAC – N, 2/15/2012; A, 4/06/2021]

2.91.2.14 FINANCIAL ASSISTANCE AGREEMENT:

A. The [~~board, the~~] authority and the qualified entity will enter into an agreement to establish the terms and conditions of financial assistance from the [~~board~~] authority. The agreement will include the terms of repayment and remedies available to [~~the board and~~] the authority in the event of a default. The [~~board, or the~~] authority [~~on behalf of the board,~~] will monitor terms of the agreement and enforce or cause to be enforced all terms and conditions thereof, including prompt notice and collection.

B. The interest rate on any financial assistance extended

shall be determined by the authority based on the cost of funds and ability of a qualified entity to repay a loan, and in accordance with the policies jointly established by the board and the authority. The interest rate shall not change during the term of the financial assistance unless refinanced or unless the financial assistance is structured as a variable rate obligation.

C. The agreement will contain provisions which require financial assistance recipients to comply with all applicable federal, state and local laws and regulations.

D. In the event of default under a financial assistance agreement by a qualified entity, [~~the board, or~~] the authority [~~on behalf of the board,~~] may enforce its rights by suit or mandamus and may utilize all other available remedies under state and applicable federal law. [2.91.2.14 NMAC – N, 2/15/2012; A, 4/06/2021]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.281.400 NMAC, Sections 1, 8, 10–12, 14-20, 21 and 23 effective 5/1/2021.

8.281.400.1 ISSUING AGENCY: New Mexico Human Services Department (HSD). [8.281.400.1 NMAC - Rp, 8.281.400.1 NMAC, 1/1/2019; A, 5/1/2021]

8.281.400.8 [RESERVED] MISSION STATEMENT: To transform lives. Working with our partners, we design and deliver innovative, high quality health and

human services that improve the security and promote independence for New Mexicans in their communities. [8.281.400.8 NMAC - N, 5/1/2021]

8.281.400.10 BASIS FOR DEFINING THE GROUP: An [~~applicant/recipient~~] applicant or recipient must require institutional care as certified by a physician licensed to practice medicine or osteopathy. The [~~applicant/recipient~~] applicant or recipient must be institutionalized in a medicaid qualifying bed in a New Mexico medicaid approved institution or in a hospital administered under the authority of the US department of veterans affairs (VA). Medicaid approved “Institutions” are defined as acute care hospitals (ACHs), nursing facilities (NFs) and intermediate care facilities for individuals with intellectual disabilities (ICF/IID), swing beds and certified inpatient rehabilitation centers. Level of care (LOC) determinations for institutional care medicaid eligibility are made by the MAD utilization review (UR) contractor or a member’s selected or assigned Managed Care Organization (MCO). Documentation of these determinations is provided to the institution by the UR contractor or MCO. For [~~applicants/recipients~~] applicants or recipients in a hospital awaiting placement in NFs, confirmation letters are furnished by the MAD UR contractor for use by hospital staff. A level of care (LOC) is not required for acute care hospitals. Documentation of acute care hospitalization must be provided by the hospital to determine the eligibility period. [8.281.400.10 NMAC - Rp, 8.281.400.10 NMAC, 1/1/2019; A, 5/1/2021]

8.281.400.11 INTERVIEW REQUIREMENTS:

A. Purpose and scope of interview: An interview is required at initial application for institutional care medicaid. The initial interview is an official and confidential discussion of household circumstances with the applicant. The interview is intended to provide the applicant with program information, and to supply the facts needed by the income support division (ISD) worker to make a reasonable eligibility determination. The interview is not simply to review the information on the application, but also to explore and clarify any unclear or incomplete information. The scope of the interview shall not extend beyond examination of the applicant's circumstances that are directly related to determining eligibility. The interview shall be held prior to disposition of the application.

B. Individuals interviewed: Applicants, including those who submit applications by mail, shall be interviewed via telephone with an ISD worker. When circumstances warrant or upon request of the applicant, the household may be interviewed in person at another place reasonably accessible and agreeable to both the applicant and the ISD worker. The applicant may bring any person he chooses to the interview.

C. Scheduling interviews: The interview on an initial application shall be scheduled within 10 working days, and, to the extent possible, at a time that is most convenient for the applicant.

D. Missed interviews: ISD shall notify a household that it missed its first interview appointment, and inform the household that it is responsible for rescheduling the missed interview. If the household contacts the caseworker within the 45-day application processing period, the caseworker shall schedule a second interview. When the applicant contacts ISD, either orally or in writing, the caseworker shall reschedule the interview as soon as possible thereafter within the

45-day processing period, without requiring the applicant to provide good cause for missing the initial interview. If the applicant does not contact ISD or does not appear for the rescheduled interview, the application shall be denied on the 45th day (or the next work day) after the application was filed.]

An interview is not required for institutional care medicaid. An applicant or recipient can request an interview from the income support division (ISD).

[8.281.400.11 NMAC - Rp, 8.281.400.11 NMAC, 1/1/2019; A, 5/1/2021]

8.281.400.12 ENUMERATION:

An [applicant/recipient] applicant or recipient must furnish his or her social security number in accordance with 8.200.410.10 NMAC.

[8.281.400.12 NMAC - Rp, 8.281.400.12 NMAC, 1/1/2019; A, 5/1/2021]

8.281.400.14 RESIDENCE:

A. Residence in the United States: An [applicant/recipient] applicant or recipient must be residing in the United States at the time of approval. An [applicant/recipient] applicant or recipient who leaves the United States for an entire calendar month loses eligibility. The [applicant/recipient] applicant or recipient must re-establish [his/her] their residence in the United States for at least 30 consecutive days before becoming eligible for any SSI-related medicaid program.

B. Residence in New Mexico: To be eligible for institutional care medicaid, an [applicant/recipient] applicant or recipient must be physically present in New Mexico on the date of application or final determination of eligibility and must have demonstrated intent to remain in the state. If the individual does not have the present mental capacity to declare intent, the parent, guardian or adult child may assume responsibility for a declaration of intent. If the individual does not have the present mental

capacity to declare intent and there is no guardian or relative to assume responsibility for a declaration of intent, the state where the person is living is recognized as the state of residence. A temporary absence from the state does not preclude eligibility. A temporary absence exists if the [applicant/recipient] applicant or recipient leaves the state for a specific purpose with a time-limited goal and intends to return to New Mexico when the goal is accomplished.

[8.281.400.14 NMAC - Rp, 8.281.400.14 NMAC, 1/1/2019; A, 5/1/2021]

8.281.400.15 SPECIAL RECIPIENT REQUIREMENTS:

[To be eligible for institutional care medicaid, an applicant/recipient must be aged, blind, or disabled as defined by the social security administration (SSA). Recipients of institutional care medicaid in New Mexico are terminated from assistance if they are transferred to, or choose to move to, a long term care facility out-of-state. New Mexico medicaid does not cover NF services furnished to applicants/ recipients in out-of-state facilities.]

A. Institutional care medicaid: To be eligible for institutional care medicaid an applicant or recipient must be aged, blind, or disabled as defined by the social security administration (SSA). Recipients of institutional care medicaid in New Mexico are terminated from assistance if they are transferred to, or choose to move to, a long term care facility out-of-state. New Mexico medicaid does not cover NF services furnished to applicants or recipients in out-of-state facilities.

B. Intermediate care facilities for individuals with intellectual disabilities (ICF/IID): To be eligible for an ICF/IID, applicants or recipients must obtain a match letter from the department of health to confirm that he or she meets the definition of an individual with a developmental disability as determined by the department of health/developmental disabilities supports division, in accordance with 8.290.400.10 NMAC.

[8.281.400.15 NMAC - Rp, 8.281.400.15 NMAC, 1/1/2019; A, 5/1/2021]

8.281.400.16 AGED: To be considered aged, an [applicant/recipient individual] applicant or recipient must be 65 years of age or older. Age is verified by the following:

A. decision from SSA regarding age;

B. acceptable documentary evidence including:

- (1) birth certificate or delayed birth certificate;
- (2) World War II ration books;
- (3) baptismal records;
- (4) marriage license or certificate;
- (5) military discharge papers;
- (6) insurance policies;
- (7) Indian census records;
- (8) dated newspaper clippings;
- (9) voting registration;
- (10) World War I registration;
- (11) veterans administration records; or
- (12) school census.

[8.281.400.16 NMAC - Rp, 8.281.400.16 NMAC, 1/1/2019; A, 5/1/2021]

8.281.400.17 BLIND: To be considered blind, an [applicant/recipient] applicant or recipient must have central visual acuity of 20/200 or less with corrective lenses.

A. Documentation of blindness: An [applicant/recipient] applicant or recipient must meet the SSA's definition of blindness. If [he/she] the applicant or recipient is receiving social security or supplemental security income (SSI) benefits based on the condition of blindness, verification of this factor can be accomplished through documents, such as award letters or benefit checks.

B. Status of SSA determination: If it has not been determined whether an [applicant/recipient] applicant or recipient meets SSA's definition of blindness or if only a temporary determination was made, the ISD worker must request a determination from the disability determination unit (DDU). Eligibility based on blindness cannot be considered to exist without a DDS determination.

C. Redetermination of blindness: A redetermination of blindness by the DDU is not required on a re-application following an [applicant/recipient's] applicant or recipient's termination from SSI/SSA or medicaid, if a permanent condition of blindness was previously established or the termination was based on a condition unrelated to blindness and there was no indication of possible improvement in an [applicant/recipient's] applicant or recipient's vision.

D. Remedial treatment: If the DDU recommends remedial medical treatment that carries no more than the usual risk or a reasonable plan for vocational training, an [applicant/recipient] applicant or recipient must comply with the recommendation unless good cause for not doing so exists. [8.281.400.17 NMAC - Rp, 8.281.400.17 NMAC, 1/1/2019; A, 5/1/2021]

8.281.400.18 DISABILITY: To be considered disabled, an [applicant/recipient] applicant or recipient under 65 years of age is considered to have a qualifying disability if [he/she is] they are unable to engage in any substantial gainful activity because of any medically determinable physical, developmental, or mental impairment which has lasted, or is expected to last, for a continuous period of at least 12 months.

A. Documentation of disability: An [applicant/recipient] applicant or recipient must meet the social security administration (SSA)'s definition of disability. If [he/she] the applicant or recipient is receiving social security or supplemental

security income (SSI) benefits based on the condition of disability, verification of this factor can be accomplished through documents, such as award letters or benefit checks.

B. Status of SSA determination: If it has not been determined whether an [applicant/recipient] applicant or recipient meets the SSA's definition of disability or if only a temporary determination was made, the ISS must request a determination from the DDU. Eligibility based on disability cannot be considered to exist without a DDS determination.

C. Redetermination of disability: A redetermination of disability by the DDU is not required on a re-application following an [applicant/recipient's] applicant or recipient's termination from SSI/SSA or medicaid, if a permanent condition of disability was previously established or the termination was based on a condition unrelated to disability and there was no indication of possible improvement in an applicant/recipient's physical condition.

D. Remedial treatment: If the DDU recommends remedial medical treatment that carries no more than the usual risk or a reasonable plan for vocational training, an [applicant/recipient] applicant or recipient must comply with the recommendation unless good cause for not doing so exists. [8.281.400.18 NMAC - Rp, 8.281.400.18 NMAC, 1/1/2019; A, 5/1/2021]

8.281.400.19 SSI STATUS: The ISD worker determines whether an [applicant/recipient's] applicant or recipient's SSI eligibility will continue while [he/she is] they are institutionalized.

A. Applicant/recipient currently eligible for SSI: If an [applicant/recipient] applicant or recipient will not continue to be eligible for SSI while institutionalized, the ISD worker processes the application regardless of the fact that SSA will not terminate

SSI benefits until the month following the month the [applicant/recipient] applicant or recipient enters an institution.

B. Applicant not currently receiving SSI: If an [applicant/recipient] applicant or recipient is not receiving SSI or has not applied for SSI before applying for medicaid and [his/her] their gross income is less than \$50, the ISD worker processes the application and refers the applicant to the SSA for determination of eligibility for SSI benefits. If an applicant's gross monthly income is \$50 or more but not in excess of the maximum allowable income standard, the ISD worker determines eligibility for institutional care medicaid based on remaining financial and nonfinancial criteria.

[8.281.400.19 NMAC - Rp, 8.281.400.19 NMAC, 1/1/2019; A, 5/1/2021]

8.281.400.20 RECIPIENT RIGHTS AND RESPONSIBILITIES:

An [applicant/recipient] applicant or recipient is responsible for establishing [his/her] their eligibility for medicaid. As part of this responsibility, the [applicant/recipient] applicant or recipient must provide required information and documents or take the actions necessary to establish eligibility. Failure to do so must result in a decision that eligibility does not exist. An [applicant/recipient] applicant or recipient must also grant the [human-services department (HSD)] HSD permission to contact other persons, agencies or sources of information, which are necessary to establish eligibility.

[8.281.400.20 NMAC - Rp, 8.281.400.20 NMAC, 1/1/2019; A, 5/1/2021]

8.281.400.21 RIGHT TO HEARING:

An [applicant/recipient] applicant or recipient residing in an institution can request an administrative hearing to dispute issues relating to the eligibility determination process at the time

of the eligibility determination (see Section 8.200.430.12 NMAC, Right to Hearing).

[8.281.400.21 NMAC - Rp, 8.281.400.21 NMAC, 1/1/2019; A, 5/1/2021]

8.281.400.23 REPORTING REQUIREMENTS: Medicaid recipients must report any change in circumstances, which may affect [his/her] their eligibility to their local [income support division (ISD)] ISD office within 10 days of the change in accordance with 8.200.430.18 NMAC.

[8.281.400.23 NMAC - Rp, 8.281.400.23 NMAC, 1/1/2019; A, 5/1/2021]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.290.400 NMAC, Sections 8, 10 and 11, effective 5/1/2021.

8.290.400.8 [RESERVED] MISSION STATEMENT: To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

[8.290.400.8 NMAC - N/E, 12/15/2020; N, 5/1/2021]

8.290.400.10 BASIS FOR DEFINING THE GROUP:

Eligibility for applicants/recipients who apply for waiver services is determined as if he or she were actually institutionalized, although this requirement has been waived. Entry into some of the waiver programs may be based upon the number of UDRs (i.e., slots) available. The individual waiver program manager notifies the income support division (ISD) when a UDR is available.

A. Elderly, blind, and disabled individuals (categories

091, 093, and 094): For applicants/recipients who are under age 65 to qualify as disabled or blind, disability or blindness must have been determined to exist by the social security administration or the DDU. To qualify as an elderly person, the applicant/recipient must be 65 years of age or older. Applicants/recipients must also meet both the financial and non-financial eligibility requirements and meet the medical level of care for nursing facility services.

B. Developmental disabilities (DD) waiver: The DD waiver identified as category 096 was approved effective July 1984, subject to renewal. DD waiver services are intended for eligible recipients who have developmental disabilities limited to intellectual disability (IID) or a [specific] related condition as determined by the DOH/DDSD. The developmental disability must reflect the person's need for a combination and sequence of special interdisciplinary or generic treatment or other supports and services that are lifelong or of extended duration and are individually planned and coordinated. The eligible recipient must also require the level of care provided in an intermediate care facility for individuals with developmental disabilities (ICF/IID), in accordance with Section 8.313.2 NMAC, and meet all other applicable financial and non-financial eligibility requirements.

(1)

Intellectual disability: An individual is considered to have an intellectual disability if she/he has significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(a)

General intellectual functioning is defined as the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning.

(b)

Significantly sub-average is defined as

an intelligence quotient (IQ) of 70 or below.

(c)

Adaptive behavior is defined as the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for age and cultural group.

(d)

The developmental period is defined as the period of time between birth and the 18th birthday.

(2) [Specific-

related] Related condition: An individual is considered to have a [specific] related condition if she/he has a severe chronic disability, other than mental illness, that meets all of the following-[conditions]:

(a) is

attributable to a condition, other than mental illness, found to be closely related to ID because this condition results in limitations in general intellectual functioning or adaptive behavior similar to that of persons with ID and requires similar treatment or services;

(b) is

manifested before the person reaches age 22 years, is likely to continue indefinitely; and

(c)

results in substantial functional limitations (adaptive behavior scores ≤70) in three or more of the following areas:

(i)

self-care;

(ii)

receptive and expressive language;

(iii)

learning;

(iv)

mobility;

(v)

self-direction;

(vi)

capacity for independent living; and

(v)

economic self-sufficiency.

(i)

[_____ cerebral palsy or seizure disorder; or

(ii)

is attributable to autistic disorder (as described in the fourth edition of the diagnostic and statistical manual of

mental disorders); or

(iii)

is attributable to chromosomal disorders (e.g. down), syndrome disorders, inborn errors of metabolism, or developmental disorders of the brain formation limited to the list in Paragraph (3) of Subsection B of 8.290.400.10 NMAC;

(b)

results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with intellectual disability and requires treatment or services similar to individuals with ID;

(c) is

manifested before the person reaches age 22 years;

(d) is

likely to continue indefinitely; and

(e)

results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency.

(3) List of

chromosomal disorders (e.g., down) syndrome disorders, inborn errors of metabolism or developmental disorders of the brain formation:

(a)

chromosomal disorders: autosomes: 4p-, trisomy 4p, trisomy 8, 5p-, 9p-, trisomy 9p, trisomy 9p mosaic, partial trisomy 10q, 13q-, ring 13, trisomy 13 (Patau), 18p-, 18q-, trisomy 18 (Edwards), Trisomy 20p, G (21,22) monosomy/deletion, trisomy 21 (down), translocation 21 (down), "cat-eye" syndrome; Prader-Willi syndrome (15);

(i)

x-linked intellectual disability: Allan syndrome; Atkin syndrome; Davis syndrome; Fitzsimmons syndrome; fragile x syndrome; fragile x phenotype (no fragile site); Gareis syndrome; glycerol kinase deficiency; Golabi syndrome; Homes syndrome; Juberg syndrome; Lujan syndrome; Renpenning syndrome; Schimke syndrome; Vasquez syndrome; nonspecific x-linked intellectual disability;

(ii)

other x chromosome disorders: xo syndrome (Turner); xyy syndrome; xxy syndrome (Klinefelter); xxyy syndrome; xxxy syndrome; xxxx syndrome; xxxxy syndrome; xxxxx syndrome (penta-x);

(b)

syndrome disorders:

(i)

neurocutaneous disorders: ataxia-telangiectasia (Louis-Bar); basal cell nevus syndrome; dyskeratosis congenital; ectodermal dysplasia (hyperhidrotic type); ectromelia-ichthyosis syndrome; focal dermal hypoplasia (Goltz); ichthyosis-hypogonadism syndrome; incontinentia pigmenti (Bloch-Sulzberger); Ito syndrome; Klippel-Trenauney syndrome; linear sebaceous nevus syndrome; multiple lentigines syndrome; neurofibromatosis (Type 1); poikiloderma (Rothmund-Thomsen); Pollitt syndrome; Sjogren-Larsen syndrome; Sturge-Weber syndrome; tuberous sclerosis; xeroderma pigmentosum;

(ii)

muscular disorders:

Becker muscular dystrophy; chondrodystrophic myotonia (Schwartz-Jampel); congenital muscular dystrophy; Duchenne muscular dystrophy; myotonic muscular dystrophy;

(iii)

ocular disorders: Aniridia-Wilm's tumor syndrome; anophthalmia syndrome (x-linked); Leber-amaurosis syndrome; Lowe syndrome; microphthalmia-corneal opacity-spasticity syndrome; Norrie syndrome; oculocerebral syndrome with hypopigmentation; retinal degeneration-trichomegaly syndrome; septo-optic dysplasia;

(iv)

craniofacial disorders: acrocephaly-cleft lip-radial aplasia syndrome; acrocephalosyndactyly; type 1 (Apert); type 2 (Apert); type 3 (Saethre-Chotzen); type 6 (Pfeiffer); Carpenter syndrome with absent digits and cranial defects; Baller-Gerold syndrome; cephalopolysyndactyly (Greig) "cloverleaf-skull" syndrome;

craniofacial dysostosis (Crouzon);
cranioleptencephalic dysplasia;
multiple synostosis syndrome;

(v)

skeletal disorders: acrodysostosis;
CHLD syndrome; chondrodysplasia
punctata (Conradi-Hunerman type);
chondroectodermal dysplasia;
Dyggve-Melchior-Clausen syndrome;
frontometaphyseal dysplasia;
hereditary osteodystrophy (Albright);
hyperostosis (Lenz-Majewski);
hypochondroplasia; Klippel-Feil
syndrome; Nail-patella syndrome;
osteopetrosis (Albers-Schonberg);
pyknodysostosis; radial aplasia-
thrombocytopenia syndrome; radial
hypoplasia pancytopenia syndrome
(Fanconi); Roberts-SC phocomelia
syndrome;

(c)

inborn errors of metabolism:

(i)

amino acid disorders:

phenylketonuria: phenylalanine
hydroxylase (classical, Type 1);
dihydropteridine reductase (type
4); dihydrobiopterin synthetase
(type 5); histidinemia; gamma-
glutamylcysteine synthetase
deficiency; hyperlysinemia; lysinuric
protein intolerance; hyperprolinemia;
hydroxyprolinemia; sulfite oxidase
deficiency; iminoglycinuria;
branched-chain amino acid disorders:
hypervalinemia; hyperleucine-
isoleucinemia; maple-syrup urine
disease; isovaleric academia, glutaric
academia (type 2); 3-hydroxy-3-
methylglutaryl CoA lyase deficiency;
3-kethothiolase deficiency; biotin-
dependent disorders: holocarboxylase
deficiency; biotinidase deficiency;
propionic academia: type A; Type
BC; methylmalonic academia:
mutase type (mut+); cofactor affinity
type (mut-); adenosylcobalamin
synthetase type (cbl A); ATP-
cobalamin adenosyltransferase type
(cbl B), with homocystinuria, type 1
(cbl C), with homocystinuria, type 2
(cbl D); folate-dependent disorders:
congenital defect of folate absorption;
dihydrofolate reductase deficiency;
methylene tetrahydrofolate reductase
deficiency; homocystinuria;
hypersarcosinemia; non-ketotic
hyperglycinemia; hyper-beta-

alaninemia; carnosinase deficiency;
homocarnosinase deficiency; Hartnup
disease; methionine malabsorption
(oasthouse urine disease);

(ii)

carbohydrate disorders: glycogen-
storage disorders: type 1, with
hypoglycemia (von Gierke); type 2
(Pompe); galactosemia; fructose-1,
6-diphosphatase deficiency;
pyruvic acid disorders: pyruvate
dehydrogenase complex (Leigh);
pyruvate carboxylase deficiency;
mannosidosis; fucosidosis;
aspartylglucosaminuria;

(iii)

mucopolysaccharide disorders:
alpha-L-iduronidase deficiency:
Hurler type; Scheie type, Hurler-
Scheie type; iduronate sulfatase
deficiency (Hunter type); Heparan
N-sulfatase deficiency (Sanfilippo
3A type); N-acetyl-alpha-D-
glucosaminidase deficiency
(Sanfilippo 3B type); Acetyl CoA;
glucosaminide N-acetyltransferase
deficiency (Sanfilippo 3C type);
N-acetyl-alpha D-glucosaminide-
6-sulfatase deficiency (Sanfilippo 3D-
type); beta-glucuronidase deficiency
(Sly type);

(iv)

mucolipid disorders: alpha-
neuraminidase deficiency
(type 1); N-acetylglucosaminyl-
phosphotransferase deficiency: I-cell
disease (Type 2); Pseudo-Hurler
syndrome (type 3); mucopolipidosis
type 4;

(v)

urea cycle disorders: carbamyl-
phosphate synthetase deficiency;
ornithine transearbamylase
deficiency; argininosuccinic acid-
synthetase deficiency (citrullinemia);
argininosuccinic acid (ASA) lyase
deficiency; arginase deficiency
(argininemia);

(vi)

nucleic acid disorders: Lesch-
Nyhan syndrome (HGPRTase
deficiency); orotic aciduria;
xeroderma pigmentosum (group A);
DeSanctis-Cacchione syndrome;

(vii)

copper metabolism disorders:
Wilson disease; Menkes disease;

(viii)

mitochondrial disorders: Kearns-
Sayre syndrome; MELAS syndrome;
MERRF syndrome; cytochrome-
c oxidase deficiency; other
mitochondrial disorders;

(ix)

peroxisomal disorders: Zellweger
syndrome; adrenoleukodystrophy:
neonatal (autosomal recessive);
childhood (x-linked); infantile
Refsum disease; hyperpipecolic
academia; chondrodysplasia punctata
(rhizomelic type);

(d)

**developmental disorders of brain
formation:**

(i)

neural tube closure defects:
anencephaly; spina bifida;
encephalocele;

(ii)

brain formation defects: Dandy-
Walker malformation;
holoprosencephaly; hydrocephalus:
aqueductal stenosis; congenital
x-linked type; Lissencephaly;
pachygyria; polymicrogyria;
schizencephaly;

(iii)

cellular migration defects: abnormal
layering of cortex; colpocephaly;
heterotopias of gray matter; cortical
microdysgenesis

(iv)

intraneuronal defects: dendritic
spine abnormalities; microtubule-
abnormalities;

(v)

acquired brain defects:
hydranencephaly; porencephaly; and

(vi)

primary (idiopathic) microcephaly.]

C. Medically fragile

(MF) waiver: The medically fragile
(MF) waiver identified as category
095 was established effective August,
1984 subject to renewal. Medically
fragile is characterized by one or more
of the following: a life threatening
condition characterized by reasonable
frequent periods of acute exacerbation
which require frequent medical
supervision, or physician consultation
and which in the absence of such
supervision or consultation would
require hospitalization, a condition
requiring frequent, time consuming

administration of specialized treatments which are medically necessary; or dependence on medical technology such that without the technology a reasonable level of health could not be maintained; examples include but are not limited to ventilators, dialysis machines, enteral or parenteral nutrition support and supplemental oxygen. The eligible recipient must require the level of care provided in an ICF/ IID, in accordance with 8.313.2 NMAC, and meet all other applicable financial and non-financial eligibility requirements and must have:

(1)

a developmental disability, developmental delay, or be at risk for developmental delay as determined by the DDU, and

(2) a

diagnosed medically fragile condition prior to the age of 22, defined as a chronic physical condition, which results in a prolonged dependency on medical care for which daily skilled (nursing) intervention is medically necessary, and which is characterized by one or more of the following:

(a)

a life threatening condition characterized by reasonably frequent periods of acute exacerbation, which require frequent medical supervision or physician consultation and which, in the absence of such supervision or consultation, would require hospitalization;

(b)

frequent, time-consuming administration of specialized treatments, which are medically necessary;

(c)

dependency on medical technology such that without the technology a reasonable level of health could not be maintained; examples include, but are not limited to, ventilators, dialysis machines, enteral or parenteral nutrition support and continuous oxygen; and

(d)

periods of acute exacerbation of a life-threatening condition, the need for extraordinary supervision or observation, frequent or time-

consuming administration of specialized treatments, dependency on mechanical (life) support devices, and developmental delay or disability.

D. Acquired immunodeficiency syndrome (AIDS) and AIDS related condition (ARC) waiver: The acquired immunodeficiency syndrome (AIDS) and AIDS related condition waiver designated as category 090, was established effective July 1987, subject to renewal. The AIDS and AIDS related condition waiver stopped covering new individuals effective January 01, 2014 as the waiver was sunset and not renewed. Individuals already on the AIDS and AIDS related condition waiver are grandfathered and remain eligible as long as eligibility requirements are met.

E. Brain injury (BI):

The brain injury category 092 stopped covering new individuals effective January 01, 2014. Individuals already on the brain injury category are grandfathered and remain eligible as long as eligibility requirements are met.

[8.290.400.10 NMAC - Rp, 8.290.400.10 NMAC, 1/1/2019; A/E, 12/15/2020; A, 5/1/2021]

8.290.400.11 GENERAL RECIPIENT REQUIREMENTS:

Eligibility for the waiver programs is always prospective per 8.290.600.11 NMAC. Applicants/recipients must meet, or expect to meet, all non-financial eligibility criteria in the month for which determination of eligibility is made including any mandatory income or resources deemed to a minor child per 8.290.500.17 and 8.290.500.21 NMAC.

A. Enumeration: An applicant/recipient must furnish his social security number in accordance with 8.200.410.10 NMAC.

B. Citizenship: Refer to 8.200.410.11 NMAC for citizenship requirements.

C. Residence: To be eligible for medicaid, an applicant/recipient must be physically present in New Mexico on the date of

application or final determination of eligibility and must have declared an intent to remain in the state. If the applicant/recipient does not have the present mental capacity to declare intent, the applicant's/recipient's representative may assume responsibility for the declaration of intent. If the applicant/recipient does not have the mental capacity to declare intent and there is no representative to assume this responsibility, the state where the applicant/recipient is living will be recognized as the state of residence. If waiver services are suspended because the recipient is temporarily absent from the state but is expected to return within 90 consecutive days at which time waiver services will resume, the medicaid case remains open. If waiver services are suspended for any other reason for 90 consecutive days, the medicaid case is closed after appropriate notice is provided to the recipient.

D. Non-concurrent receipt of assistance: HCBS waiver services furnish medicaid benefits to an applicant/recipient who qualifies both financially and medically for institutional care but who, with provision of waiver services, can receive the care he needs in the community at less cost to the medicaid program than the appropriate level of institutional care. Individuals receiving services under a HCBS waiver may not receive concurrent services under nursing facility (NF), ICF/IID, personal care or any other HCBS waiver.

(1) SSI

recipients: Applicants receiving supplemental security income (SSI) benefits are categorically eligible for waiver services. No further verification of income, resources, citizenship, age, disability, or blindness is required. The applicant must, however, meet the level of care requirement. (An SSI recipient must meet the assignment of rights and TPL requirements and not be ineligible because of a trust).

(2) Married

SSI couples: All married SSI couples where neither member is

institutionalized in a medicaid-certified facility are treated as separate individuals for purposes of determining eligibility and benefit amounts beginning the month after the month they began living apart. See Section 8012 of the Omnibus Budget Reconciliation Act of 1989. In the case of an initial application, or reinstatement following a period of ineligibility, when members of a married couple are not living together on the date of application or date of request for reinstatement, each member of the couple is considered separately as of the date of application or request, regardless of how recently the separation occurred.

E. INTERVIEW

REQUIREMENTS: ~~[An interview is required at initial application for all home and community-based waiver medical assistance programs in accordance with all of the requirements set forth at 8.281.400.11 NMAC.] An interview is not required in accordance with 8.281.400.11 NMAC.~~

[8.290.400.11 NMAC - Rp, 8.290.400.11 NMAC, 1/1/2019; A/E, 12/15/2020; A, 5/1/2021]

PUBLIC EDUCATION DEPARTMENT

This is an emergency amendment to 6.12.14 NMAC, Sections 7 and 8, effective 3/24/2021.

6.12.14.7 DEFINITIONS:

A. ~~["Formative assessment"~~ means measures of academic achievement during the learning process.] "Alternate work" means a temporary change to the location, conditions, duties, schedules, reduction in number of contacts with students and other staff and individuals, etc., due to public health emergency-necessitated circumstances. Alternate work does not automatically mean working from home.

B. **"Full reentry operating category"** means the instructional model that permits all students to return to in-person

learning for the full school week, with continued use of preventative measures including COVID-Safe Practices and other practices in department guidance.

C. "High-risk staff"

means a person employed by a school or school district who is 65 years of age or older or has one or more of the following conditions that places the person at an increased risk of severe illness from the virus that causes

COVID-19:

- (1) cancer;
- (2) chronic kidney disease;
- (3) chronic obstructive pulmonary disease;
- (4) down syndrome;
- (5) heart conditions such as heart failure, coronary artery disease or cardiomyopathies;
- (6) immunocompromised state (weakened immune system) from solid organ transplant;
- (7) severe obesity (body mass index greater than 40 kg/m²);
- (8) pregnancy;
- (9) sickle cell disease;
- (10) type 2 diabetes mellitus;

D. **"Hybrid operating category"** means the instructional model wherein schools assign a combination of some in-person learning days and some remote learning days, while limiting the number of students who may be in the school building at any given time by the number that can be accommodated while adhering to at least six feet of social distancing and other criteria provided in guidance documents, including limitations on the percentage of students eligible to be on school premises at one time.

E. **"Remote operating category"** means the instructional model that requires all students to engage in remote learning, with limited possible exceptions, as defined in department guidance, of students with disabilities and students in

grades pre-kindergarten through grade three to engage in in-person learning. Schools should take all practical measures to provide each student with a digital device and to provide support for in-home internet connectivity.

[6.12.14.7 NMAC – N/E, 12/3/2021, A/E, 1/29/2021, A/E, 2/11/2021, A/E, 3/24/2021]

6.12.14.8 REQUIREMENTS FOR SCHOOLS:

A. All public schools and local school districts shall:

- (1) follow all public health orders and executive orders and department guidance for the operation of schools and school premises, including school transportation; testing programs detailed in department guidance;
- (2) participate in surveillance testing programs detailed in department guidance;
- (3) adhere to social distancing requirements;
- (4) require all persons on school premises, and in school vehicles, to wear face coverings per department guidance and current statewide public health orders;

(5) cooperate immediately and fully with department officials, environment department officials, fire marshals, state police and other officials conducting site visits and investigating COVID-safe practices; and

(6) to the extent possible, implement practices to promote social emotional learning, support high quality teaching and learning, and effectively communicate with tribal communities and families.

B. **COVID-19 safe practices.** All local school districts and public schools shall maintain communication with department of health officials shall report all confirmed cases of COVID-19 in students, staff, contractors and volunteers to the department and the environment department as appropriate; and shall perform all COVID-19 safe practices described or referenced in department guidance, such as:

(1) working with school administrators, school nurses, and other healthcare providers to identify an isolation room or area to separate anyone who exhibits COVID-like symptoms;

(2) closing off and limiting access to areas potentially affected by COVID-19 exposure and, if possible, wait 24 hours before cleaning and disinfecting;

(3) requiring school nurses and other healthcare providers to use centers for disease control and prevention (CDC) recommended standard precautions when caring for sick people, including:

(a) engaging in frequent hand hygiene;

(b) using personal protective equipment when there is an expectation of possible exposure to infectious material;

(c) following respiratory hygiene and coughing etiquette;

(d) ensuring appropriate patient placement in quarantine or isolation;

(e) ensuring the proper handling and disinfection of patient care equipment and instruments;

(f) ensuring the careful handling of textiles and laundry;

(g) following safe injection practices; and

(h) ensuring healthcare provider safety, including proper handling and disposal of needles and other sharps.

(4) requiring school nurses and other healthcare providers to use CDC recommended transmission-based precautions when caring for sick people, including:

(a) establishing procedures for safely transporting anyone who is sick home or to a healthcare facility;

(b) closing for 24 hours parts of school buildings if used by a COVID-19 infected person then clean and

disinfect before re-opening affected areas;

(c) advising sick staff members and children not to return until they have met New Mexico department of health criteria to discontinue home isolation; and

(d) informing those who have had close contact with a person diagnosed with COVID-19 to stay home and follow New Mexico department of health guidance.

C. Small group instruction. School districts and schools are permitted to provide small group instruction pursuant to department guidance regardless of whether the school district or school is in the remote learning, hybrid learning, or full reentry operational model.

D. Continuation of Remote Learning. When in-person learning is available through a hybrid operational model or full reentry operational model, school districts and schools shall continue to offer remote learning to students who choose remote learning.

E. Transportation. School districts and schools shall follow department guidance, which requires students to sit in spaced and assigned seating while being transported to and from schools, limits the number of students who may be seated together on a bus seat, and sets forth detailed requirements and suggestions for COVID-19 safe practices for the transportation of students.

F. Student movement and gathering. School districts and schools in the hybrid or full reentry operating category shall keep students' and student groups' movements and gatherings safe pursuant to current department guidance, which presently includes:

(1) limiting mixing among different student groups to the greatest extent practicable;

(2) for class changes and other transitions throughout the day:

(a) designating flow paths in hallways to keep students separated and minimize the congregation of students;

(b) planning staggered class changes to decrease the number of students in the hallways at one time;

(c) having the same group of students stay with the same staff in elementary school; and

(3) for student gatherings:

(a) avoiding large group gatherings, and abiding by the maximum number of people allowed to congregate as defined by current public health orders;

(b) prohibiting the congregation of students in parking lots and common areas;

(c) staggering the schedules for group gatherings such as recess or meals;

(d) identifying and utilizing large spaces, such as gymnasiums, auditoriums, and outdoor spaces as weather permits for social distancing; and

(e) following the New Mexico activities association's guidelines for extracurricular activities and similar congregate events.

G. Staffing. All school districts and schools shall follow public health orders, executive orders and department guidance as updated from time to time and shall:

(1) train staff in local and state rules regarding health and safety procedures, such as appropriate use of personal protective equipment and procedures for when school personnel or students exhibit symptoms of COVID-19; and

(2) establish processes, aligned with school district or charter school human resource departments to process formal requests [~~from COVID-19 high-risk staff to work remotely~~] for reasonable accommodations under the Americans with Disabilities Act (ADA) and leave under the Family Medical Leave Act

(FMLA). Professional development, other trainings and staff meetings conducted in-person on school premises require staff to remain socially distanced at a distance of six feet or more apart from each other and adhere to all other COVID-Safe Practices; otherwise, professional development, other trainings and staff meetings must be conducted remotely. [5; and

~~(3) adhere to department guidance stating that work that may be performed remotely should be performed remotely. For certain work that may only be performed on school premises, schools and districts may require staff to physically report to school premises. Examples of work that must be performed physically on school premises include in-person instruction, food service preparation, transportation, work done to clean, maintain, supervise, and sanitize school premises, property, materials, and supplies, and any other work that cannot physically be performed off-site. For work that need not be performed on school premises, such as most professional development, staff meetings and team planning, and fully remote instruction, staff's presence on school premises shall not be required. However, if the school district or school deems it to be safe, then staff whose work need not be physically performed on school premises may choose to work on the school premises.]~~

H. Tribal sovereignty.

School districts and schools shall honor tribal sovereignty and abide by applicable tribal public health orders, tribal executive orders and tribal council resolutions.

[6.12.14.8 NMAC – N/E, 12/3/2020, A/E, 1/29/2021, A/E, 2/11/2021, A/E, 3/24/2021]

PUBLIC REGULATION COMMISSION

This is an amendment to 1.2.2 NMAC, Sections 7, 8, 9, 10, 11, 34 & 35 effective 4/6/2021. This amendment is a permanent

replacement of the emergency amendment to 1.2.2 NMAC, Sections 7 and 8 effective 10/15/2020.

1.2.2.7 DEFINITIONS:

In addition to the definitions contained in Sections 3-29-2, 8-8-2, 53-4-1, 53-6-3, 53-8-2, 53-11-2, 53-19-2, 53-20-2, 60-2C-2, 62-3-3, 62-14-2, 63-9-2, 63-9A-3, 63-9H-3, 65-2A-3, 65-6-2, and 70-3-12 NMSA 1978, as used in this rule:

~~[~~ **A. advisory staff** means persons hired by the commission pursuant to Section 8-8-13 NMSA 1978, but who do not represent staff in proceedings before the commission;

~~_____~~ **B. applicant** means any party on whose behalf an application is made for approval or authorization of the commission;

~~_____~~ **C. chief clerk** means the person appointed by the chief of staff pursuant to Section 8-8-5 NMSA 1978 to serve as director of the administrative services division pursuant to Section 8-8-7 NMSA 1978;

~~_____~~ **D. chief of staff** means the person appointed by the commission pursuant to Section 8-8-5 NMSA 1978;

~~_____~~ **E. commenter** means a person who enters into the record of a proceeding before the commission or presiding officer a comment on the grounds of public or private interest, but who is not a party to the proceeding;

~~_____~~ **F. complainant** means a person who complains of anything done or omitted to be done in violation of any law, rule, or order administered or promulgated by the commission;

~~_____~~ **G. corporations** means domestic and foreign corporations, limited liability companies, cooperative associations, sanitary projects act associations, water users associations, waterworks corporations, and foreign business trusts as those terms are defined in Section 3-29-2 and Chapter 53, NMSA 1978, unless exempted by law from commission regulation;

~~_____~~ **H. document** means, except as otherwise used in the provisions of this rule governing discovery, any submission in a formal proceeding which is not a pleading or which is required to be filed by commission rule or order outside a formal proceeding;

~~_____~~ **I. electronic** means relating to technology having electrical, digital, magnetic, wireless, telephonic, optical, electromagnetic or similar capabilities;

~~_____~~ **J. file, filed, or filing** means delivery or transmittal to the chief clerk or the chief clerk's designee and acceptance by the chief clerk or the chief clerk's designee of an order, notice, pleading, or document to be kept on file in their official capacity;

~~_____~~ **K. fire marshal-regulated entities** means persons whose activities are regulated by the provisions of Sections 59A-52-1 through 59A-52-25 NMSA 1978, or the Fireworks Licensing and Safety Act, Sections 60-2C-1 through 60-2C-11 NMSA 1978;

~~_____~~ **L. formal proceedings** means all matters other than rulemakings to which case numbers are assigned and which are entered on the commission's docket for decision by the commission;

~~_____~~ **M. hearing examiner** means a person employed by the commission as a hearing examiner, or a commissioner or advisory staff member designated by the commission as the hearing examiner to conduct any hearing or investigation which the commission is authorized to conduct;

~~_____~~ **N. informal proceedings** means any matters handled outside a formal proceeding by the commission or its staff, including informal complaints;

~~_____~~ **O. intervenor** means a person permitted by the commission or presiding officer to participate as a party in a proceeding pursuant to 1.2.2.23 NMAC;

~~_____~~ **P. mediator** means a person assigned by the commission to facilitate resolution of disputes pending informally or formally before

the commission by assisting parties in their communications and meetings, identification and exploration of issues, and development of bases for agreements;

_____ **Q.** _____ **party** means a person who initiates a commission proceeding by filing an application, petition or complaint, or whom the commission or presiding officer names as a respondent, or whom the commission or presiding officer grants leave to intervene; unless the context indicates otherwise, the term "party" may also refer to counsel of record for a party; staff shall have the status of a party, without being required to file a motion to intervene, but shall not have a right to appeal;

_____ **R.** _____ **petitioner** means any party on whose behalf a petition is made for approval, determination, consent, certification, or authorization of the commission;

_____ **S.** _____ **pleading** means an application, petition, complaint, answer, motion, response to motion, exception, or other formal written statement filed in any formal proceeding;

_____ **T.** _____ **presiding officer** means a commissioner taking such actions as are permitted under 1.2.2.29 and 1.2.2.30 NMAC or the hearing examiner designated to preside over a proceeding;

_____ **U.** _____ **proceeding** means a formal proceeding;

_____ **V.** _____ **public hearing** means a portion of a proceeding, open to the public and conducted by the commission or presiding officer, that affords an opportunity to present such evidence, argument, or other appropriate matters as the commission or presiding officer deems relevant or material to the issues;

_____ **W.** _____ **regulated entity** means a utility, telecommunications provider, motor carrier, fire marshal-regulated entity, railroad, or owner or operator of gas and hazardous liquid pipelines and underground facilities or one-call notification system subject to the jurisdiction of the commission;

_____ **X.** _____ **respondent** means any party against whom any complaint is filed or any party subject

to the jurisdiction of the commission to whom the commission issues notice instituting a proceeding, investigation, or inquiry of the commission;

_____ **Y.** _____ **staff** means all persons, other than hearing examiners and advisory staff, employed by the commission; and

_____ **Z.** _____ **telecommunications provider** shall have the meaning given in Paragraph (2) of Subsection A of 63-7-23 NMSA 1978.]

A. Definitions

beginning with "A":

_____ **(1) advisory staff** means persons hired by the commission pursuant to Section 8-8-13 NMSA 1978, but who do not represent staff in proceedings before the commission;

_____ **(2) applicant** means any party on whose behalf an application is made for approval or authorization of the commission.

B. Definitions

beginning with "B": [RESERVED]

C. Definitions

beginning with "C":

_____ **(1) chief clerk** means the person appointed by the chief of staff pursuant to Section 8-8-5 NMSA 1978 to serve as director of the administrative services division pursuant to Section 8-8-7 NMSA 1978 or the director of the administrative services division's designee;

_____ **(2) chief of staff** means the person appointed by the commission pursuant to Section 8-8-5 NMSA 1978;

_____ **(3) commenter** means a person who enters into the record of a proceeding before the commission or presiding officer a comment on the grounds of public or private interest, but who is not a party to the proceeding;

_____ **(4) complainant** means a person who complains of anything done or omitted to be done in violation of any law, rule, or order administered or promulgated by the commission;

_____ **(5) corporations** means domestic and foreign corporations, limited liability

companies, cooperative associations, sanitary projects act associations, water users associations, waterworks corporations, and foreign business trusts as those terms are defined in Section 3-29-2 and Chapter 53, NMSA 1978, unless exempted by law from commission regulation.

D. Definitions

beginning with "D":

_____ **(1) date and time of filing** means, for an electronic filing, the date and time on the filing transmittal email delivered to the records bureau email address; electronic filings may be deemed filed at later date and time than the time on the filing transmittal email in accordance with the procedures set forth in Paragraph (1) of Subsection C of 1.2.2.10 NMAC. For a hard copy filing, the date and time of filing is the date of the date stamp affixed by the records bureau in accordance with Paragraph 2 of Subsection C 1.2.2.10 NMAC.

_____ **(2) document** means, except as otherwise used in the provisions of this rule governing discovery, any submission in a formal proceeding, including pleadings, or which is required to be filed by commission rule or order outside a formal proceeding.

E. Definitions

beginning with "E":

_____ **(1) electronic** means relating to technology having electrical, digital, magnetic, wireless, telephonic, optical, electromagnetic or similar capabilities;

_____ **(2) electronic signature** means a full, printed name of the person responsible for the electronic version of the document by scanned or other electronic reproduction of the signature or by typing in the signature line the notation "/s/" followed by the name of the person signing the original document and including the email address of the person signing;

_____ **(3) electronic filing** means the filing procedures for set forth in 1.2.2.10 NMAC.

F. Definitions

beginning with "F":

_____ **(1) file, filed,**

or filing means filing by electronic mail to the records bureau email address, unless otherwise permitted by Subsections C and D of 1.2.2.10 NMAC, and acceptance by the chief clerk or the clerk's designee;

(2) fire

marshal-regulated entities means persons whose activities are regulated by the provisions of Sections 59A-52-1 through 59A-52-25 NMSA 1978, or the Fireworks Licensing and Safety Act, Sections 60-2C-1 through 60-2C-11 NMSA 1978; this Paragraph shall be effective until June 30, 2021 at which time it shall be deleted;

(3) formal

proceedings means all matters other than rulemakings to which case numbers are assigned and which are entered on the commission's docket for decision by the commission.

G. Definitions

beginning with "G": [RESERVED]

H. Definitions

beginning with "H": hearing examiner means a person employed by the commission as a hearing examiner, or a commissioner or advisory staff member designated by the commission as the hearing examiner to conduct any hearing or investigation which the commission is authorized to conduct;

I. Definitions

beginning with "I":

(1) informal

proceedings means any matters handled outside a formal proceeding by the commission or its staff, including informal complaints;

(2) intervenor

means a person permitted by the commission or presiding officer to participate as a party in a proceeding pursuant to 1.2.2.23 NMAC.

J. Definitions

beginning with "J": [RESERVED]

K. Definitions

beginning with "K": [RESERVED]

L. Definitions

beginning with "L": [RESERVED]

M. Definitions

beginning with "M": mediator means a person assigned by the commission to facilitate resolution of disputes pending informally or formally before the commission

by assisting parties in their communications and meetings, identification and exploration of issues, and development of bases for agreements.

N. Definitions

beginning with "N": [RESERVED]

O. Definitions

beginning with "O": [RESERVED]

P. Definitions

beginning with "P":

(1) party

means a person who initiates a commission proceeding by filing an application, petition or complaint, or whom the commission or presiding officer names as a respondent, or whom the commission or presiding officer grants leave to intervene; unless the context indicates otherwise, the term "party" may also refer to counsel of record for a party; staff shall have the status of a party, without being required to file a motion to intervene, but shall not have a right to appeal;

(2) petitioner

means any party on whose behalf a petition is made for approval, determination, consent, certification, or authorization of the commission;

(3) pleading

means an application, petition, complaint, answer, motion, response to motion, exception, or other formal written statement filed in any formal proceeding;

(4) presiding

officer means a commissioner taking such actions as are permitted under 1.2.2.29 NMAC and 1.2.2.30 NMAC or the hearing examiner designated to preside over a proceeding;

(5)

proceeding means a formal proceeding;

(6) public

hearing means a portion of a proceeding, open to the public and conducted by the commission or presiding officer, that affords an opportunity to present such evidence, argument, or other appropriate matters as the commission or presiding officer deems relevant or material to the issues.

O. Definitions

beginning with "O.": [RESERVED]

R. Definitions

beginning with "R":

(1) records

bureau email address means prc.records@state.nm.us or another records bureau email address, as set out on the commission's webpage;

(2) regular

business hours means 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m. prevailing mountain time Monday through Friday, excluding state holidays;

(3)

regulated entity means a utility, telecommunications provider, motor carrier, fire marshal-regulated entity (to be deleted on June 30, 2021), railroad, or owner or operator of gas and hazardous liquid pipelines and underground facilities or one-call notification system subject to the jurisdiction of the commission;

(4)

respondent means any party against whom any complaint is filed or any party subject to the jurisdiction of the commission to whom the commission issues notice instituting a proceeding, investigation, or inquiry of the commission;

S. Definitions

beginning with "S": staff means all persons, other than hearing examiners and advisory staff, employed by the commission; and

T. Definitions

beginning with "T":

telecommunications provider shall have the meaning given in Paragraph (2) of Subsection A of Section 63-7-23 NMSA 1978.

U. Definitions

beginning with "U": unsworn affirmation means an unsworn affirmation in lieu of a notarization pursuant to Paragraph (3) of Subsection A of 1.2.2.35 NMAC.

V. Definitions

beginning with "V": [RESERVED]

W. Definitions

beginning with "W":

[RESERVED]

X. Definitions

beginning with "X": [RESERVED]

Y. Definitions

beginning with "Y": [RESERVED]

Z. Definitions

beginning with “Z”: [RESERVED]

[1.2.2.9 NMAC - Rp, 17 NMAC
1.2.9, 9/1/2008; A, 4/6/2021]

1.2.2.8 GENERAL PROVISIONS:

A. Public records:

The commission’s policy is to allow full and complete access to public records in accordance with the Inspection of Public Records Act, Section 14-2-1 NMSA 1978 *et seq.* Except when the commission or presiding officer directs otherwise, all pleadings, orders, communications, exhibits, or other documents shall become matters of public record as of the day and time of their filing. The commission shall permit any person to examine any such public record, unless subject to a protective order, or otherwise protectable under the Inspection of Public Records Act. Under no circumstances will any person be allowed to take original commission records from commission premises. Arrangements to examine records or to obtain copies of records must be made through the chief clerk or the chief clerk’s designee.

B. Protective orders:

(1) Any person moving for an order to protect pleadings, documents or classes of documents from disclosure bears the burden of establishing their right, if any, to such protection. A motion for an order to protect documents or information from disclosure shall be supported by an affidavit. The affidavit shall:

(a) satisfy the claimant’s burden of making a *prima facie* showing that protection is appropriate, and, if protection is sought for pleadings or documents that are to be filed, that protection is consistent with the Inspection of Public Records Act, including protectable trade secrets;

(b) be executed by the claimant or a person employed by the claimant who is sufficiently knowledgeable about the grounds on which protection is sought that they can defend such claim if it is challenged; and

(c) explain with particularity the injury which would result from disclosure of the information for which protection is sought.

(2) If the commission or presiding officer deems it necessary, or if any party files a motion to compel, the commission or presiding officer may require the party seeking the protective order to file the documents or information which are the subject of the motion in a properly identified sealed container. The container may be opened by the commission or presiding officer prior to ruling on the motion for a protective order only for purposes of making an *in camera* inspection.

(3) The commission or presiding officer may, in ruling on the motion, provide that the documents or information not be disclosed or that they be disclosed only in a designated manner or to designated persons. Any order granting a motion for a protective order in whole or in part shall include clear and specific instructions to the chief clerk or chief clerk’s designee regarding the limitations placed on disclosure of the documents or information subject to the order and a reminder that sanctions may be imposed under applicable laws for its violation. The protective order shall set forth the conditions for protection and disclosure of information subject to protection under the Inspection of Public Records Act to parties to the proceeding. The order shall be included in the appropriate publicly available file in lieu of the documents or information which are the subject of the protective order.

(4) The period of time during which disclosure is limited shall be two years from the date of the final order in the case, provided that the movant may request that the protective order specify a different period of protection. The movant may, prior to expiration of the protective order, move for an order extending the period of protection of the documents or information.

(5) Nothing in this rule shall be construed as waiving or altering any requirement placed upon the commission for timely disclosure and copying of public records under the Inspection of Public Records Act.

(6) In the event of a conflict between the terms of a protective order and the rules set forth in 1.2.2 NMAC the protective order controls;

C. Fees:

(1) All application fees or other charges required by law shall be paid to the commission at the time of filing or at the time the charge is incurred.

(2) No pleading or document will be accepted without payment of required fees and submission of the required number of copies by the filing party, unless the commission or presiding officer directs otherwise.

(3) Except as otherwise provided by Sections 53-2-1, 53-8-87 and 65-2A-36 NMSA-1978, and 12.3.1 NMAC, the fee for paper copies of papers, testimony, or records, shall be the charge set by the state records center for similar types of copies:

(4) The fee for copies of papers, testimony, or records on electronic storage media shall be the same charge set by the state records center for paper copies of the same:

(5) The fee for cassette or CD-ROM copies of audio recordings of informal and formal proceedings, if available, is \$10 per cassette or CD-ROM.

(6) For paper copies of pleadings or documents that are not retrievable on electronic storage media maintained by the commission, the chief clerk or chief clerk’s designee may charge a document search and preparation fee based on the hourly rate charged by the state records center for document preparation in 1.13.2 NMAC.]

C. Filing Fees:

(1) **Filing fees for specific documents are:**

(a)

Applications, petitions, formal complaints, and all other filings requiring a new Case No.; a fee of \$25.00 each applies, and is required at time of filings;

(b)

Advice Notices: a fee of \$1.00 per each proposed rate, rule, or form applies, and is required at time of filing.

(2)

Electronically filed documents that are required by law to be submitted with a filing fee:

(a)

the entity electronically filing documents that require a filing fee shall include as an attachment to the filing transmittal email a scan (pdf) or photograph (jpeg) of the filing fee (check or money order made payable to the commission) to show proof of payment at time of filing. The scan or photograph of the check or money order shall be a separate electronic document from the document to be filed;

(b)

the entity electronically filing documents shall promptly physically mail the check or money order to NMPRC, Attn: Records Bureau, P.O. Box 1269, Santa Fe, NM 87504-1269 along with a copy of the cover page for the document that the fee is associated with to assist the chief clerk or designee with making sure the filing fee is properly applied;

(c)

after receipt of the electronically filed document and the attached scan or photograph of the filing fee, the records chief clerk or designee will issue a case no. (if applicable) and will post the document into e-docket.

(3) All

application fees or other charges required by law to be paid along with the filing of a document shall be paid to the commission by check or money order at the time of filing a hard copy by regular mail or in-person at the commission offices.

(4) No

pleading or document will be accepted without payment of required fees and submission of the required

number of copies by the filing party, unless the commission or presiding officer directs otherwise.

(5) Except as

otherwise provided by Sections 53-2-1, 53-8-87 and 65-2A-36 NMSA 1978, and 12.3.1 NMAC, the fee for paper copies of papers, testimony, or records, shall be the charge set by the commission's inspection of public records policy posted on the commission's website.

(6) The fee for

copies of papers, testimony, or records on electronic storage media shall be the charge set by the commission's inspection of public records policy posted on the commission's website.

(7) The fee for

cassette or CD-ROM copies of audio recordings of informal and formal proceedings, if available, shall be the charge set by the commission's inspection of public records policy posted on the commission's website.

(8) For paper

copies of pleadings or documents that are not retrievable on electronic storage media maintained by the commission, the chief clerk or chief clerk's designee may charge in accordance with the commission's inspection of public records policy posted on the commission's website.

D. Waiver of rules:

Upon the commission's or presiding officer's own motion or by motion of the staff or any party showing good cause and such notice as the commission or presiding officer may deem proper, the commission or presiding officer may waive the application of any procedural provision of this rule, except when precluded by law.

E. Construction and amendment: These rules, and any rules incorporated by reference, shall be so construed as to secure just and speedy determination of the issues.

F. Docket: The commission shall maintain a docket of all proceedings, and each new proceeding shall be assigned an appropriate docket number. The docket is open to public inspection.

G. Calendar of public hearings: The commission shall

maintain a public hearing calendar. The public hearing calendar is open to public inspection.

H. [Address of the commission: Persons shall submit filings in proceedings related to utilities and telecommunications providers to the records office located at the utility division's address. Persons shall submit filings in proceedings related to motor carriers, railroads, fire marshal-regulated entities, corporations, and owners and operators of gas and hazardous liquid pipelines and underground facilities, excavators, and one-call notification systems to the records office located at the transportation division's address:

(1) **Utility**

division:

(a)

Street address: Marian Hall, 224 E. Palace Avenue, Santa Fe, New Mexico 87501-2013.

(b)

Mailing address: Public Regulation Commission, Utilities Division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

(2)

Transportation division:

(a)

Street address: P.E.R.A. Building, 1120 Paseo de Peralta, Santa Fe, New Mexico, 87504.

(b)

Mailing address: Public Regulation Commission, (indicate appropriate division or bureau), P.O. Box 1269, Santa Fe, NM 87504-1269.

I. Office days and

hours: The offices of the commission are open from 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m., Monday through Friday, legal holidays excepted.

J] Identification of

communications: Communications shall contain the name, address, e-mail address, if available, and telephone number of the communicator and an appropriate reference to any commission cases pertaining to the subject of the communication.

K. Current

information required: In all cases,

persons shall keep the information required by Subsection J of this section current, and when updating the information, shall indicate the case numbers of all docketed cases in which the person is a party or otherwise included on the certificate of service.]

I. Current information required: In all cases, persons shall keep the information required by Subsection H of this section current, and when updating the information, shall indicate the case numbers of all docketed cases in which the person is a party or otherwise included on the certificate of service.

[E] J. Computation of time: The time within which an act is to be done as provided in any rule or order promulgated by the commission or order issued by the presiding officer, when expressed in days, shall be computed by excluding the day of the act or event from which the time begins to run and including the last, except that if the last day be Saturday, Sunday, or a legal holiday, the act may be done in the next succeeding business day.

[M] K. Extensions of time: Except as otherwise provided by law, the time by which any person is required or allowed to act under any statute, rule, or order may be extended by the commission or presiding officer for good cause, upon a motion made before the expiration of the period prescribed or previously extended. The filing of the motion does not toll the running of the time period prescribed.

[N] L. Classification of parties: Parties to proceedings before the commission shall be classified as applicants, petitioners, complainants, respondents, or intervenors.
[1.2.2.9 NMAC - Rp, 17 NMAC 1.2.9, 9/1/2008; A, 4/6/2021]

1.2.2.9 PRACTICE BEFORE THE COMMISSION: (See 18.60.4.11 NMAC for matters involving owners and operators of gas and hazardous liquid pipelines and underground facilities, excavators, and one-call notification systems.)

A. An individual may appear as a party in person or by an attorney licensed to practice law in New Mexico at either informal or formal proceedings.

B. Entities other than an individual may appear as a party at informal proceedings by an officer or employee of the entity.

C. Commenters may appear in person or by an attorney at any proceeding.

D. Except as provided in this section, entities other than an individual must be represented by an attorney licensed to practice law in New Mexico at all formal proceedings.

E. An attorney licensed in a jurisdiction other than New Mexico may appear at public hearings before the commission or presiding officer provided such non-resident attorney files a motion *pro hac vice* and is associated with and accompanied by an attorney licensed in New Mexico.

F. The following entities may be represented at all formal proceedings as provided:

(1) if the party is the United States, it may be represented as provided in 40 U.S.C. Section 481(a)(4) and 486(d);

(2) if the party is an association of residential customers of an investor-owned public utility or an association of residential members of a rural electric cooperative, it may be represented by an officer or employee thereof who has been authorized to appear on behalf of the association;

(3) if the party is a class C or class D water utility as defined in General Provisions for Water Utilities, 17.12.1 NMAC, or is a sewer utility subject to the requirements of procedures for review of rates proposed by sewer utilities having annual operating revenues averaging less than \$500,000 over any consecutive three-year period, 17.13.970 NMAC, and:

(a) [if such a water or sewer utility is a corporation whose voting shares are held by a single shareholder or

closely knit group of shareholders all of whom are natural persons active in the conduct of the business, it may be represented by an officer or general manager who has been authorized to appear on behalf of the corporation, or;] if such a water or sewer utility is a corporation or LLC whose voting shares are held by a single shareholder or closely knit group of shareholders all of whom are natural persons active in the conduct of the business, it may be represented by an officer or general manager who has been authorized to appear on behalf of the corporation, or;

(b) if such a water or sewer utility is a general partnership; and the partnership has fewer than ten partners, whether limited or general, except that a husband and wife are treated as one partner for this purpose; and all partners, whether limited or general, are natural persons; it may be represented by a general partner who has been authorized to appear on behalf of the general partnership;

(4) if the party is a water and sanitation district governed by the Water and Sanitation District Act, Section 73-21-1 NMSA 1978 *et seq.*, it may be represented by an officer or employee of the water and sanitation district who has been authorized by the water and sanitation district to appear on its behalf;

(5) if the party is a utility submitting an application relating to securities pursuant to Subsection B of Section 62-6-8 NMSA 1978, it may be represented by an officer or employee of the utility who has been authorized by the utility to appear on its behalf; however, upon a finding by the commission or the presiding officer that there is good cause to hold a public hearing on such an application, the applying utility shall be represented in that proceeding by an attorney licensed to practice law in New Mexico.

G. The commission or presiding officer may require any person claiming to represent any other person or entity as allowed by this rule to provide such verification or corroboration of their claimed

representational authority as the commission or presiding officer may deem necessary.

H. Nothing in this rule shall be construed to prohibit a party from being represented in a formal proceeding by an attorney licensed to practice law in New Mexico when such representation is desired by a party or is required by law.

[1.2.2.9 NMAC - Rp, 17 NMAC 1.2.9, 9/1/2008; A, 4/6/2021]

1.2.2.10 FILING AND SERVICE:

~~_____ **A.** **Filing:** A pleading or document is considered filed on the date stamped by the commission. Any pleading or document received after regular business hours will be stamped and considered filed on the next regular business day.~~

~~_____ **B.** **Rejection:**
_____ **(1)** Pleadings and documents which are not in substantial compliance with these or other commission rules, orders of the commission or presiding officer, or applicable statutes may be rejected within thirty (30) days after filing.
_____ **(2)** If rejected, such papers will be returned with an indication of the deficiencies therein. Acceptance of a pleading or document for filing is not a determination that the pleading or document complies with all requirements of the commission or presiding officer and is not a waiver of such requirements.~~

~~_____ **(3)** The chief of staff of the commission is authorized to reject pleadings and documents under this rule and to sub-delegate such authority.~~

~~_____ **(4)** Pleadings or documents that have been rejected shall not be entered on the commission's docket for decision.~~

~~_____ **C.** **Service Generally:**~~

~~_____ **(1)** Except as otherwise provided by rule or order, all pleadings, orders, notices, and documents filed in a proceeding shall be promptly served upon those persons described in Paragraph (4) of Subsection C of 1.2.2.10 NMAC by the person filing the orders, notices, pleadings, or documents. Service~~

~~shall be made by depositing the pleading, order, notice, or document in the U.S. mail, postage prepaid, using first class or express mail, by delivering the pleading, order, notice, or document to a commercial courier service for delivery, by hand delivery, or by electronic transmission in accordance with other rules governing electronic service promulgated by the commission. The date of service shall be the date of deposit in the mail, delivery to a commercial courier service, hand delivery, or electronic transmission.~~

~~_____ **(2)** A certificate of service listing, by name, each person served and describing the manner and date of service shall be filed with or attached to the pleading, order, notice, or document being filed and all copies served or filed, unless otherwise directed by the commission or presiding officer.~~

~~_____ **(3)** Service of pleadings, orders, notices, and documents on the staff's or a party's named attorney is valid service upon staff or the party for all purposes in the proceeding unless the commission or presiding officer directs otherwise.~~

~~_____ **(4)** Service of pleadings, orders, notices, and documents shall be made upon all persons included on the official service list. The official service list is the most recent service list issued by the commission or presiding officer in the proceeding.~~

~~_____ **(a)** A service list shall include parties and staff or their counsel of record and shall be issued by the commission or presiding officer in all proceedings after the deadline for intervention has passed in the proceeding, and may be revised from time to time.~~

~~_____ **(b)** The commission or presiding officer shall serve all service lists upon staff and the parties to the proceeding promptly upon issuance of the list.~~

~~_____ **(c)** Prior to the issuance of an official service list, all pleadings, orders, notices, and documents filed in a proceeding shall be served by the person filing the orders, notices,~~

~~pleadings, or documents upon all other parties in the proceeding, persons who have pending motions to intervene, staff, and as otherwise required by commission rule or order.~~

~~_____ **D.** **Electronic service:** Electronic service shall be effectuated in accordance with other rules of the commission governing electronic filing and service.~~

~~_____ **E.** **Amendments and withdrawal of pleadings and supporting documents:**~~

~~_____ **(1)** Except in the case of formal complaints, pleadings may be amended or withdrawn only with leave of the commission or presiding officer and upon such conditions as the commission or presiding officer may deem appropriate.~~

~~_____ **(2)** Formal complaints may be amended without leave at any time prior to the issuance of the probable cause determination required by this rule.~~

~~_____ **(3)** Amendments to any pleading shall not broaden the scope of the issues originally filed unless the commission or presiding officer exercises the discretion to allow such an amendment.~~

~~_____ **(4)** Upon any amendment or withdrawal of a pleading allowed, the commission or presiding officer may require a supplementary public notice.~~

~~_____ **(5)** Direct testimony and exhibits filed may be amended or withdrawn only with leave of the commission or presiding officer, who may take into consideration, among other things, any delay or prejudice to the commission, its staff, or the parties which would result from the granting of the motion. The commission or presiding officer may grant or deny the motion or grant the motion only upon such conditions as are deemed appropriate. Upon any amendment or withdrawal allowed, the commission or presiding officer may require a supplementary public notice.]~~

~~_____ **A.** **Service and contact emails:** all regulated entities shall at all times keep a current email~~

on file with the commission's chief clerk or designee at which they can receive service of pleadings, process and other communication from the commission. All participants in open dockets shall provide a current email to the commission's chief clerk or designee at which they can receive service of pleadings, process and other communication from the commission, unless they do not have access to email.

B. Service generally:

(1) Except as otherwise provided by this rule or order of the commission or presiding officer, all pleadings, orders, notices, and documents filed in a proceeding shall be promptly served upon those persons described in Paragraph (4) of Subsection B of 1.2.2.10 NMAC by the person filing the orders, notices, pleadings, or documents. Service of electronic filings shall be made by electronic transmission. If a person does not have the ability to serve and be served electronically service on and by that person shall be made by depositing the pleading, order, notice, or document in the U.S. mail, postage prepaid, using first class or express mail, by delivering the pleading, order, notice, or document to a commercial courier service for delivery, by hand delivery. The date of service shall be the date of deposit in the mail, delivery to a commercial courier service, hand delivery, or electronic transmission.

(2) A certificate of service listing, by name, each person served and describing the manner and date of service shall be attached to the pleading, order, notice, or document being filed and all copies served or filed, unless otherwise directed by the commission or presiding officer.

(3) Service of pleadings, orders, notices, and documents on the staff's or a party's named attorney is valid service upon staff or the party for all purposes in the proceeding unless the commission or presiding officer directs otherwise.

(4) Service of pleadings, orders, notices, and documents shall be made upon all

persons included on the official service list. The official service list is the most recent service list issued by the commission or presiding officer in the proceeding.

(a) A service list shall include parties and staff or their counsel of record and shall be issued by the commission or presiding officer in all proceedings after the deadline for intervention has passed in the proceeding, and may be revised from time to time.

(b) The commission or presiding officer shall serve all service lists upon staff and the parties to the proceeding promptly upon issuance of the list.

(c) Prior to the issuance of an official service list, all pleadings, orders, notices, and documents filed in a proceeding shall be served by the person filing the orders, notices, pleadings, or documents upon all other parties in the proceeding, persons who have pending motions to intervene, staff, and as otherwise required by commission rule or order.

(5) Orders or documents issued by the commission or presiding officer are effective on the date they are filed unless otherwise stated in the order or document;

(6) When serving documents electronically each document shall be identified in the following four segment format: case number-filing date-party name-pleading identifier. Each name segment shall be separated by a hyphen. Case number shall be in the form: xx-xxxxx-suffix (UT or TR). Filing date shall be in the form: four digit year-two digit month-two digit day of month. Party name shall utilize a single word or abbreviated form, e.g. party initials, acronym or other identifier. The pleading identifier shall identify the nature of the pleading by concise description, e.g. petition, application, complaint, answer, motion seeking xxxxxxx, brief, response, reply, etcetera.

C. Date stamps on filed documents and pleadings:

(1) Electronic filings:

(a) the filing transmittal email for each filing, as received by the records bureau, shall be converted to a PDF and appended to every filed document or pleading before uploading to e-docket;

(b) the date and time on the filing transmittal email shall serve as the date stamp for the filed document or pleading;

(c) if the date and time on the filing transmittal email from a party or other person reflects a date or time that is outside of regular business hours, the filed document or pleading will be deemed to be filed the following business hour;

(d) if the date and time on the filing transmittal email from the commission or a presiding officer reflects a date or time that is outside of regular business hours, the filed document or order will be deemed to be filed as of the date and time on the filing transmittal email;

(e) filing transmittal emails shall be substantially in the format of the sample transmittal email attached as exhibit one to this rule;

(f) the filing transmittal email should be addressed to the records bureau email address only and should be a separate email from any service email;

(2) For a filings by mail or in person, the records bureau shall date stamp the original document or pleading with the date it is deemed filed, in accordance with the definition of date and time of filing provided in Paragraph (1) of Subsection D of 1.2.2.7 NMAC, before scanning and uploading to e-docket. The filer may request and provide to the records bureau any number of conformed copies of the filed document or pleading for the records bureau to stamp and return to them. If the filing is made by mail, the filer must provide a self-addressed stamped envelope for the return of the conformed copies.

D. Filings:

(1) Any complete, correctly filed document, order, notice or pleading will be accepted by the chief clerk or designee and will be uploaded in the .pdf format submitted in the appropriate identified case numbers locations in e-docket on a regular basis for the purpose of inspection of records.

(2) All filed documents shall be made available, upon reasonable demand, for inspection by the chief clerk or designee public, other parties or the commission.

(3) The filing party has the responsibility to make sure that the filed document or pleading is complete and accurate.

(4) The filing party shall ensure that all filed documents and pleadings do not contain or have properly redacted any confidential information or "protected personal identifier information" as defined by 1-079 NMRA and Section 14-2-6 NMSA 1978.

(5) The filing party shall ensure that all filed documents and pleadings do not contain or have properly redacted any protected information that is prohibited from disclosure by any state or federal law or regulation.

(6) When a party files a document that contains redacted confidential information or personal protective identifier information they shall deliver a non-redacted version to the records bureau in accordance with Paragraph (12) of Subsection E of 1.2.2.10 NMAC.

(7) A filing party who files any documents or pleadings that contain protected personal identifier information or information prohibited from disclosure by state or federal law or regulation shall be solely liable for any damages that result from filing such information with the commission.

(8) Except as provided in Paragraph (2) of Subsection C of 1.2.2.10 NMAC, persons exempted from the electronic

filing requirement may physically file documents or pleadings by:

(a) sending one original of the document or pleading to be filed via regular postal mail to: NMPRC Records Bureau, PO Box 1269, Santa Fe, NM 87504; or

(b) if the records bureau has a physical location that is open to the public, by delivery of one original of the document or pleading to the commission's chief clerk or designee during posted office hours.

E. Electronic filing:

(1) Electronic filing required:

(a) all regulated entities are required to make electronic filings;

(b) all persons should make electronic filings if they have the ability to do so;

(c) only persons who lack the ability to make electronic filings are permitted to make physical filings;

(2) electronically filed documents shall be emailed to the records bureau email address as .pdf documents;

(3) electronically filed documents shall be scanned with a regular signature or be electronically signed;

(4) electronically filed documents shall include the email address of the person signing the document in the signature block, and if filing on behalf of a regulated entity, the email address of the regulated entity;

(5) electronically filed documents shall be combined into one complete document, shall include accompanying consecutively numbered attachments, if any, except in cases where the .pdf exceeds size limit restrictions, and if so the document shall comply with Paragraph (8) of Subsection E of 1.2.2.10 NMAC herein;

(6) electronically filed documents shall include a certificate of service evidencing service upon which

individuals or entities were served and by what manner of service;

(7) Confidentiality agreements and non-disclosure agreements: when filing nondisclosure agreements or confidentiality agreements, each confidentiality agreement or non-disclosure agreement shall be filed as a separate document;

(8) when emailing electronically filed documents to the records bureau email address there are size limit restrictions to the .pdf attachments of approx. 20MB but this may change as the commission's servers change. If a filer receives an "undeliverable" email due to attachment size limits, the filer shall re-send the .pdf as a single document using a download link that allows for it to be downloaded from a cloud service such as Dropbox, One Drive, etcetera. If it is impossible to re-send an oversized .pdf via a download link it is permissible to split the .pdf into multiple smaller sized files and email in batches with identifying numbers showing how the document should be combined (i.e. batch one of three, batch two of three, etcetera) so that the records chief clerk or designee may properly assemble for filing in e-docket;

(9) the filing date for an electronically filed document shall be the date the filing email is sent if emailed during regular business hours for the commission; if emailed outside of regular business hours the document will be considered received and filed on the next regular business day;

(10) no physical hard copies of electronically filed documents or multiple copies of physically filed documents are required to be submitted unless the commission or presiding officer directs the filer to do so. At the direction of the commission or presiding officer a designated number of copies of any filed document shall be mailed, by regular postal service mail, to the commission at any number of designated addresses.

(11) The commission or presiding officer may

direct any filer to submit documents or pleadings to them in a native document format in addition to the PDF version filed with the records bureau if a native format exists:

(12) If for any reason physical electronic storage media must be presented to the commission, unless otherwise directed by the commission or presiding officer, the electronic storage media shall be a USB flash drive. All electronic storage media submitted pursuant to this rule shall be compatible with the commission's current computer capabilities. All physical electronic storage media filed shall have affixed thereto a label containing the appropriate case number, the title of the pleading or document, the name of the party or staff making the filing:

(13) **Confidential materials** are an exception to the electronic filing requirement and shall be filed as follows:

(a) subject to the terms of any applicable protective order, confidential materials shall be filed by mailing hard copies to the NMPRC Records Bureau, PO Box 1269, Santa Fe, NM 87504 or by in-person delivery of hard copies to the commission's chief clerk or designee;

(b) when filing confidential materials they shall submitted to the records bureau in a sealed envelope that is separate from any mailing envelope;

(c) the sealed envelope containing confidential materials shall list the case number, case caption, document name, name of filer and other non-confidential identifying information on the outside of the envelope;

(14) Parties are responsible for the timely filing of electronic documents to the same extent as with the filing of non-electronic documents, with the same consequences for missed deadlines;

F. Rejection:

(1) Pleadings and documents which are not in substantial compliance with these or

other commission rules, orders of the commission or presiding officer, or applicable statutes may be rejected within thirty (30) days after filing.

(2) If rejected, such papers will be returned with an indication of the deficiencies therein. However, a copy of the rejected papers shall be retained by the chief clerk or designee as a public record. Acceptance of a pleading or document for filing is not a determination that the pleading or document complies with all requirements of the commission or presiding officer and is not a waiver of such requirements.

(3) The chief of staff of the commission is authorized to reject pleadings and documents under this rule and to sub-delegate such authority.

(4) Pleadings or documents that have been rejected shall not become part of the record proper used as a basis for the commission's decision.

G. Amendments and withdrawal of pleadings and supporting documents:

(1) Except in the case of formal complaints, pleadings may be amended or withdrawn only with leave of the commission or presiding officer and upon such conditions as the commission or presiding officer may deem appropriate.

(2) Formal complaints may be amended without leave at any time prior to the issuance of the probable cause determination required by this rule.

(3) Amendments to any pleading shall not broaden the scope of the issues originally filed unless the commission or presiding officer exercises the discretion to allow such an amendment.

(4) Upon any amendment or withdrawal of a pleading allowed, the commission or presiding officer may require a supplementary public notice.

(5) Direct testimony and exhibits filed may be amended or withdrawn only with leave of the commission or

presiding officer, who may take into consideration, among other things, any delay or prejudice to the commission, its staff, or the parties which would result from the granting of the motion. The commission or presiding officer may grant or deny the motion or grant the motion only upon such conditions as are deemed appropriate. Upon any amendment or withdrawal allowed, the commission or presiding officer may require a supplementary public notice.

(6) A copy of any withdrawn filing shall be retained by the chief clerk or designee as a public record.

[1.2.2.10 NMAC - Rp, 17 NMAC 1.2.28, 9/1/2008; A, 4/6/2021]

1.2.2.11 PLEADINGS:

Pleadings shall be in writing, shall state their object, and shall be signed by the party or staff representative seeking authorization or relief from the commission or by their attorney.

A. Contents: All pleadings shall be paginated and shall contain:

(1) a clear and concise statement of the authorization or other relief sought;

(2) in the case of initial pleadings, the exact legal name, mailing address, and telephone number of each party or the staff representative seeking the authorization or relief; the address or principal place of business of such party or staff; and the name, mailing address, email address, and telephone number of the party's or staff's attorney, if any;

(3) a concise and explicit statement of the facts which said party or the staff is prepared to prove by competent evidence and upon which the commission is expected to rely in granting the authorization or other relief sought; and

(4) a table of contents, if more than ten pages.

B. Supporting exhibits: All pertinent and relevant data, exhibits, illustrations, and prepared testimony, if required by this or any other rule or order of the

commission or presiding officer, must be filed along with the pleading.

(1) If supporting exhibits consist of tables or graphs, the specific formulae and equations used to derive the tables or graphs shall be attached as part of the supporting exhibit.

(2) Failure to submit all direct testimony and exhibits in support of a proposed tariff change, application, or petition at the time of filing, if required by rule or order of the commission or presiding officer, may result in a rejection of the pleading or document without prejudice.

(3) Likewise, failure to comply with an order of the presiding officer requiring the filing of testimony and exhibits may result in the rejection of the pleading or document without prejudice.

C. Form and size: All pleadings shall be typed or machine printed on paper eight and one-half (8-1/2) inches wide and eleven (11) inches long. The impression shall be on only one side of the paper and shall be double-spaced. Footnotes and quotations may be single-spaced. Pleadings shall be fastened only on the left side. Reproductions may be made by any process provided that all copies are clear and permanently legible.

D. Interrogatories: Written interrogatories and written answers to interrogatories, shall conform to the form and size requirements of this rule, except that they may be single-spaced unless the commission or presiding officer otherwise directs.

E. Electronic form: Any pleading or supporting document may additionally be presented in electronic form at the option of the party or staff making a filing, and shall be presented in electronic form if the commission or presiding officer so orders. All diskettes, CD-ROMs or other electronic storage media submitted pursuant to this rule shall be compatible with the commission's current computer capabilities. Diskettes, CD-ROMs and other electronic storage media

shall contain the exact electronic image of the document or pleading being replicated. Unless otherwise ordered by the commission or presiding officer, the contents of all filed diskettes, CD-ROMs and other electronic storage media shall be physically or electronically protected from alteration or deletion. All diskettes, CD-ROMs or other electronic storage media filed shall have affixed thereto a label containing the appropriate caption and case number, the title of the pleading or document, the name of the party or staff making the filing, and space for date-stamping.]

F. E. Title and docket number: All pleadings filed shall show the caption for the proceeding, the docket number, and the title of the pleading. Pleadings initiating new proceedings shall leave a space for the docket number.

G. E. Construction: All pleadings shall be liberally construed and errors or defects therein which do not mislead or affect the substantial rights of staff and the parties involved shall be disregarded.

H. Copies: The party or staff filing a pleading shall provide the commission with one (1) original plus five (5) conformed copies of the pleading unless the commission or presiding officer directs otherwise. The commission or presiding officer may require the filing of additional paper copies.]

[1.2.2.11 NMAC - Rp, 17 NMAC 1.2.10, 9/1/2008; A, 4/6/2021]

1.2.2.34 TRANSCRIPTS:

A. Record of proceedings and testimony: A full and complete record of all proceedings before the commission or presiding officer in any formal public hearing and all testimony shall be taken down by a reporter appointed by the commission.

B. Copies of transcripts: Transcripts may be requested by any party or by staff at the inception of the public hearing or their preparation otherwise directed by the commission or presiding officer. Any party other than the

commission or its staff who requests and receives transcripts shall pay the specified costs to the preparer of the transcript. If such receipt is earlier than the date on which the commission or staff would otherwise receive transcripts, the preparer shall deliver the commission's and staff's copies to the commission and staff on the earlier date.]

A. Record of proceedings and testimony:

(1) A full and complete record of all proceedings before the commission or presiding officer in any formal public hearing and all testimony shall be made by either audio recording by a commission employee or shall be taken down and transcribed by a certified court reporter at the discretion of the presiding officer.

(2) If the commission or presiding officer intends to have a transcript made by audio recording they will state this in the notice or order of hearing or proceeding.

(3) Upon receiving notice that the commission or presiding officer intends to have a transcript made by audio recording, any party can file a request to have the hearing or proceeding transcribed by a certified court reporter and the commission will arrange a court reporter. A party requesting a court reporter for a hearing or proceeding that would otherwise be made by audio recording shall be responsible for the full cost of the court reporter's fees. A request by any party to have a hearing or proceeding transcribed by a certified court reporter shall be filed as soon as practicable before the hearing or proceeding. If a request by any party to have a hearing or proceeding transcribed by a certified court reporter is not made at least seven days prior to the hearing the commission may be unable to accommodate the request.

B. Copies of transcripts: The commission shall file in e-docket a pdf version of any transcript it receives on the date the transcript is created or the date it is filed with the commission or the presiding officer.

C. Corrections:

Suggested corrections to the transcript or record must be offered within 13 days after the transcript is filed in the proceeding except for good cause shown, and such suggestion shall be in writing and served upon each party, staff, the official reporter, and the presiding officer. Failure to timely file suggested corrections without good cause shown constitutes a waiver of objections to the transcript.

(1) Objections to the suggested corrections shall be made in writing within 13 days from the filing of the suggestions. The commission or presiding officer shall, with or without public hearing, determine what changes, if any, shall be made in the record.

(2) If no objection is made to the suggested corrections, the presiding officer may in their discretion direct that the corrections be made and the manner of making them.

D. Citation form:

When referring to the record in briefs and other documents, staff and the parties shall cite to the transcript using the reporter’s pagination, e.g., Tr. (transcript page number). If a transcript is made by audio recording staff and the parties shall cite to the transcript using time markers. [1.2.2.34 NMAC - Rp, 17 NMAC 1.2.36, 9/1/2008; A, 4/6/2021]

1.2.2.35 RULES OF EVIDENCE:

A. General:

(1) Subject to the other provisions of this rule, all relevant evidence is admissible which, in the opinion of the presiding officer, is the best evidence most reasonably obtainable, having due regard to its necessity, competence, availability, and trustworthiness.

(2) In passing upon the admissibility of evidence the presiding officer shall give consideration to, but shall not be bound by, the New Mexico rules of evidence which govern proceedings in the courts of this state. The presiding officer shall also give consideration to the legal requirement that any final

decision on the merits be supported by competent evidence.

(3) Unless otherwise directed by the commission or the presiding officer, documents that require sworn verification by notarization under commission rules may be supported by unsworn affirmation in compliance with rule of civil procedure 1-011(B) NMRA.

B. Testimony under oath: All testimony to be considered by the commission or presiding officer in formal public hearings except matters officially noticed or entered by stipulation shall be made under oath.

C. Stipulation as to facts:

(1) The parties and staff in any proceeding before the commission or presiding officer may, by stipulation in writing filed or entered in the record, agree upon the facts or any portion thereof involved in the controversy, which stipulation shall be binding upon the parties and staff entering into the stipulation and may be regarded and used by the commission or presiding officer as evidence at the public hearing. It is desirable that the facts be thus agreed upon wherever practical. The commission or presiding officer may, however, require proof or evidence of the facts stipulated to, notwithstanding the stipulation of the parties and staff.

(2) In the event the parties and staff stipulate to certain facts as part of a proposed settlement of the case, and the settlement is rejected, the stipulations of fact entered for purposes of the settlement will not be binding upon the parties or used as evidence in any subsequent public hearing on the merits unless all signatories thereto agree to refile the stipulations of fact.

D. Administrative notice:

(1) The commission or presiding officer may take administrative notice of the following matters if otherwise admissible under Subsection A of 1.2.2.35 NMAC:

(a) rules, regulations, administrative rulings, published reports, licenses, and orders of the commission and other governmental agencies;

(b) contents of certificates, permits, and licenses issued by the commission;

(c) tariffs, classifications, schedules, and periodic reports regularly established by or filed as required or authorized by law or order of the commission;

(d) decisions, records, and transcripts in other commission proceedings;

(e) state and federal statutes;

(f) decisions of state and federal courts;

(g) generally recognized technical and scientific facts; and

(h) matters of which the courts of this state may take judicial notice.

(2) In addition the commission or presiding officer may take administrative notice of the results of their own inspection of any physical location or condition involved in the proceeding, and may take administrative notice on the record of the results of the commission’s previous experience in similar situations and general information concerning a subject within the commission’s expert knowledge.

(3) Parties and staff requesting that administrative notice be taken of documents or portions of documents or of the contents thereof must submit those documents or portions of documents to the commission or presiding officer in the form of exhibits except as may otherwise be provided in this rule.

(4) The commission or presiding officer may take administrative notice whether requested or not subject to appropriate objection under Subsection L of 1.2.2.35 NMAC. If staff or a party requests that administrative notice be taken, the commission or presiding officer must be provided the necessary information.

(5) Matters noticed are admitted into evidence to the same extent as other relevant evidence.

E. Resolutions:

Resolutions, properly authenticated, of the governing bodies of cities, towns, counties and other municipal corporations, and of chambers of commerce, commercial or mercantile boards of trade, agricultural or manufacturing societies, and other civic organizations will be received in evidence if relevant. Such resolution shall be received subject to rebuttal by adversely affected staff or parties as to the authenticity of the resolution. Recitals of fact contained in resolutions shall not be deemed proof of those facts.

F. Official records:

An official rule, report, order, record, or other document prepared and issued by any governmental authority may be introduced into evidence. In cases where such official records, otherwise admissible, are contained in official publications or publications by nationally recognized reporting services and are in general circulation and readily accessible to all parties and staff, they may be introduced by reference unless the presiding officer directs otherwise, provided that proper and definite reference to the record in question is made by the party or staff offering the same.

G. Commission

files: Papers and documents on file relevant to the proceeding may be introduced into evidence by reference to number or date or by any other method of identification satisfactory to the presiding officer unless the presiding officer directs that the paper or document or a summary thereof be presented for the record in the form of an exhibit. If only a portion of any such paper or document is offered in evidence, the part so offered shall be presented for the record in the form of an exhibit.

H. Records in other proceedings: In case any portion of the record in any other proceeding before the commission or presiding officer is admissible for any purpose and is offered in evidence, a true copy

of such portion may be presented for the record in the form of an exhibit.

I. Prepared testimony:

~~_____ (1) Prepared written testimony shall be received in evidence with the same force and effect as though it were stated orally by the witness. All witnesses must be present at the public hearing and shall adopt, under oath, their prepared written testimony, subject to cross-examination and motions to strike unless the witness's presence at public hearing is waived by the commissioner or presiding officer upon notice to and without objection from staff and the parties.~~

~~_____ (2) Unless the commission or presiding officer directs otherwise, testimony in written form shall be prepared in accordance with the following guidelines:~~

~~_____ (a) the cover page shall contain the case caption and number and the name of the witness;~~

~~_____ (b) all pages are to be typed or machine printed and double-spaced;~~

~~_____ (c) the top, bottom, and left-hand margins shall be at least one and one-half (1-1/2) inches;~~

~~_____ (d) the name of the witness and the case number, if then known, shall be typed at the top center of each page two (2) inches from the edge;~~

~~_____ (e) the page number for each page shall be typed at the bottom center one (1) inch from the edge;~~

~~_____ (f) a square of approximately one and one-half (1-1/2) inches in the upper right-hand corner of each page shall be left clear for commission use; and~~

~~_____ (g) testimony shall contain line numbers on the left-hand side of the page.~~

~~_____ (3) Prepared testimony shall be included in the record as an exhibit.]~~

_____ (1) Prepared written testimony shall be received in evidence as exhibits with the same force and effect as though it

were stated orally by the witness.

All witnesses must be present at the public hearing and shall adopt, under oath, their prepared written testimony, subject to cross-examination and motions to strike unless the witness's presence at public hearing is waived by the commissioner or presiding officer upon notice to and without objection from staff and the parties.

_____ (2) Unless the commission or presiding officer directs otherwise, testimony in written form shall be prepared in accordance with the following guidelines:

_____ (a) the cover page shall contain the case caption and number and the name of the witness;

_____ (b) all pages are to be typed or machine printed and double-spaced;

_____ (c) the top, bottom, and left-hand margins shall be at least one and one-half inches;

_____ (d) the name of the witness and the case number, if then known, shall be typed at the top center of each page two inches from the edge;

_____ (e) the page number for each page shall be typed at the bottom center one inch from the edge;

_____ (f) a square of approximately one and one-half inches in the upper right-hand corner of each page shall be left clear for commission use;

_____ (g) testimony shall contain line numbers on the left-hand side of the page; and

_____ (h) testimony shall be filed in question and answer format and be supported by affidavit.

_____ (3) Unless the commission or presiding officer directs otherwise no documents other than pre-filed testimony shall be admitted into evidence on direct examination of a witness.

J. Exhibits:

(1) Use of data in exhibits:

(a)
When supporting exhibits consist of

tables of data or graphs, all formulae, equations, or other methodology used to derive the data shall be included as part of the supporting exhibit.

(b)

If data used in supporting exhibits are derived from or supported by complex computerized analyses, working copies of the computer models may be included on a diskette compatible with the commission's current computer capabilities, in lieu of printed material.

(2) Size

of exhibits: Except by special permission of the presiding officer, no specially prepared exhibits offered as evidence shall be of greater size, when folded, than eight and one-half (8-1/2) inches by eleven (11) inches.

(3) Marking

of exhibits: All exhibits shall be marked numerically in the order of introduction by the moving party or staff. To the extent practicable all exhibits, including those to be introduced on cross-examination, shall be marked before the start of public hearings on the day the witness will be examined thereon.

(4)

Designation of part of document as evidence:

(a)

When relevant and material matter offered in evidence by any party or staff is embraced in a book, paper, or document containing other matter not material or relevant, the party or staff offering the same must plainly designate the matter so offered.

(b)

If other matter is in such volume as would unnecessarily encumber the record, such book, paper, or document will not be received in evidence but may be marked for identification, and, if properly authenticated, the relevant or material matter may be read into the record, or, if the presiding officer so directs, a true copy of such matter in proper form shall be received as an exhibit and like copies delivered by the party or staff offering the same to all other parties and staff appearing at the public hearing.

(c)

All parties and staff shall be afforded

an opportunity to examine the book, paper, or documents and to offer in evidence in like manner other portions thereof if found to be material and relevant.

(5) Abstracts

of documents: When documents are numerous and it is desired to offer in evidence more than a limited number of such documents as typical of the others, an abstract shall be prepared and offered as an exhibit giving other parties to and staff in the proceeding reasonable opportunity to examine the abstract and the documents.

(6)

Summaries of documents: Where a document being offered into evidence is voluminous, the presiding officer may direct that a summary be prepared and offered as an exhibit giving other parties to and staff in the proceeding reasonable opportunity to examine the summary and the document. The presiding officer may require that the summary be offered as an exhibit in addition to the summarized document or in lieu thereof.

(7) Copies of

exhibits:

(a)

When exhibits not attached to pleadings as required by this rule are offered in evidence, the original shall be furnished to the reporter.

(b)

The party or staff offering exhibits shall also furnish a copy to each commissioner or hearing examiner sitting, advisory staff if in attendance, each party, and the staff unless such copies have previously been furnished or the presiding officer directs otherwise.

(c)

The proponent shall, to the extent practicable, furnish the required copies to the reporter, the commissioners or hearing examiner, advisory staff, parties, and staff before the start of the public hearings on the day said proponent intends to offer the exhibits into evidence.

K. Additional

evidence: At any stage of the proceeding the commission or presiding officer may require the

production of further evidence upon any issue. Such evidence may, at the discretion of the commission or presiding officer, be in writing or presented orally. All parties and the staff will be given an opportunity to reply to such evidence submitted and cross-examine the witness under oath.

L. Objections:

(1) Any

evidence offered in whatever form shall be subject to appropriate and timely objection. When objection is made to the admissibility of evidence, such evidence may be received subject to later ruling by the commission or presiding officer.

(2) The

commission or presiding officer their discretion either with or without objection may exclude inadmissible, incompetent, cumulative, or irrelevant evidence or order the presentation of such evidence discontinued.

(3) Parties

or staff objecting to the introduction of evidence shall briefly state the grounds of objection at the time such evidence is offered.

(4) The

evidence to be admitted at public hearing shall be material and relevant to the issue. Formal exceptions to rulings are not necessary and need not be taken.

M. Offers of proof:

An offer of proof for the record may be made and shall consist of a statement of the substance of the evidence to which objection has been sustained. The commission or presiding officer may require offers of proof to be submitted in writing in question and answer form.

N. Rebuttal evidence:

(1) Rebuttal

evidence is evidence which tends to explain, counteract, repel, or disprove evidence submitted by another party or by staff. Evidence which is merely cumulative or could have been more properly offered in the case in chief is not proper rebuttal evidence.

(2) Staff

or a party wishing to offer rebuttal testimony shall at the close of their opponent's direct case move the commission or presiding officer to

Other Material Related to Administrative Law

**HEALTH,
DEPARTMENT OF**
**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT
OF HEALTH
SECRETARY-TRACIE C.
COLLINS, M.D.**
MARCH 12, 2021
**Public Health Emergency Order
Clarifying that Current Guidance
Documents, Advisories, and
Emergency Public Health Orders
Remain
in Effect; and Amending Prior
Public Health Emergency Orders
to
Impose County-by-County
Restrictions Due to COVID-19**
PREFACE

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 (“COVID-19”). Continued social distancing and self-isolation measures are necessary to protect public health given the potentially devastating effects that could result from a rapid increase in COVID-19 cases in New Mexico. It remains the core purpose of this Order to emphasize that all New Mexicans should be staying in their homes for all but the most essential activities and services. When New Mexicans are not in their homes, they must strictly adhere to social distancing protocols and wear face coverings to minimize risks. These sacrifices are the best contribution that each of us can individually make to protect the health and wellbeing of our fellow citizens and the State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage

New Mexicans to stay in their homes for all but the most essential activities.

It is hereby **ORDERED** that

1. All current guidance documents and advisories issued by the Department of Health remain in effect.

2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:

A. March 24, 2020 Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19; and

B. December 15, 2020 Amended Public Health Emergency Order Implementing Additional Contact Tracing Information Requirements for All Laboratories and Submitters Submitting Notifiable Condition COVID-19 Test Results to the New Mexico Epidemiology and Response Division.

C. January 8, 2021 Emergency Order Implementing Administration and Reporting Requirements for All COVID-19 Vaccine Providers.

D. January 29, 2021 Amended Public Health Emergency Order Temporarily Limiting Long-Term care Facilities Visitation Due to COVID-19; and

E. February 26, 2021 Public Health Emergency Order Implementing Administration Requirements for All COVID-19 Vaccine Providers and Requiring Accurate Information be Provided by Individuals Registering to Receive the COVID-19 Vaccine.

3. The February 24, 2021 Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health

Orders Remain in Effect; and Amending Prior Public Health Emergency Orders Limiting Businesses and Non-Profit Entities’ Operations and Providing Additional Restrictions on Mass Gatherings Due to COVID-19 is hereby amended as follows:

ORDER

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through April 2, 2021;

WHEREAS, confirmed cases in the United States have risen to more than 29.2 million and confirmed COVID-19 infections in New Mexico have risen to over 187,000;

WHEREAS, COVID-19 is a deadly virus and has taken the lives of over 529,000 Americans and over 3,800 New Mexicans;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

WHEREAS, social distancing and the consistent and

proper use of face coverings in public spaces are the most effective ways New Mexicans can minimize the spread of COVID-19 and mitigate the potentially devastating impact of this pandemic in New Mexico; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE, I, Tracie C. Collins, M.D., Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance, as defined in NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

DEFINITIONS

As used in this Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) "Essential business" means any business or non-profit entity falling within one

or more of the following categories:

a. Health care operations including hospitals, walk-in-care health facilities, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, drug and alcohol recovery support services, and medical supplies and equipment manufacturers and providers;

b. Homeless shelters, food banks, and other services providing care to indigent or needy populations;

c. Childcare facilities;

d. Grocery stores, supermarkets, food banks, farmers' markets and vendors who sell food, convenience stores, and other businesses that generate more than one-third of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, animal feed or supplies, fresh meats, fish, and poultry, and any other consumable household products;

e. Farms, ranches, and other food cultivation, processing, or packaging operations;

f. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, self-storage facilities, airport operations, public transportation, airlines, taxis, private transportation providers, transportation network companies, water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, gas stations, solid waste collection and removal, trash and recycling collection, processing and disposal,

sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;

g. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;

h. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades;

i. Veterinary and livestock services, animal shelters and facilities providing pet adoption, daycare, or boarding services;

j. Media services;

k. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bike repair products;

l. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;

m. Hardware stores;

n. Laundromats and dry cleaner services;

o. Crematoriums, funeral homes, and cemeteries;

p. Banks, credit unions, insurance providers, licensed check cashing businesses, payroll services, brokerage services, and investment management firms;

q. Businesses providing mailing and shipping services;

r. Laboratories and defense and national security-related operations supporting the United States government, a contractor to the United States government, or any federal entity;

s. Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and

t. Logistics, and also businesses that store, transport, or deliver groceries, food, materials, goods, or services directly to residences, retailers, government institutions, or essential businesses.

(2) “Close-contact businesses” include barbershops, hair salons, tattoo parlors, nail salons, spas, massage therapy services, esthetician clinics, and tanning salons.

(3) “Food and drink establishments” include restaurants, breweries, wineries, distillers, cafes, coffee shops, or other similar establishments that offer food or drink. For purposes of this section, “breweries” are those businesses licensed pursuant to NMSA 1978, Section 60-6A-26.1; “distillers” are those businesses licensed pursuant to NMSA 1978, Section 60-6A-1; and “wineries” are those businesses licensed pursuant to NMSA 1978, Section 60-A-11.

(4) “Houses of worship” means any church, synagogue, mosque, or other gathering space where persons congregate to exercise their religious beliefs.

(5) “Large entertainment venues” means any publicly or privately owned venue typically or actually used to host large audiences for the purposes of entertainment or amusement, including, but not limited to: convention centers, concert venues, movie theaters, performance venues, professional or semi-professional sports venues, racetracks, and theaters.

(6) “Recreational facilities” means any publicly or privately owned facility typically or actually used for recreational activities capable of bringing persons within close proximity of one another, including, but not limited to: aquariums, amusement parks, arcades, basketball courts, baseball fields, bowling alleys, botanical gardens, family entertainment centers, football fields, go-kart courses, gold courses, guided raft and balloon tours, ice skating rinks, golf courses, museums with interactive displays or exhibits, miniature golf courses, ski areas, soccer fields, swimming pools, tennis courts, trampoline parks, youth programs, and zoos.

(7) “Bars and clubs” means any business, other than those specifically designed as a “food and drink establishment,” that typically or actually generates more than half of its revenue from the sale of alcohol for on-premises consumption, as well as adult entertainment venues, nightclubs, and dance clubs, regardless of the source of their revenue.

(8) “Places of lodging” means hotels, motels, RV parks, and short-term vacation rentals.

(9) “Retail space” means any business that regularly sells goods or services directly to consumers or end-users at the business location and includes, but is not limited to, the following “essential businesses” identified in the categories above: (1)d, (1)k, (1)m, and (1)n.

(10) “Mass gathering” means any public gathering, private gathering, organized event, ceremony, parade, funeral, or any other grouping that brings together a specified number of individuals in a single room or connected space, confined outdoor space, or open outdoor space. “Mass gatherings” also includes coordinated events in which individuals gather in vehicles. “Mass gathering” does not include the presence of any number of individuals where those individuals regularly reside. “Mass gathering”

does not include individuals who are public officials or public employees in the course and scope of their employment.

(11) “COVID-Safe Practices” (“CSPs”) are those directives, guidelines, and recommendations for businesses and other public operations that are set out and memorialized in the document titled “All Together New Mexico: COVID-Safe Practices for Individuals and Employers.” This document may be obtained at the following link <https://cv.nmhealth.org/covidsafe-practices/>.

THE “RED TO GREEN” FRAMEWORK

I DIRECT that the State shall continue to reopen according to the following county-by-county framework:

SUMMARY

This Order sets out the “Red to Green” framework, which includes four levels of operations that are based on a county’s ability to satisfy specified metrics: Turquoise Level, Green Level, Yellow Level, and Red Level. A county will remain at a given operating level so long as it continues to satisfy the specified metrics for that level. The Department of Health maintains the official map displaying each county’s current level at: <https://cvprovider.nmhealth.org/public-dashboard.html>. The Department of Health updates this map every other Wednesday. If a county fails to meet the specified metrics for a given level, the county must begin operating at the lower level’s restrictions within 48 hours of the map’s update. If a county begins meeting the specified metrics for a less restrictive level, the county may begin operating at that level’s restrictions immediately upon the map’s update.

REOPENING LEVEL METRICS

Counties shall be categorized

according to one of the following levels:

(1) Turquoise Level – Counties seeking to operate at this level must have satisfied the metrics required to operate at Green Level for the two most recent 14-day reporting periods.

(2) Green Level - Counties seeking to operate at this level must satisfy both of the following metrics:

(a) A new COVID-19 case incidence rate of no greater than 8 cases per 100,000 inhabitants during the most recent two-week period; AND

(b) An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 5%.

(3) Yellow Level - Counties seeking to operate at this level must meet either of the following metrics:

(a) A new COVID-19 case incidence rate of no greater than 8 cases per 100,000 inhabitants during the most recent two-week period; OR

(b) An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 5%.

(4) Red Level -All other counties shall operate at the Red Level.

REQUIREMENTS FOR EACH LEVEL

Turquoise Level - Turquoise Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all “mass gatherings” of more than one hundred fifty (150) individuals are prohibited. “Mass gatherings” in which individuals gather in vehicles are permitted so long as the gathering is limited to two hundred (200) vehicles.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to

the following occupancy limits and restrictions:

a. All “essential businesses,” excluding those defined as a “retail space,” may operate without occupancy limitations but must limit operations to only those absolutely necessary to carry out essential functions.

b. “Essential businesses” identified as a “retail space” may operate but may not exceed 75% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department. Further, such “retail spaces” may operate up to 100% capacity of any outdoor space on the premises.

c. “Houses of worship” may hold religious services, indoors or outdoors, or provide services through audiovisual means, but may not exceed 75% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

d. “Large entertainment venues” may operate up to 33% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department. Further, “large entertainment venues” may operate up to 75% capacity of any outdoor space on the premises.

e. “Recreational facilities” may operate up to 50% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department. Further, “recreational facilities” may operate up to 75% capacity of any outdoor space on the premises.

f. “Bars and clubs” may operate up to 33% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department. Further, “bars and clubs” may operate up to 75% capacity of any outdoor space

on the premises, where applicable.

“Bars and clubs” shall comply with all other requirements applicable to “food and drink establishments.”

g. “Food and drink establishments” may not provide dine-in service, except those restaurants that have completed the NM Safe Certified training program. All “food and drink establishments” that have completed the NM Safe Certified offered at <https://nmsafecertified.org>, and also comply with all NM Safe Certified requirements, including, but not limited to: screening customers and staff for symptoms of COVID-19 prior to entry, consenting to Department of Health spot-testing of symptomatic employees, requiring dine-in customers to provide limited contact information for contact tracing purposes, and retaining contact tracing information for no less than three weeks may operate at 75% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department. All “food and drink establishments,” regardless of compliance with the NM Safe Certified requirements, may provide service in outdoor seating areas up to 75% occupancy, where applicable. In all instances, tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served food or drink unless ordering food for carryout, and no bar or counter seating is permitted. “Food and drink establishments” may provide carryout service, or delivery service if otherwise permitted by law.

h. “Places of lodging” which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 100% of maximum occupancy. All other “places of lodging” shall not operate at more than 50% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered

as a vacation rental may operate but may not exceed fifteen (15) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

i. Any entity not identified above may operate but may not exceed 75% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department. Further, such entities may operate up to 100% capacity of any outdoor space on the premises.

Green Level - Green Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all “mass gatherings” of more than twenty (20) individuals are prohibited. “Mass gatherings” in which individuals gather in vehicles are permitted so long as the gathering is limited to one hundred twenty (120) vehicles, no food or drinks are sold at the gathering, and all individuals remain in their vehicles.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following occupancy limits and restrictions:

a. All “essential businesses,” excluding those defined as a “retail space,” may operate without occupancy limitations but must limit operations to only those absolutely necessary to carry out essential functions.

b. “Essential businesses” identified as a “retail space” may operate but may not exceed 50% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

c. “Houses of worship” may hold religious

services, indoors or outdoors, or provide services through audiovisual means, but may not exceed 50% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

d. “Large entertainment venues” may operate up to 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department. Further, “large entertainment venues” may operate up to 50% capacity of any outdoor space on the premises.

e. “Recreational facilities” may operate up to 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department. Further, “recreational facilities” may operate up to 50% capacity of any outdoor space on the premises.

f. “Bars and clubs” may operate up to 25% capacity of any outdoor space on the premises, where applicable, but shall not permit patrons to enter any indoor portion of the premises except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the premises only to the extent necessary to operate the outdoor portion. “Bars and clubs” shall comply with all other requirements applicable to “food and drink establishments.”

g. “Food and drink establishments” may not provide dine-in service, except those restaurants that have completed the NM Safe Certified training program. All “food and drink establishments” that have completed the NM Safe Certified offered at <https://nmsafecertified.org>, and also comply with all NM Safe Certified requirements, including, but not limited to: screening customers and staff for symptoms of COVID-19 prior to entry, consenting to

Department of Health spot-testing of symptomatic employees, requiring dine-in customers to provide limited contact information for contact tracing purposes, and retaining contact tracing information for no less than three weeks may operate at 50% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department. All “food and drink establishments,” regardless of compliance with the NM Safe Certified requirements, may provide service in outdoor seating areas up to 75% occupancy, where applicable. In all instances, tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served food or drink unless ordering food for carryout, and no bar or counter seating is permitted. “Food and drink establishments” may provide carryout service, or delivery service if otherwise permitted by law.

h. “Places of lodging” which have completed the NM Safe Certified training offered at <https://mnsafecertified.org> may operate up to 75% of maximum occupancy. All other “places of lodging” shall not operate at more than 40% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed ten (10) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

i. Any entity not identified above may operate but may not exceed 50% of the maximum occupancy of any outdoor or enclosed space on the premises, as determined by the relevant fire marshal or fire department.

Yellow Level - Yellow Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all “mass gatherings” of more than ten (10) individuals are prohibited. “Mass gatherings” in which individuals gather in vehicles are permitted so long as the gathering is limited to eighty (80) vehicles, no food or drinks are sold at the gathering, and all individuals remain in their vehicles.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following occupancy limits and restrictions:

a. All “essential businesses,” excluding those defined as a “retail space,” may operate but must limit operations to only those absolutely necessary to carry out essential functions.

b. “Essential businesses” identified as a “retail space” may operate but may not exceed 33% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

c. “Houses of worship” may hold religious services, indoors or outdoors, or provide services through audiovisual means, but may not exceed 33% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

d. “Large entertainment venues” may operate up to 25% capacity of any outdoor space on the premises but shall not permit patrons to enter any indoor portion of the venue except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the facility only to the extent necessary to operate the outdoor portion. Notwithstanding the foregoing, “large entertainment venues” may

operate up to 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department, for the limited purposes of recording and broadcasting entertainment, but shall in no event permit any live, in-person audience.

e. “Recreational facilities” may operate up to 33% capacity of any outdoor space on the premises but shall not permit patrons to enter any indoor portion of the facility except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the facility only to the extent necessary to operate the outdoor portion. Notwithstanding the foregoing, pools may operate up to 33% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department, so long as they are only used for physical therapy and socially distanced exercise.

f. “Bars and clubs” may not operate.

g. “Food and drink establishments” may not provide dine-in service unless they complete the NM Safe Certified training offered at <https://nmsafecertified.org>, as well as comply with all NM Safe Certified requirements, including, but not limited to: screening customers and staff for symptoms of COVID-19 prior to entry, consenting to Department of Health spot-testing of symptomatic employees, requiring dine-in customers to provide limited contact information for contact tracing purposes, and retaining contact tracing information for no less than three weeks. Those “food and drink establishments” that complete the NM Safe Certified training and comply with all attendant requirements mandated by that program may provide dine-in services but they may not exceed more than 33% of the maximum occupancy of any enclosed space on the premises,

as determined by the relevant fire marshal or fire department. All “food and drink establishments,” regardless of compliance with the NM Safe Certified requirements, may provide service in outdoor seating areas up to 75% occupancy, where applicable. In all instances, tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served food or drink unless ordering food for carryout, and no bar or counter seating is permitted. Any “food and drink establishment” that is permitted to serve alcohol must close for in person service by 10:00 p.m. and must remain closed until at least 4:00 a.m., but may continue to provide delivery service so long as customers are permitted on the premises. “Food and drink establishments” may provide delivery service after 10:00 p.m. but no customers are permitted on the premises. “Food and drink establishments” may provide carryout service, or delivery service if otherwise permitted by law.

h. “Places of lodging” which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 60% of maximum occupancy. All other “places of lodging” shall not operate at more than 33% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed five (5) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

i. “Close-contact businesses” may operate but may not exceed the lesser of 33% of the maximum occupancy of any outdoor or enclosed space on the premises, as determined

by the relevant fire marshal or fire department, or twenty (20) customers inside the building at any given time.

j. Any entity not identified above may operate but may not exceed 33% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

Red Level -Red Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all “mass gatherings” of more than five (5) individuals are prohibited. “Mass gatherings” in which individuals gather in vehicles are permitted so long as the gathering is limited to forty (40) vehicles, no food or drinks are sold at the gathering, and all individuals remain in their vehicles.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following occupancy limits and restrictions:

a. All “essential businesses,” excluding those defined as a “retail space,” may operate but must limit operations to only those absolutely necessary to carry out essential functions.

b. “Essential businesses” identified as a “retail space” may operate but may not exceed 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

c. “Houses of worship” may hold religious services, indoors or outdoors, or provide services through audiovisual means, but may not exceed 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

d. “Large entertainment venues” may not operate.

e. “Recreational facilities” may operate up to 25% capacity of any outdoor space on the premises but shall not permit patrons to enter any indoor portion of the facility except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the facility only to the extent necessary to operate the outdoor portion. Notwithstanding the foregoing, amusement parks may not operate.

f. “Bars and clubs” may not operate.

g. “Food and drink establishments” may provide service in outdoor seating areas up to 25% occupancy, where applicable, but shall not permit patrons to enter any indoor portion of the premises except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the premises only to the extent necessary to operate the outdoor portion. Tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served food or drink unless ordering food for carryout, and no bar or counter seating is permitted. “Food and drink establishments” may provide carryout service, or delivery service if otherwise permitted by law. Any “food and drink establishment” that is permitted to serve alcohol must close for in-person service by 9:00 p.m. and must remain closed until at least 4:00 a.m. but may continue to provide delivery service so long as no customers are permitted on the premises.

h. “Places of lodging” which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 40% of maximum occupancy. All other “places of lodging” shall not operate at more than 25% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other

similar space that is offered as a vacation rental may operate but may not exceed five (5) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

i. “Close-contact businesses” may operate but may not exceed 25% of the maximum occupancy of any outdoor or enclosed space on the premises, as determined by the relevant fire marshal or fire department, or ten (10) customers inside the building at any given time.

j. Any entity not identified above may operate but may not exceed 25% of the maximum occupancy of any outdoor or enclosed space on the premises, as determined by the relevant fire marshal or fire department.

BASELINE DIRECTIVES

Regardless of a county’s level, I **DIRECT** that the following baseline directives apply at all times and in all instances:

(1) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when eating or drinking. Masks with vents do not satisfy this requirement. “Retail spaces” may not allow a person who is without a mask or multilayer cloth face covering to enter the premises except where that person is in possession of a written exemption from a healthcare provider.

(2) In order to minimize the shortage of health care supplies and other necessary goods, “retail spaces” shall limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual.

(3) Any “food and drink establishment,” “close-contact

business,” “place of lodging,” “retail space,” or other business (including “essential businesses” other than those which meet the definition of a healthcare operation, utility, or indigent care services) in which members of the public regularly visit must immediately close for a period of fourteen (14) days following the occurrence of four (4) or more rapid responses within a fourteen (14) day period. For purposes of this directive, rapid responses will be counted on a rolling basis. Notwithstanding this provision, an “essential business” may be permitted to continue operating if the Department of Health, after consultation with the New Mexico Environment Department, determines that the business is a necessary provider of goods or services within the community in light of geographic considerations. Further, “essential businesses” that test each employee every two weeks and regularly provide contact tracing data to the Environment Department shall not be subject to closure under this provision.

(4) All businesses, houses of worship, and other non-profit entities must adhere to the pertinent CSP’s. In the event the pertinent CSP’s specify a reduced occupancy or capacity limit, the CSP’s limit shall control.

(5) Private educational institutions serving children and young adults from pre-Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall adhere to the face covering and other COVID-Safe Practices requirements for in person instruction contained in the New Mexico’s Public Education Department’s “Reentry Guidance” and “COVID-19 Response Toolkit for New Mexico’s Public Schools,” available at <https://webnew.ped.state.nm.us/reentry-district-and-school-guidance/>, and may operate without occupancy or capacity limits, other than those imposed by the relevant fire marshal or fire

department. Private schools shall report to the New Mexico Public Education Department all cases of COVID-19-positive students, staff, contractors and volunteers associated with the school within four hours of the school being notified of the positive case, pursuant to the procedures in the current COVID-19 Response Toolkit for New Mexico’s Public Elementary Schools. Private schools must immediately close for a period of fourteen (14) days following the last occurrence of four (4) or more rapid responses within a fourteen (14) day period. Private schools also are subject to inclusion on the New Mexico Environment Department’s watchlist and closure list.

(6) State parks shall be open to camping with reservations and day-use only. Event facilities at state parks shall remain closed. The State Parks Division is directed to extend the use of annual camping passes that were purchased after March 2019 for a period determined by the State Parks Division related to the original expiration date due to the closure of state parks to camping.

(7) State museums may operate subject to the occupancy level and restrictions applicable to comparable private museums located in their respective counties.

I FURTHER DIRECT as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the Public Health Act.

(3) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Order shall

take effect on March 12, 2021 and remain in effect through April 9, 2021.

(5) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the Department of the Environment, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(6) Any and all State officials authorized by the Department of Health may enforce this Public Health Order by issuing a citation of violation, which may result in civil administrative penalties of up to \$5,000 for each violation under Section 12-10A-19.

I FURTHER ADVISE the public to take the following preventive precautions:

-- **New Mexico citizens should stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.**

-- Retailers should take appropriate action consistent with this order to reduce hoarding and ensure that all New Mexicans can purchase necessary goods.

-- Avoid crowds.

-- Avoid all non-essential travel including plane trips and cruise ships.

DONE AT THE EXECUTIVE OFFICE THIS 12TH DAY OF MARCH 2021

ATTEST:

**/S/ MAGGIE TOULOUSE
OLIVER
SECRETARY OF STATE**

WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO

**/S/ TRACIE C. COLLINS, M.D.
SECRETARY DESIGNATE OF
THE STATE OF NEW MEXICO
DEPARTMENT OF HEALTH**

**STATE AUDITOR,
OFFICE OF THE****NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Office of the State Auditor gives Notice of a Minor, Nonsubstantive Correction to 2.2.2 NMAC.

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

In Section 8, Subsection G, Paragraph (1), Subparagraph (b), there was an item (i) without an item (ii). Accordingly, on the electronic copy of this rule on NMAC site, the errant item (i) was removed.

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

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

2021 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXII, Issues 1-24

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

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

The New Mexico Register is available free online at: <http://www.srca.nm.gov/new-mexico-register/>. For further information, call 505-476-7941.