

NOTICE OF RULE MAKING AND PUBLIC RULE HEARING

Notice of Rulemaking: The Administrative Hearings Office (“AHO”) will hold a public hearing on the proposed adoption of certain rules, as detailed below in the description of Proposed Rules, governing the conduct and procedures for administrative hearings before the Administrative Hearings Office. These new rules are proposed pursuant to Section 7-1B-5 NMSA 1978. No technical scientific information was consulted in drafting these proposed rules.

Copies of all the proposed rules may be found at AHO’s website, <http://www.aho.state.nm.us>, or at AHO’s main office in Santa Fe, Wendell Chino Building, Rm. 269, 1220 S. St. Francis Drive, Santa Fe, NM, AHO’s office in Albuquerque, Compass Bank Building, 505 Marquette NW, Suite 1150, Albuquerque, NM 87102, AHO’s office in Clovis, 904 W. 6th Street, Veteran Services, Clovis, NM 88101, or in AHO’s Las Cruces Office, 2540 El Paseo, Bldg. #2, Las Cruces, NM 88001.

Notice of Public Rule Hearing: The public rule hearing will occur on **Friday, December 1, 2017 at 9:00 am in Porter Hall, Wendell Chino Building, 1220 S. St. Francis Drive, Santa Fe, New Mexico.** The public hearing will be conducted in a fair and equitable manner by an AHO hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact John Griego at john.griego1@state.nm.us. AHO will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

Notice of Acceptance of Written Public Comment: Written public comment, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public will be accepted until 9:00 a.m. on December 1, 2017 by submitting them via email to tax.pleadings@state.nm.us with the subject line “AHO Rulemaking R17-01,” or via first class mail to Administrative Hearings Office, ATTN Rulemaking R17-01, P.O. 6400, Santa Fe, NM, 87502, or by hand delivery to AHO’s Santa Fe office, Wendell Chino Building, Rm. 269, 1220 S. St. Francis Drive, Santa Fe, NM.

Description of Proposed Rules: in compliance with Section 14-4-5.2 NMSA 1978, including a summary of the proposed rule, a short explanation of the purpose of the rule, and specific legal authority authorizing the proposed rule (the method and manner of public comment and notice of public hearing on the proposed rules are listed above):

22.600.1 NMAC (“*General Administrative Hearing Rules and Procedures*”): The rule is being proposed pursuant to Section 7-1B-5 NMSA 1978. The purpose of the proposed rule is to establish general rules and practice procedures for administrative hearings conducted by AHO, unless a more specific statute or regulation applies to the substantive hearing type at issue. In summary, the proposed rule establishes: how to request an administrative hearing in a matter within the jurisdiction of AHO; who may represent a party in a matter before AHO; how to file pleadings in a matter before AHO; the manner of conducting prehearing and scheduling conferences; the requirements for notices of hearing; the location of hearings both in person and by telephone or videoconference; how to request continuances of a scheduled hearing; what attire is to be worn at hearings before AHO; the burden of proof, presentation of the case, and evidentiary rules of the hearings before AHO; the rules for calling of witnesses; the power and responsibilities of the hearing officer; the openness or confidentiality of the proceeding, including exhibits; the rules for issuance of administrative subpoenas; the requirements for language interpreters; the consequences for failing to appear at the scheduled hearing; when and how a reconsideration of AHO decision is permitted; information about an appeal of AHO decision; how to request copies of exhibits and the administrative record; and what rules apply to hearings conducted involving other state agencies other than the Taxation and Revenue Department. Copies of the proposed rule may be found as indicated in the second paragraph of this notice. Information on the public hearing and on submitting written comments is described above in paragraph three and four respectively of this notice.

22.600.2 NMAC (“*Code of Conduct for Administrative Hearings*”): The rule is being proposed pursuant to Section 7-1B-5 NMSA 1978. The purpose of the proposed rule is to establish a code of conduct for AHO hearing officers conducting and adjudicating administrative hearings. In summary, the proposed rule establishes that

hearings officers: conduct the hearings in a manner that promotes public confidence in the integrity and fairness of the process; avoid impropriety and the appearance thereof; be competent in conducting hearings; exercise independent judgment in adjudicating the matter; ensure good order and decorum in the hearing, including regulating the conduct of parties, representatives, and witnesses appearing before AHO; conduct the hearing impartially and without bias, prejudice or harassment; refrain from prohibited ex parte communications; limit public statements on pending matters while remaining engaged with the legal community; manage personal conduct to reduce the possibility of disqualifications; maintain required confidentiality; comply with other ethical standards; disqualify themselves when required; and establishes an informal and formal complaint procedure under the Code of Conduct. Copies of the proposed rule may be found as indicated in the second paragraph of this notice. Information on the public hearing and on submitting written comments is described above in paragraph three and four respectively of this notice.

22.600.3 NMAC (“Hearings under the Tax Administration Act”): The rule is being proposed pursuant to Section 7-1B-5 NMSA 1978, for protest hearings pursuant to Section 7-1-24 NMSA 1978. The purpose of the proposed rule is to establish the rules of procedure for tax protest administrative hearings before AHO. In summary, the proposed rule establishes: the manner and method to request a tax protest hearing before AHO; the scheduling of various types of hearings before AHO; the location of tax protest hearings; procedures for conducting videoconference and telephonic hearings; who may appear as a representative at a hearing; that tax protest hearings are closed, confidential proceedings; procedures for withdrawing a protest; a mechanism for expedited, proposed summary disposition of limited types of cases; the procedures for filing pleadings; rules on motion practice; a discovery process; consequences for failing to follow orders; the rules of prehearing conference, status conferences, and status checks; the method of securing and serving subpoenas; how to request a continuance of a hearing; the consequence for failing to appear at a scheduled hearing; the powers and duties of a hearing officer conducting a tax protest hearing; evidentiary standards of the hearing; the manner of recording the proceeding; the procedures for post-hearing briefing; the date of mailing or delivery of the decision; and the procedures for appeal of a decision. Copies of the proposed rule may be found as indicated in the second paragraph of this notice. Information on the public hearing and on submitting written comments is described above in paragraph three and four respectively of this notice.

22.600.6 NMAC (“Implied Consent Act License Revocation Hearings”): The rule is being proposed pursuant to Section 7-1B-5 NMSA 1978, for Implied Consent Act license revocation hearings pursuant to Section 66-8-112 NMSA 1978. The purpose of the proposed rule is to establish the rules of procedure for Implied Consent Act license revocation hearings heard before AHO. In summary, the proposed rule establishes: the procedures for requesting an Implied Consent Act hearing and the Motor Vehicle Division’s referral of the matter to AHO for hearing; who may appear as a representative at hearing; the time, place, location, and method of conducting the hearing; how to request a continuance of a scheduled hearing; how to subpoena witnesses and documents for the hearing; the powers and duties of a hearing officer; the parties to the hearing and their rights at hearing; the evidentiary standards for the hearing; the issues to be considered at the hearing; that hearings are open to the public; the requirements of issuing a decision and order; the method of recording the proceeding; and how to calculate time frames under the Implied Consent Act. Copies of the proposed rule may be found as indicated in the second paragraph of this notice. Information on the public hearing and on submitting written comments is described above in paragraph three and four respectively of this notice.

22.600.9 NMAC (“Parental Responsibility Act License Suspension Hearings”): The rule is being proposed pursuant to Section 7-1B-5 NMSA 1978, for the conduct of Parental Responsibility Act license suspension hearings pursuant to Section 40-5A-6 NMSA 1978. The purpose of the proposed rule is to establish the rules of procedure for Parental Responsibility Act driver’s license suspension hearings heard before AHO. In summary, the proposed rule establishes: the procedures for requesting a hearing challenging a license suspension and MVD’s referral of the matter to AHO for hearing; the procedures of setting the hearing, sending notice, and conducting the hearing; the issues to be considered at the hearing; the relevant evidence and proof to be considered at the hearing; the order to be issued; and the procedures for appeal of a decision. Copies of the proposed rule may be found as indicated in the second paragraph of this notice. Information on the public hearing and on submitting written comments is described above in paragraph three and four respectively of this notice.

22.600.4 NMAC, 22.660.5 NMAC, 22.600.7 NMAC, and 22.600.8 NMAC are reserved for future rulemaking.