

From: [Jeanne Tatum](#)
To: [Apodaca, Sheila, DOH](#)
Subject: [EXT] comment regarding proposed rule amendments 7.1.30 NMAC, "Administrative Hearing for Civil Monetary Penalties Issued Pursuant to PHERA"
Date: Tuesday, July 21, 2020 1:18:28 AM

I disagree with the proposed rule amendments other than the correction of the typographical error on page 3, paragraph Q correcting the capitalization of New Mexico.

As to [7.1.30.8](#), paragraph B, number (3), notice of hearing, I disagree with changing the five day to twenty days. The appellant has only five days to request the hearing (as stated in Paragraph A). There is no legitimate reason to allow the department twenty days to inform the appellant of the date, time and place of hearing and the identity of the hearing officer. Quid pro quo-five days each side or twenty days each side, especially considering the size of the monetary penalty and in light of the methodology that these penalties are currently being imposed.

As to [7.1.30.8](#), paragraph B, number (4), hearing venue, I disagree with changing this item at all. There is no fairness in the change and no purpose for the change.

As to [7.1.30.8](#), paragraph F, Powers of the hearing office, again, I disagree with changing this item at all. The changes put more burden on the appellant, who is more likely a layman, who cannot afford council and according to this entire procedure, the burden of proof is on the department. This proposed change contradicts paragraph O, burden of proof.

These changes seem to be unnecessary and will only serve to cause more hardship and undue burden on the appellant and seem to me to be the result of issues discovered during the imposition of civil penalties currently being contested in court.

Also, I agree with the comments from Ms. Dunlap, this entire procedure is being rushed through without enough public notification (published only in the Albuquerque newspaper is not public notice when over half of the state doesn't have access to delivery of the Albuquerque paper except by mail subscription, which in itself is not timely) or debate. I also believe the legislative process should be included in any decision involving the Public Health Emergency Response Act, especially in light of the manner in which this Act can and is currently being abused.

These rule amendments should not be adopted.

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