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CONTENTS

- 1. [Material Changes](#)
- 2. [Purpose](#)
- 3. [Organization Affected](#)
- 4. [Authority](#)
- 5. [Definitions](#)
- 6. [References](#)
- 7. [Policy](#)
- 8. [Procedures](#)
- 9. [Attachments](#)
- 10. [Approval](#)

1. MATERIAL CHANGES

1.1. This is a new policy.

2. PURPOSE

2.1. The purpose of this policy is to establish a process to telework during an emergency, providing employees and TRD alternatives in employee work locations, while adhering to Federal and State statutes and regulations. Telework is a work alternative that may be appropriate for some employees and some jobs. It is not an entitlement, it is not a State benefit, and it in no way changes the terms and conditions of employment with TRD.

3. ORGANIZATION AFFECTED

3.1. This policy and these procedures apply to all TRD employees.

4. AUTHORITY

- 4.1. Sections 9-11-1 through 9-11-13, as amended. NMSA 1978.
- 4.2. The All Hazard Emergency Management Act, NMSA 1978 Section 12-10-1 through 12-10-10.
- 4.3. The Public Health Emergency Response Act at NMSA 1978, Section 12-10A-5, 13-1-127 (2019).
- 4.4. New Mexico Constitution Article V, Section 4.

5. DEFINITIONS

5.1. **Emergency:** is an unplanned or imminent event that affects or threatens the health, safety or welfare of people, or property and infrastructure, disrupts ordinary business operations, *and* which requires a significant and coordinated response. What constitutes an emergency is determined by the Governor or the TRD Secretary. Examples include:

- 5.1.1. Fires;
- 5.1.2. Health outbreaks;

- 5.1.3. Severe weather;
 - 5.1.4. Natural disasters;
 - 5.1.5. Power failures, including electricity outages or gas leaks;
 - 5.1.6. Emergency evacuation or moving to an emergency shelter;
 - 5.1.7. Temporary closure or relocation of the program to another facility or service site for more than 24 hours;
 - 5.1.8. Other events that threaten the immediate health and safety of persons served and that require calling “911.”
- 5.2. **HRB:** TRD’s Human Resources.
- 5.3. **Telework:** means a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee's position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work, during any part of regular, paid hours, including from an employee’s residence.
- 5.4. **TRD:** State of New Mexico Taxation and Revenue Department.

6. REFERENCES

- 6.1. The Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, as amended.

7. POLICY

- 7.1. TRD retains the right to determine work schedules and locations.
- 7.2. Either an employee or a supervisor can suggest telework as a possible work arrangement during an emergency or preparedness for an emergency. This policy only applies to an emergency or preparedness for emergency as defined herein.
- 7.3. After the Governor or TRD Secretary determines an emergency has been resolved and/or persons involved are in no longer in immediate danger, employees will return to their normally assigned work location.
- 7.4. TRD will determine, with information supplied by the employee and the supervisor, the appropriate equipment needs (including hardware, software, modems, phone and data lines, facsimile equipment or software, and photocopiers) for each telework arrangement on a case-by-case basis. HRB and information technology departments will serve as resources in this matter. Equipment supplied by the organization will be maintained by TRD. Equipment supplied by the employee, if deemed appropriate by the organization, will be maintained by the employee. TRD accepts no responsibility for damage or repairs to employee owned equipment. TRD reserves the right to make determinations as to appropriate equipment, subject to change at any time. Equipment supplied by the organization is to be used for business purposes only. The teleworker should sign an inventory of all TRD property and agrees to take appropriate action to protect the items from damage or theft. Upon termination of employment all company property will be returned to the company, unless other arrangements have been made.
- 7.5. Consistent with TRD’s expectations of information security for employees working at the office, teleworkers will be expected to ensure the protection of proprietary information, personally identifiable information, and other information confidentiality laws or regulations in their home or telework location. Steps include use of locked file

cabinets and desks, regular password maintenance, and any other steps appropriate for the job and the environment.

- 7.6. TRD will supply the employee with appropriate office supplies (pens, paper, etc.) for successful completion of job responsibilities. TRD will also reimburse the employee for all other business-related expenses that are reasonably incurred in accordance with job responsibilities. Such business-related expenses must be pre-approved by the employee's supervisor.
- 7.7. The employee and supervisor will agree on the number of days of telework allowed each week, the work schedule the employee will customarily maintain, and the manner and frequency of communication. The employee agrees to be accessible by phone or modem within a reasonable time period during the agreed on work schedule.
- 7.8. In the event that more than one eligible employee requests telework, and all such requests cannot be granted while meeting the eligibility criteria, TRD Secretary may deny all requests, rotate alternative work schedules, or take other appropriate action.
- 7.9. Requests for intermittent leave under the Family and Medical Leave Act (FMLA) or reasonable accommodations under the American with Disabilities Act (ADA) are not governed by this policy. Such requests are governed by TRD's FMLA policy and ADA policy, respectively.

8. PROCEDURES

- 8.1. To perform telework under this policy, employees shall utilize TRD's **Telework Agreement form**.
- 8.2. The employee must present the form to their immediate supervisor for review and recommendation.
- 8.3. The supervisor will evaluate the suitability of such an arrangement paying particular attention to the following areas.
 - 8.3.1. Employee suitability. The employee and supervisor will assess the needs and work habits of the employee.
 - 8.3.2. Job responsibilities. The employee and supervisor will discuss the job responsibilities and determine if the job is appropriate for a telework arrangement.
 - 8.3.3. Equipment needs and scheduling issues. The employee and supervisor will discuss equipment needs and scheduling issues.
 - 8.3.4. Tax and other legal implications for the business use of the employee's home based on Internal Revenue Service (IRS) and state and local government restrictions. Responsibility for fulfilling all obligations in this area rests solely with the employee.
- 8.4. An appropriate level of communication between the teleworker and supervisor will be agreed to as part of the discussion process in a manner and frequency that seems appropriate for the job and the individuals involved.
- 8.5. If the employee and supervisor agree, and HRB concurs, a draft telework agreement will be prepared and signed by the employee and supervisor. The supervisor will

send the telework agreement to the Secretary, with the supervisor's recommendation whether to approve the telework request.

- 8.6. The TRD Secretary shall review the telework agreement and approve, amend, or deny the request. All denied requests shall state a reason for the denial on the telework agreement and be discussed with the employee.
- 8.7. Once approved, amended, or denied by the Secretary and discussed with the employee, the employee's supervisor shall forward the telework agreement to HRB for the employee's personnel file. Any additional changes to the schedule requiring approvals must be completed on the required forms and forwarded to HRB for the employee's personnel file.
- 8.8. HRB will enter the telework location into the SHARE system as appropriate and provide the employee with a copy of the signed telework agreement. HRB shall maintain the original request and agreement upon approval, amendment, or denial. HRB will provide copies of the telework agreement to supervisors and supervisors, who are responsible for employee compliance with these documents and ensuring that a forty (40) hour workweek is completed.

8.9. **Revocation**

Supervisors, with the approval of the TRD Secretary, may permanently or temporarily cancel, suspend, or adjust schedules based on workload, special projects, special assignments, training, the emergency has been resolved and/or persons involved are in no longer in immediate danger, or in the best interest of the TRD. Employees shall be given as much advance notice as possible when canceling, suspending, or adjusting telework.

9. **ATTACHMENTS**

- 9.1. Sample of Telework Agreement.

10. **APPROVAL**

- 10.1. Approved by:



Stephanie Schardin Clarke

3/11/2020

Date



Telework Agreement

The purpose of this document is for both the supervisor and the employee to have a clear, shared understanding of the employee’s telework arrangement during emergencies. Each telework arrangement is unique depending on the needs of the position, supervisor, and employee.

This telework agreement is not a contract of employment and does not provide any contractual rights to continued employment. It does not alter or supersede the terms of the existing employment relationship. The employee remains obligated to comply with all TRD rules, policies, practices, and instructions that would apply if the employee were working at the regular TRD worksite.

Employee Telework Information

Employee Name:	
Job Title:	
Department and Bureau:	
Supervisor:	
Arrangement requested by:	<input type="checkbox"/> Employee <input type="checkbox"/> Department/Agency
Location where telework will be performed:	
Telework arrangement effective dates:	

Job Duties

The general expectation for a telework arrangement is that employees will effectively accomplish their regular job duties, regardless of work location. If there are telework-specific job duties and/or expectations, specify them in the box below, or enter N/A.

1. While telecommuting, employee will:
 - a. remain accessible during the telecommute work schedule;
 - b. check in with the supervisor to discuss status and open issues;
 - c. be available for teleconferences, scheduled on an as-needed basis;
 - d. be available to come into the office if a business need arises;
 - e. request supervisor approval in advance of working any overtime hours (if employee is non-exempt); and
 - f. request supervisor approval to use vacation, sick, or other leave in the same manner as when working at employee’s regular work location.
2. Employee’s duties, obligations, responsibilities, and conditions of employment with TRD remain unchanged except those obligations and responsibilities specifically addressed in this agreement. Job responsibilities, standards of performance, and performance appraisals remain the same as when working at the normally assigned duty station. The supervisor reserves the right to assign work as necessary at any work site.
3. The parties acknowledge that this agreement may be evaluated on an ongoing basis to ensure that employee’s work quality, efficiency, and productivity are not compromised by the telecommuting arrangement described herein.

Work Schedule and Location

Day of Week	Work Hours	Work Location
Sunday		
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		

Telework Arrangement Modification

Unless a collective bargaining agreement states otherwise, either the employee or TRD may end an employee requested telework arrangement. This form does not apply to telework arrangements made through the disability accommodation process. All employee-proposed changes are subject to TRD approval.

Ad-hoc modifications to this agreement should be discussed between the employee and supervisor. Long-term or substantive modifications should be documented by revising this agreement.

Telework Review

Specify a date to meet and discuss the effectiveness of the telework arrangement, or enter N/A.

Telework review date:	
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Equipment and technology access

TRD’s will work with the employee to determine appropriate and suitable equipment. In the spaces below, specify any equipment or technology access the employee will need to telework and whether it will be employee or TRD provided. In the event of equipment failure or service interruption, the employee must notify TRD immediately to discuss alternate assignments or other options. Internet access must be via DSL, Cable Modem, or an equivalent bandwidth network, with a secure password protected router.

Employee agrees to protect TRD -owned equipment, records, and materials from unauthorized or accidental access, use, modification, destruction, or disclosure. The precautions described in this agreement apply regardless of the storage media on which information is maintained, the locations where the information is stored, the systems used to process the information, or the process by which the information is stored.

Employee agrees to report to employee’s supervisor any incidents of loss, damage, or unauthorized access at the earliest reasonable opportunity.

Employee understands that all equipment, records, and materials provided by TRD shall remain the property of the TRD.

Equipment	Provided by	Responsible for loss or damage

Taxes

Employee understands that employee is responsible for tax consequences, if any, of this arrangement.

Pay, Attendance and Leave

All pay, leave and travel entitlements will be based on the employee’s telework location and the employee’s time and attendance will be recorded as if performing official duties there. Telework employees will not be granted administrative leave during inclement weather unless otherwise approved by telework employee’s manager, which will be approved on a case-by-case basis. The employee shall not work overtime for which additional compensation might be due without supervisory approval in advance. The employee must obtain supervisory approval before taking leave, in accordance with established procedures. Telework employees are expected to adhere to the same policies and procedures as non-telework employees. By signing this Agreement, the employee agrees to follow established procedures for requesting and obtaining approval of leave.

Incident Reports

The employee shall report any job-related injuries that occur in the course and scope of employment while teleworking at the earliest reasonable opportunity.

Policies and Procedure Acknowledgements

Initials

I have read and understand the TRD’s Telework During Emergencies Policy.	
I have read and understand TRD’s policies regarding personal use of state computers and equipment.	

Employee signature: _____ Date: _____

Supervisor signature: _____ Date: _____

Approved Denied

If Denied, provide reason(s): _____

Secretary signature: _____ Date: _____

Approved Denied

If Denied, provide reason(s): _____

Distribution:

Original: Personnel File

Copies: Employee, Supervisor, Secretary