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New Mexico Register

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

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The New Mexico Register

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New Mexico Register

Volume XXXIV, Issue 16

August 29, 2023

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Notices of Rulemaking and Proposed Rules

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public rulemaking hearing on October 4, 2023. The hearing will begin at 9:00 a.m. and will be held via Microsoft Teams and in person at the New Mexico Higher Education Department. The purpose of the hearing is to take public comment regarding proposed amendments to **5.100.5 NMAC, EXEMPTION UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT.**

Join via Microsoft Teams:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZGVhYThjZTgtNzc4OC00OTc0LWFINGYtZWU3ZjIwYjJjYzVl%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22c327f958-5970-4536-8f6b-03d48b60d29e%22%7d

Or call in (audio only)
+1 (505) 312-4308
Phone Conference ID: 377 376 228#

Purpose:

The purpose of the proposed amendment is to align exemptions under the Post-Secondary Educational Institution Act with existing regulations in 5.99.1 NMAC PUBLIC AND PRIVATE POST-SECONDARY INSTITUTIONS OPERATING UNDER THE INTERSTATE DISTANCE EDUCATION ACT. Section 10, Subsection D of 5.99.1 NMAC provides that an institution is exempt from distance education authorization if the institution offers distance education courses on a military base or vessel if enrollment in such courses is limited to active and reserve military personnel and their spouses and dependents. The

proposed amendment to 5.100.5 NMAC also provides for institutions to qualify for an exemption if they offer educational programs to military veterans and their spouses and dependents and civilians employed full-time on a military base in New Mexico and their spouses and dependents.

Summary of proposed rule:

The amendment to Section 6 of 5.100.5 NMAC adds an exemption for institutions operating on a military base in New Mexico and offering educational programs to active military personnel, military reserve personnel, military veterans, and civilians employed full-time on the military base and the spouses and dependents of active military personnel, military reserve personnel, military veterans, and civilians employed full-time on the military base.

Details for Obtaining a Copy, Public Hearing and Comments:

The proposed rule is posted on the NMHED website and may be accessed at <http://www.hed.nm.gov> under the "Events" section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@hed.nm.gov or (505)476-8411.

A public hearing will be held on October 4, 2023 from 9:00 a.m. until 9:30 a.m. via Microsoft Teams and in person at the NMHED Office located at **2044 Galisteo Street, Suite 4, Santa Fe, NM 87505**. Any person who is or may be affected by this proposed rule may participate. Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@hed.nm.gov. **Written comments must be received no later than 4:00 p.m. on October 2, 2023.** Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be

accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978, Section 21-21R-1 et seq. NMSA 1978 and Section 21-23-1 et seq. NMSA 1978

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@hed.nm.gov ten (10) business days prior to the hearing.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public rulemaking hearing on October 4, 2023. The hearing will begin at 9:30 a.m. and will be held via Microsoft Teams and in person at the New Mexico Higher Education Department. The purpose of the hearing is to take public comment regarding proposed amendments to **5.100.6 NMAC, REGISTRATION UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT**

Join via Microsoft Teams:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_ODRhZGQ2ZmItMGMwOC00YzllLWFfODYtNDc0YmE3YmJjY2M4%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22c327f958-5970-4536-8f6b-03d48b60d29e%22%7d

Or call in (audio only)
+1 (505) 312-4308
Phone Conference ID: 101 312 397#

Purpose:

The purpose of the proposed amendment to 5.100.6.16 NMAC is to add institutional requirements for record maintenance and retention. The rule seeks to proactively address the problem of recovering student transcripts in the event of the closure of a private post-secondary educational institution by adding requirements relating to digitalization and servicing of transcripts.

Summary of proposed rule:

The proposed amendment to 5.100.6.16 NMAC adds a requirement that the institution report the percentage of digitalized records and provide a plan to digitalize any non-digitalized records within twelve months. The amendment requires institutions to provide information on the process to obtain access to transcripts through the custodian of record. If the process is not satisfactory, the proposed rule would require the institution to hire a professional digital credential firm to manage its student transcripts or provide transcripts to the New Mexico Higher Education Department which would become the custodian of record. Conditions relating to the Department serving as custodian of record are provided. Language that is elaborated on in new Subsections is removed from Subsection A of 5.100.6.16 NMAC. Grammatical corrections are made.

Details for Obtaining a Copy, Public Hearing and Comments:

The proposed rule is also posted on the NMHED website and may be accessed at <http://www.hed.nm.gov> under the "Events" section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@hed.nm.gov or (505)476-8411.

A public hearing will be held on October 4, 2023 from 9:30 a.m. until 10:00 a.m. via Microsoft Teams and

in person at the NMHED Office located at **2044 Galisteo Street, Suite 4, Santa Fe, NM 87505**. Any person who is or may be affected by this proposed rule may participate. Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@hed.nm.gov. **Written comments must be received no later than 4:00 p.m. on October 2, 2023.** Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978, Section 21-21R-1 et seq. NMSA 1978 and Section 21-23-1 et seq. NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@hed.nm.gov ten (10) business days prior to the hearing.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public rulemaking hearing on October 4, 2023. The hearing will begin at 10:00 a.m. and will be held via Microsoft Teams and in person at the New Mexico Higher Education Department. The purpose of the hearing is to take public comment regarding proposed amendments

to 5.100.7 NMAC, LICENSURE UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT

Join via Microsoft Teams:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_OTQwYzQ4YjAtMGM1OC00ODc4LWE4ZmItZGJiZmNkZTk3MDIh%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22c327f958-5970-4536-8f6b-03d48b60d29e%22%7d

Or call in (audio only)
+1 (505) 312-4308
Phone Conference ID: 915 077 912#

Purpose:

The purpose of the proposed amendment to 5.100.7.10 NMAC is to add institutional requirements for record maintenance and retention. The rule seeks to proactively address the problem of recovering student transcripts in the event of the closure of a private post-secondary educational institution by adding requirements relating to digitalization and servicing of transcripts.

Summary of proposed rule:

The proposed amendment to 5.100.7.10 NMAC adds a requirement that the institution report the percentage of digitalized records and provide a plan to digitalize any non-digitalized records within twelve months. The amendment requires institutions to provide information on the process to obtain access to transcripts through the custodian of record. If the process is not satisfactory, the proposed rule would require the institution to hire a professional digital credential firm to manage its student transcripts or provide transcripts to the New Mexico Higher Education Department which would become the custodian of record. Conditions relating to the Department serving as custodian of record are provided. The Section is restructured, and repetitive language is removed.

Details for Obtaining a Copy, Public Hearing and Comments:

The proposed rule is also posted on the NMHED website and may be accessed at <http://www.hed.nm.gov> under the “Events” section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@hed.nm.gov or (505)476-8411.

A public hearing will be held on October 4, 2023 from 10:00 a.m. until 10:30 a.m. via Microsoft Teams and in person at the NMHED Office located at **2044 Galisteo Street, Suite 4, Santa Fe, NM 87505**. Any person who is or may be affected by this proposed rule may participate. Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@hed.nm.gov. **Written comments must be received no later than 4:00 p.m. on October 2, 2023.** Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978, Section 21-1-26 NMSA 1978 and Section 21-23-1 et seq. NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@hed.nm.gov ten (10) business days prior to the hearing.

**TRANSPORTATION,
DEPARTMENT OF****NOTICE OF PROPOSED
RULEMAKING**

The New Mexico Department of Transportation (NMDOT) is proposing new rule, 18.28.6 NMAC, Transportation Construction Manager General Contractor Rule.

Purpose: In 2022, the New Mexico legislature enacted the Transportation Construction Manager General Contractor Act compiled at Section 13-1-122.1 through -122.4 NMSA 1978. to provide construction manager general contractor (CMGC) as an alternative project delivery method for certain NMDOT projects. The proposed rule establishes procedures for the solicitation and award of a CMGC project delivery procurement method for certain NMDOT projects.

Summary of Full Text: The proposed rule addresses use of the CMGC project delivery method, including scope of services and procurement method. The rule also establishes the evaluation criteria, composition of the selection committee, and the process for award of CMGC contracts.

Full Text of the Proposed Rule: A copy of the full text of the proposed rule may be found on the NMDOT website at the following internet links, under the *Legal Notices* tab: <https://www.dot.nm.gov/public-legal-notice/> and under the *Public Involvement* tab: <https://www.dot.nm.gov/public-involvement/>. A copy of the proposed rule may also be requested by contacting Lauren Vigil at (505) 487-0626 or lauren.vigil@dot.nm.gov. A reasonable fee may be charged for printed copies.

Rulemaking Hearing: NMDOT will hold a public hearing with an option to participate virtually for the purpose of receiving oral and written public comment from interested parties on the proposed rule, 18.28.6

NMAC. The hearing is scheduled on October 12, 2023, from 2:00 p.m. to 3:30 p.m. at the NMDOT, General Office, Training Rooms 1 and 2, 1120 Cerrillos Road, Santa Fe, New Mexico. To participate virtually in the public hearing, a link will be provided on the NMDOT website under the *Legal Notices* and *Public Involvement* links above. You may also request a link to participate virtually by emailing Lauren Vigil at lauren.vigil@dot.nm.gov.

Written Comments: To submit written comments on or before October 12, 2023, please send to: Lauren Vigil, PO Box 1149, Room 209, Santa Fe, NM 87504-1149; Telephone (505) 487-0626; Email: lauren.vigil@dot.nm.gov Written comments will be accepted from the date this notice is published in the New Mexico Register, September 12, 2023, and until the close of the hearing scheduled in this rulemaking, October 12, 2023. If you plan to submit written comments, please make sure any documentation contains your name, phone number and email address, and please bring (3) copies of any documents to the hearing. If submitting written comments by email, please indicate the rule number in the subject line. Oral comments will only be accepted at the public hearing, and may be subject to time limitations. After the close of the hearing scheduled in this rulemaking, the rulemaking record will be closed, and no other comments will be accepted. All written comments will be posted on the department’s website within three days of receipt.

Accommodations: Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule revisions in an accessible form may contact: Lauren Vigil at (505) 487-0626 or lauren.vigil@dot.nm.gov at least ten days before the hearing.

**End of Notices of
Rulemaking and Proposed
Rules**

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Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided 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.

HEALTH, DEPARTMENT OF

This is an amendment to 7.5.3 NMAC, Sections 6, 7, 8, and 9 effective 8/29/2023.

7.5.3.6 OBJECTIVE: The objective is to establish standards and procedures for obtaining exemptions to required immunizations as allowed by Section 24-5-3 NMSA 1978; specifically for children whose:

A. ~~[duly licensed physician]~~ licensed physician, a physician assistant, or a certified nurse practitioner provides a certificate stating that any of the required immunizations would seriously endanger the life or health of the child; or

B. parent or legal guardian attests via affidavit or written affirmation from an officer of a recognized religious denomination that such child's parents or guardians are bona fide members of a denomination whose religious teaching requires reliance upon prayer or spiritual means alone for healing; or

C. parent or legal guardian attests via affidavit or written affirmation that their religious beliefs, held either individually or jointly with others, do not permit the administration of vaccine or other immunizing agent.

[7.5.3.6 NMAC - Rp, 7 NMAC 5.3.6, 11/27/2013; A, 8/29/2023]

7.5.3.7 DEFINITIONS:

A. "ACIP" means advisory committee on immunization practice.

B. "Administrative authority" means the superintendent, principal, or the designee of such person.

C. "Certified nurse practitioner" means a registered nurse licensed by the New Mexico board of nursing for advanced practice as a certified nurse practitioner.

~~[C:]~~ **D.** "Denial" means a denial of a request for exemption from immunizations.

~~[D:]~~ **E.** "Department" means the department of health.

~~[E:]~~ **F.** "Licensed physician" means a physician licensed by the New Mexico board of medicine to practice medicine or osteopathic medicine.

~~[F:]~~ **G.** "NMSIIS" means the New Mexico Statewide Immunization Information System; a secured, confidential, population-based, computerized registry for recording vaccination information established pursuant to Sections 24-5-7 through 24-5-15 NMSA 1978.

H. "Physician assistant" means a health care practitioner licensed by the New Mexico board of medicine to practice as a physician assistant and to provide services to patients with the supervision of or in collaboration with a licensed physician.

~~[G:]~~ **I.** "Public health division" means a division of the department of health within which the immunization program is located.

~~[H:]~~ **J.** "Required immunizations" means those immunizations against diseases deemed to be dangerous to the public health by the public health division, and set forth in its immunization requirements, which are within recommendations of the ACIP.

~~[I:]~~ **K.** "Satisfactory evidence of commencement of immunization" means satisfactory evidence of a person having begun the process of immunizations, such as a certificate, or record signed

by a ~~[duly]~~ licensed physician or other recognized public or private health provider ~~[facility]~~ stating that the person has received at least the first in the series of required immunizations and is proceeding with the immunizations according to the prescribed schedule.

~~[J:]~~ **L.** "Satisfactory evidence of immunization" means a statement, certificate, or record signed by a licensed physician or other recognized licensed health provider stating that the required immunizations have been given to the person or record of receipt of immunization in the NMSIIS registry.

~~[K:]~~ **M.** "Secretary" means the secretary for the department of health.

[7.5.3.7 NMAC - Rp, 7 NMAC 5.3.7, 11/27/2013; A, 8/29/2023]

7.5.3.8 REQUIREMENTS FOR APPROVAL OF EXEMPTIONS FROM IMMUNIZATION:

A. Any minor child through his parent or guardian may file a request for exemption from required immunization with the director of the public health division by providing the following:

(1) certificate or affidavit from a ~~[duly licensed physician]~~ licensed physician, a physician assistant, or a certified nurse practitioner attesting that any of the required immunizations would seriously endanger the life or health of the child; or

(2) an affidavit or written affirmation from an officer of a recognized religious denomination stating that the parents or guardians are bona fide members of the recognized denomination, whose religious teaching requires reliance upon prayer or spiritual means alone for healing; or

(3) an affidavit or written affirmation by a parent or guardian whose religious beliefs, held either individually or jointly with others, do not permit the administration of vaccine or other immunizing agents.

B. The original request for approval of any exemptions from immunization must be mailed to the department of health, public health division, immunization program. The address is P.O. Box 26110, Suite S-1250, Santa Fe, NM, 87502. Request forms can be found at the immunization program offices 1190 St. Francis Drive, Suite South 1250 or on the program's website.

C. Within 60 days of receipt of a request for exemption from immunization, the department of health immunization program [manager] staff shall review the request to determine whether the certificate has been duly completed. Incomplete requests shall be returned to the requester with information regarding what elements are missing.

D. The department of health immunization program [manager] staff shall determine approval status of all requests for exemption:

(1) exemption requests shall be approved for a [nine-month] one-year period indicated by the public health division director or designee;

(2) in the case of approval of a request for exemption, an approved, signed copy of the request shall be provided to the parents or guardian of the child [~~and to the administrative authority of the school or director of the pre-school or childcare center at which the child has been conditionally enrolled~~];

(3) in the case of a denial, the department of health immunization program staff shall state the reasons for denial in a letter of notification to the parents or guardian of the child [~~and to the administrative authority of the school or director of the pre-school or childcare center at which the child has been conditionally enrolled~~]. The notice to the parents or guardians

shall also include information about the review process in 7.5.3.9 NMAC. [7.5.3.8 NMAC - Rp, 7 NMAC 5.3.8, 11/27/2013; A, 8/29/2023]

7.5.3.9 REVIEW CRITERIA:

A. The department of health immunization program [manager] staff will consider the requirements and allowances of the law and the completeness and clarity of the requests for exemption in his or her review. Written criteria for review of exemption from immunization shall be available on the department of health website, included in documents required for submission of immunization exemptions, and provided upon request made to the department.

B. Requests for exemption based on a certificate or affidavit from a [~~duly licensed-physician~~] licensed physician, a physician assistant, or a certified nurse practitioner will be reviewed for the following:

(1) an original document signed by a [~~duly licensed doctor of medicine or doctor of osteopathic medicine~~] licensed physician, a physician assistant, or a certified nurse practitioner, which

(2) contains a statement that immunizations would seriously endanger the health of the child.

C. Requests for religious exemption based on an affidavit or written affirmation from an officer of a religious denomination will be reviewed for the following:

(1) an original document signed by an officer of the denomination, which

(2) contains a statement affirming that the parent or guardian of the child are members of the religious denomination; and

(3) that the religious teachings of the denomination require reliance on prayer or spiritual means alone for healing.

D. Requests for exemption based on an affidavit or

written affirmation from a parent will be reviewed for the following:

(1) an original, signed, complete, properly notarized form, which

(2) contains a statement of affirmation from the parent or guardian that their personal religious belief, or jointly-held religious belief does not permit immunization of their child.

[7.5.3.9 NMAC - Rp, 7 NMAC 5.3.9, 11/27/2013; A, 8/29/2023]

PUBLIC EDUCATION DEPARTMENT

This is an emergency amendment to 6.41.4 NMAC, Section 9, effective 8/4/2023.

6.41.4.9 RESPONSIBILITIES OF THE LEA:

A. General requirements:

(1) The LEA shall designate a transportation administrator.

(2) The LEA shall observe all federal and state laws, department regulations, and local board of education policies and procedures. The LEA shall follow the New Mexico guide for school vehicle maintenance and safety audit program.

(3) Prior to providing services, the LEA shall ensure that each transportation service provider has a properly executed contract on a form approved by the department.

(4) The LEA shall direct drivers, school bus assistants, and substitute school bus assistants on meeting all transportation requirements of students' IEPs.

(5) The LEA shall, in accordance with applicable federal and state law and department regulation:

(a) verify qualifications which include fingerprint-based background checks

and reference checks made and completed for the following positions:

- (i) school bus driver;
- (ii) substitute school bus driver;
- (iii) activity school bus driver;
- (iv) school-owned activity vehicle driver;
- (v) SUV driver;
- (vi) school bus assistant; and
- (vii) substitute school bus assistant;

(b) ensure proper training is provided by a qualified trainer and documented on the applicable pre-service training record as provided by the department. The training shall be completed prior to the drivers, school bus assistants, and substitute school bus assistants performing assigned duties; and

(c) ensure ongoing training is provided and continuing requirements for drivers, school bus assistants, and substitute school bus assistants are met pursuant to 6.41.4.13 NMAC.

(6) The LEA shall establish and provide to all drivers written procedures to be followed:

- (a) for immediate replacement of a vehicle when a vehicle fails pre-trip inspection;
- (b) during inclement weather; and
- (c) during school bus evacuation drills.

(7) The LEA shall provide to transportation service providers and drivers vital emergency information for all students with an IEP or special medical conditions. All vital emergency information shall be treated as a confidential record as provided by law.

(8) The LEA, shall be available until all school bus drivers have completed their trips and all students have been properly delivered.

(9) The LEA shall develop and implement a school

transportation safety curriculum for students who ride school buses to and from planned LEA-sponsored activity trips.

(10) The LEA shall review for safety each student walk zone for each school on an LEA approved cycle. The review cycle shall not exceed five years.

(11) The LEA shall ensure that school bus evacuation drills are performed and documented once per semester.

(12) All school buses, activity school buses, and school-owned activity vehicles shall be alcohol, drug, and tobacco free areas. The LEA shall ensure that, prior to or during work periods, all drivers, school bus assistants, and substitute school bus assistants shall not use alcoholic beverages, illegal substances, or legal substances which would impair the driver's or the assistant's ability to perform required duties.

(13) The transportation administrator shall ensure compliance with 49 CFR Part 382 by maintaining documentation including proof of contract and pools of driver names. Drivers who possess a CDL shall constitute a pool of names and the school-owned activity vehicle drivers shall constitute a separate pool of names for random drug and alcohol testing.

(14) The LEA shall arrange for and document in-service training that meets the department's required hours for applicable staff.

B. Accidents: In the event of a school bus accident or emergency, the LEA shall:

- (1) promptly notify the department by telephone if a school bus is involved in an accident that results in the death, serious injury or hospitalization of any occupant of the school bus or other motor vehicle or a pedestrian;
- (2) promptly notify the department if a school bus is involved in an accident in which possible mechanical failure may have been a contributing factor; and

(3) submit the uniform school bus accident and adjudication report to the department within seven calendar days of any accident.

C. Plan of action for emergencies:

(1) The LEA or the transportation service provider shall provide to each driver a written plan of action in case of an emergency covering:

- (a) vehicle trouble requiring evacuation;
- (b) vehicle trouble not requiring evacuation;
- (c) passenger trouble requiring transportation personnel intervention;
- (d) passenger trouble requiring police intervention; and
- (e) passenger trouble requiring medical intervention.

(2) Student evacuation drills or adequate alternate instruction as provided in Paragraph (4) of Subsection C of 6.41.4.9 NMAC for to-and-from transportation services in a school bus shall:

- (a) be documented;
- (b) be conducted once per semester;
- (c) include all school bus drivers and substitute school bus drivers;
- (d) include all school bus assistants and substitute school bus assistants;
- (e) exempt students when they are limited in their capability to participate; and
- (f) include the following types of evacuation drills:
 - (i) occupants exit through the rear emergency door;
 - (ii) occupants exit through the front service door;
 - (iii) occupants in the front half of the school bus exit through the front service door and occupants in the

back half of the school bus exit through the rear emergency door. If any emergency door is located mid-bus, it shall be considered the rear emergency door; and

(iv)

occupants receive instructions on the proper use of roof hatches.

(3) Student

evacuation drills or adequate alternate instruction as provided in Paragraph (4) of Subsection C of 6.41.4.9

NMAC for to-and-from transportation services in an SUV shall:

(a) be

documented;

(b) be

conducted once per semester;

(c)

include all SUV drivers and assistants;

(d)

exempt students when they are limited in their capability to participate; and

(e)

include the following types of evacuation drills:

(i)

occupants exit through the nearest door;

(ii)

occupants exit through driver-side doors only; and

(iii)

occupants exit through passenger-side doors only.

(4) Adequate

alternate instruction shall be verbal instruction on the location and operation of emergency exits and shall be presented by the driver to all vehicle occupants.

D. School bus routes:

The LEA shall follow department regulations and procedures for the establishment and monitoring of school bus routes.

(1) Loading

and unloading shall occur, whenever possible, off the roadway and so that students do not have to cross the roadway. When it is impossible for a school bus to completely pull off the roadway, the driver shall remain on the roadway and use procedures provided in Subsection D of 6.41.4.11 NMAC.

(2) LEAs shall

establish written procedures regarding adherence to school bus route pick-up and delivery times by both drivers and students. This information shall be available to parents and guardians of the students.

(3) The LEA

shall review each school bus route on a district- approved cycle for safety and economy. The review cycle shall not exceed five years.

(4) The

LEA shall comply with local board of education policy regarding the number of days allowed to re-configure a school bus route when a student's IEP has been modified and requires an adjustment to the student's transportation.

(5) The

LEA shall establish a policy for the minimum time required for the school bus driver to wait for a student with an IEP who is receiving transportation as a related service to arrive at the school bus stop to be picked up. The policy shall also include information regarding the unloading of that student when returning the student to their school bus stop when a parent or guardian is not present to receive the student.

E. Loading and unloading students at schools:

(1) All school

bus loading and unloading zones shall be properly marked by use of signs and pavement markings.

(2) The school

bus loading and unloading zones shall be adequately staffed with designated personnel to monitor the loading and unloading of students.

(3) When

loading and unloading, school buses shall be parked in a single file as close as possible to avoid students and other people from going between the school buses.

(4) Whenever

possible, loading and unloading shall be done on school premises and separated from general vehicular traffic areas and playground areas.

(5) If loading

or unloading must occur on the roadway, the school bus shall be

stopped on the side of the roadway nearest the school. Alternating red flasher lights shall be activated when the school bus is stopped on the roadway.

(6) When

loading, school buses shall be parked prior to dismissal time, if possible. School buses shall be parked in the order in which they arrive at the school.

(7) When

loading or unloading students, the school bus parking brake shall be activated, the transmission shall be in neutral or in park, if equipped, and the engine off. ~~[Should the driver be required to leave the driver's seat, the keys shall be removed from the ignition switch. Exceptions to removing the key from the ignition switch include:]~~

(8) For LEA's

in counties where a heat advisory or excessive heat warning issued by the National Weather Service is in effect, the LEA may elect to review the circumstances and make their own determination as to whether a bus equipped with air conditioning shall remain on for the duration of the heat advisory or excessive heat warning when loading or unloading students. The LEA shall first consider alternatives that may be available taking into consideration best practices and implementing those other alternatives if practicable. The LEA may also reference any guidance or resource documents issued by the department involving best practices for maintaining student safety during heat advisories or excessive heat warnings.

(9) When

loading and unloading students, if the driver is required to leave the driver's seat, the keys shall be removed from the ignition switch. Exceptions to removing the key from the ignition switch include:

(a)

school buses built after July 1, 2003 that are equipped with an interlock for wheel chair lifts; and

(b)

school buses equipped with a child check safety system. In buses

equipped with this system, the service door shall be closed when the driver leaves the driver’s seat.

(10)

The LEA shall review each school bus loading and unloading area at each school for safety on an LEA-approved cycle. The review cycle shall not exceed five years.

F. School bus stops:

LEAs shall establish all school bus stops and, when appropriate, include involvement from a student’s IEP team. The local public safety organization having jurisdiction shall also be included whenever necessary. Services shall be designed that safely, efficiently, and economically transport students.

(1) The LEA shall review each school bus stop for safety on an LEA approved cycle. The review cycle shall not exceed five years.

(2) School bus stops shall not be established where the view is obstructed to motorists for 500 feet in either direction. If, because of natural conditions, a stop must be established with a view of less than 500 feet, the LEA shall contact the state highway department or other agency having jurisdiction and request the installation of highway signage.

(3) School bus stops shall not be established on any interstate highway. If necessary, school bus stops shall be established on service or frontage roads adjacent to the interstate highway.

(4) School bus stops shall, whenever possible, be established so that students do not have to cross the roadway.

(5) School bus stops shall not be made:

(a) within 25 feet of any intersection.

(b) at a railroad grade crossing where a stop-and-go traffic light controls movement of traffic;

(c) at an abandoned railroad grade crossing which is marked with a sign indicating that the railroad is abandoned;

(d) at an industrial or spur line railroad grade crossing marked with a sign reading “EXEMPT CROSSING”; or

(e) at a railroad grade crossing used exclusively for industrial switching purposes within a business district or a streetcar crossing.

G. Identification of transportation needs for students with disabilities:

(1) Transportation needs for students with an IEP who require transportation as a related service is determined by each student’s IEP team and shall be included in the IEP.

(2) When modifications to standard transportation are necessary, transportation personnel shall be afforded the opportunity to participate in the development of the IEP. The IEP document shall clearly state the transportation needs or modification or both identified by the IEP team and, if applicable, transportation personnel. If circumstances require changes in services, any team member may request that the team reconvene to consider the student’s transportation needs.

H. Provisions for transportation of students with disabilities:

(1) In providing transportation as a related service to a student with an IEP, the LEA shall ensure:

(a) all alternatives are considered if, due to serious health or safety considerations, an IEP team determines that a student with an IEP cannot be transported with neighborhood peers who are not disabled;

(b) time transporting a student with an IEP is comparable to that provided for non-disabled neighborhood peers, unless otherwise specified in the student’s IEP;

(c) access to and from the designated pickup and drop-off point; and

(d) access to other educational and related services specified in the student’s IEP.

(2)

Confidentiality of IEP and student medical information shall apply when transportation as a related service is provided to a student with an IEP.

I. Provisions of transportation for children and youth in foster care:

(1) The LEA shall develop and implement clear written procedures governing how transportation to maintain children in foster care in their school of origin when in their best interest will be provided, arranged, and funded for the duration of the time in foster care. The procedures shall:

(a) ensure that children in foster care needing transportation to the school of origin will promptly receive transportation in a cost-effective manner and in accordance with Section 475(4)(A) of the Social Security Act;

(b) ensure that, if there are additional costs incurred in providing transportation to maintain children in foster care in their school of origin, the LEA will provide transportation to the school of origin if:

(i) the local child welfare agency agrees to reimburse the LEA for the cost of such transportation;

(ii) the LEA agrees to pay for the cost of such transportation; or

(iii) the LEA and the local child welfare agency agree to share the cost of such transportation; and

(c) include, in addition to state and local funds that may be available for transportation, certain federal funds, if allowable under the grants, may be available to cover additional transportation costs to maintain children in foster care in their schools of origin.

(2) LEAs shall provide transportation to maintain children in foster care in their school

of origin even if it does not provide transportation for children that are not in foster care.

(3) LEAs shall provide or arrange for adequate and appropriate transportation of children in foster care to and from the school of origin while any disputes are being resolved.

J. Provisions of transportation for homeless children and youth:

(1) LEAs are responsible for reviewing and revising transportation policies that may act as barriers to the identification, enrollment, attendance or success in schools of homeless children and youth.

(2) McKinney-Vento Act requires homeless children and youth to receive transportation that is comparable to what is available to non-homeless students.

(3) LEAs shall adopt policies and practices to ensure that transportation is provided, at the request of the parent or guardian or in the case of the unaccompanied youth, the liaison, to and from the school of origin in accordance with the following requirements.

(a) If the child or youth continues to live in the area served by the LEA in which the school of origin is located, that LEA shall provide or arrange for the child's or youth's transportation to and from the school of origin.

(b) If the child or youth continues their education in the school of origin but begins living in an area served by another LEA, the LEA of origin and the LEA in which the homeless child or youth is living must agree upon a method to apportion the responsibility and costs for providing the child or youth with transportation to and from the school of origin. If the LEAs cannot agree upon a method, the responsibility and costs for transportation are to be shared equally, pursuant to 6.42.2 NMAC.

(4) LEAs may use McKinney-Vento subgrant funds or Title I funds to defray the excess costs of transporting homeless

children and youth to and from their school of origin.

(5) LEAs are required to provide adequate and appropriate transportation for homeless children and youth to and from the school of origin while enrollment disputes are being resolved.

(6) LEAs shall continue to provide transportation to and from the school of origin to formerly homeless children and youth who have become permanently housed for the remainder of the academic year during which the child or youth becomes permanently housed.

K. Dispute resolution regarding the transportation of children in foster care and homeless children and youth:

(1) To the extent feasible and appropriate, LEAs must ensure children in foster care remain in their school of origin while disputes are being resolved to minimize disruptions and reduce the number of moves between schools.

(2) Homeless children and youth shall be provided adequate and appropriate transportation to and from the school of origin while disputes are being resolved.

(3) LEAs shall work with child welfare agencies, unaccompanied youth liaisons, and parents and guardians to resolve disputes at the lowest level possible.

(4) If disputes are unable to be resolved at the local level, applicable parties may access dispute resolution procedures available at the department including those pursuant to 6.10.3 NMAC.

L. Student behavior:

(1) When a student's behavior on a school bus or at a designated school bus stop endangers the safety of others, the student shall be suspended from being transported according to LEA policies and department regulations.

(2) If an incident or behavior occurs involving a student with an IEP, the driver shall report each incident or behavior to the

transportation administrator within 24 hours of the incident. Provisions for removal and reinstatement of transportation services for students with disabilities shall be specified in the LEA's policies and in the student's IEP. Any change in transportation as a related service must be made through the IEP process, and the procedural safeguards specified in department regulations shall apply. The transportation administrator shall report each incident or behavior within 24 hours of receiving the driver's report to the LEA's special education director or appropriate administrator. The incident or behavior shall be addressed by the student's IEP team.

M. Process for pre-employment screening of initial commercial driver's license (CDL) driver applicants:

The employer shall adhere to all applicable federal, state, and department employment requirements.

(1) The employer shall verify the following documentation is in each driver applicant's file:

(a) a complete LEA-approved application form that meets or exceeds federal, state and department requirements;

(b) a copy of the driver applicant's current and valid driver's license, verified by the employer;

(c) a fingerprint-based background check. Effective January 1, 2006, a person applying for full or part-time employment with an LEA or transportation service provider to operate a vehicle for the purpose of transporting students shall, at the person's own expense, submit to a fingerprint-based background check pursuant to Section 22-10A-5 NMSA 1978;

(i) the finger-print based background check shall be conducted prior to employment;

(ii) the applicant shall not qualify if there is a conviction of any violation of the Controlled Substances Act;

(iii) the applicant shall not qualify if there is a conviction of child abuse pursuant to Section 30-6, NMSA 1978, Crimes Against Children and Dependents;

(iv) the applicant shall not qualify if there is a conviction of any other criminal offense in which a child was a victim as defined or prescribed by the offense;

(v) the employer shall maintain on file an agreement, authorization, and waiver and release form in addition to a criminal history affidavit on any newly-hired employee employed to operate a vehicle for the purpose of transporting students; and

(vi) the fingerprint-based background check requirement does not apply to any person who, as of January 1, 2006 was already engaged in full or part-time employment to operate a vehicle used to transport students, unless the employer's policies require it;

(d) a department of transportation (DOT) medical examiner's certificate indicating that a DOT physical examination was passed in accordance with DOT and federal motor carrier safety administration requirements. The DOT physical examination form that is current on the date of the examination must be used. The transportation administrator or the department may require a DOT physical examination be performed at any time, and the medical examiner's certificate shall be provided to all appropriate parties;

(e) a completed New Mexico school bus driver pre-service training record per the current SBDI manual provided by the department;

(i) an SBDI certified by the department shall conduct instruction using the current SBDI manual provided by the department;

(ii) all pre-service training shall be documented on the appropriate pre-service training record as per the SBDI manual provided by the department;

(iii) pre-service training shall be administered in a 65-71 passenger type C school bus. When the driver applicant is expected to operate more than one size and type of school bus, training shall be given on the specific handling characteristics of each size and type of school bus the driver applicant may be assigned to drive once all pre-service training has been completed;

(iv) all behind the wheel instruction shall be administered under the supervision of an SBDI and without student passengers or other persons on board except other school bus driver applicants;

(v) observation time shall include riding in a school bus with a licensed school bus driver driving on a school bus route or in observation of other school bus driver applicants driving under the supervision of an SBDI. Observation time shall also include actual school bus route orientation with a licensed school bus driver; and

(vi) if the school bus driver applicant has completed a department-approved first aid and cardiopulmonary resuscitation (CPR) course taught by a certified instructor and the certificate is current, the certificate shall be provided to the transportation administrator. This shall satisfy the requirement for first aid and CPR training on the school bus driver pre-service training record. On-line courses are not acceptable;

(f) a printout of the driver applicant's current driving record through the New Mexico motor vehicle division or the national driver register or other states' motor vehicle divisions. Verification includes the driver applicant's eligibility to be a driver. The driver applicant shall not be eligible if their driving record shows the driver applicant has:

(i) been convicted of driving while intoxicated (DWI) or driving under the influence (DUI) of intoxicating liquor or drugs within three years

(iii) of the date of application for employment;

(ii) been convicted of a DWI or DUI between three years and 20 years prior to the date of application for employment unless the person provides written verification from a licensed counselor or physician that the person has successfully completed an alcohol or drug abuse program. On-line programs are not acceptable;

(iii) been convicted two or more times for DWI or DUI;

(iv) had their driver's license suspended or revoked within five years of the date of application for employment for any serious traffic offense;

(v) been convicted of more than three serious traffic offenses within three years of the date of application for employment; or

(vi) been convicted of any felony within the previous 10 years, or there exist other reasonable grounds related to the services of transporting students rendering the applicant ineligible;

(g) a copy of the CDL test results, if available.

(2) The employer shall make available to each driver applicant at the time of hiring a current copy of 6.41.4 NMAC and any applicable LEA handbooks.

N. Process for pre-employment screening of returning CDL driver applicants: The employer shall adhere to all applicable federal, state and department employment requirements.

(1) A returning CDL driver applicant shall:

(a) provide a completed New Mexico school bus driver pre-service training record provided by the department or certificates of training conducted by the department prior to 2000; and

(b) complete the training as outlined on the New Mexico returning school bus driver pre-service training record per

the current SBDI manual provided by the department.

(2) A returning CDL driver applicant that cannot provide either a New Mexico school bus driver pre-service training record provided by the department or certificates of training conducted by the department prior to 2000 must complete the process for pre-employment screening of initial commercial driver's license (CDL) driver applicants pursuant to Subsection M of 6.41.4.9 NMAC.

(3) The employer shall verify that the following is completed and in each returning driver applicant's file:

(a) documentation pursuant to the requirements listed in Paragraph (1) of Subsection M of 6.41.4.9 NMAC; and

(b) a completed New Mexico returning school bus driver pre-service training record.

(4) The employer shall make available documents pursuant to Paragraph (2) of Subsection M of 6.41.4.9 NMAC.

O. Process for pre-employment screening of school-owned activity vehicle driver applicants: The LEA shall adhere to all federal, state and department employment requirements when employing a school-owned activity vehicle driver.

(1) The LEA shall verify the following documentation is in each driver applicant's file:

(a) a completed employment application form that meets or exceeds federal, state and department requirements unless the applicant is currently employed by the LEA;

(b) documentation pursuant to requirements listed in Subparagraphs (b), (c) and (f) of Paragraph (1) of Subsection M of 6.41.4.9 NMAC;

(c) a current medical examiner's certificate indicating that a physical examination was passed using the DOT physical

examination form that is current as of the date of the examination.

The transportation administrator or the department may require a physical examination be performed at any time. The medical examiner's certificate shall be provided to all appropriate parties;

(d) a completed New Mexico school-owned activity vehicle driver pre-service training record per the current SBDI manual provided by the department;

(i) training shall be provided by an SBDI with activity vehicle (AV) certification by the department or an activity vehicle instructor (AVI) certified by the department using the current SBDI manual provided by the department;

(ii) as part of the pre-service training, the driver applicant must complete a defensive driving course (DDC) that is nationally recognized and approved by the department. In lieu of AV-certified SBDI or AVI DDC training, a certificate of completion of a DDC course that is approved by the department may be accepted. The certificate of completion shall be dated within four years of the driver applicant's date of application; and

(iii) as part of the pre-service training, the driver applicant must complete a department-approved first aid and CPR course taught by a certified instructor. A certificate from the completed course shall be provided to the transportation administrator. If the driver applicant has a current certificate from a department-approved complete first aid and CPR course, this shall satisfy the requirement. On-line courses are not acceptable.

(2) The employer shall make available documents pursuant to Paragraph (2) of Subsection M of 6.41.4.9 NMAC.

P. Process for pre-employment screening of school bus assistant and substitute school bus assistant applicants: The employer shall adhere to all applicable federal,

state, and department employment requirements.

(1) The employer shall maintain the following documentation in each school bus assistant and substitute school bus assistant's file:

(a) a completed employment application form that meets or exceeds federal, state and department requirements unless the applicant is currently employed by the LEA;

(b) a fingerprint-based background check pursuant to the requirements listed in Subparagraph (c) of Paragraph (1) of Subsection M of 6.41.4.9 NMAC;

(c) a physical examination record; (i) the physical examination shall be completed before the assistant begins performing duties; and

(ii) the transportation administrator or the department may require a new physical examination be performed at any time;

(d) a completed New Mexico school bus assistant pre-service training record in accordance with the SBDI manual as provided by the department; and

(e) a current first aid and CPR certificate. On-line first aid and CPR courses are not acceptable.

(2) The applicant shall not qualify if they have:

(a) been convicted of any felony within the previous 10 years, or there exist other reasonable grounds related to the services of transporting students rendering the applicant ineligible;

(b) a conviction for any violation of the Controlled Substances Act;

(c) been convicted of child abuse pursuant to Section 30-6, NMSA 1978, Crimes Against Children and Dependents; or

(d) been convicted of any other criminal offense in which a child was a victim

as defined or prescribed by the offense.

(3) The employer shall make available documents pursuant to Paragraph (2) of Subsection M of 6.41.4.9 NMAC.

Q. Continuing standards for drivers: Any individual who currently drives a vehicle transporting students shall no longer be eligible to transport students:

(1) for three years if they receive a conviction for DWI or DUI. They may requalify if a written verification from a licensed counselor or physician is provided that the person has successfully completed an alcohol or drug abuse program. On-line programs are not acceptable. They are permanently ineligible if they have two or more DWI or DUI convictions;

(2) for five years if they receive a suspension or revocation of driver's license for any serious traffic offense;

(3) for three years if they receive convictions for more than three serious traffic offenses; or

(4) if they receive any convictions pursuant to Paragraph (2) of Subsection P of 6.41.4.9 NMAC.

R. Background check requirements for drivers, school bus assistants, and substitute school bus assistants: The background check requirements pursuant to 6.41.4.9 NMAC, shall not apply to anyone who, as of January 1, 2006 was already engaged in full or part time employment to operate a vehicle to transport students. LEAs may require additional background check information.

S. Required documentation for files: In addition to the required pre-employment screening documentation pursuant to 6.41.4.9 NMAC, the documentation below shall be maintained in the employee's file.

(1) Employee files for school bus drivers, substitute school bus drivers and activity bus drivers shall include:

- (a) a copy of current CDL;
- (b) a current medical examiner's certificate for a DOT physical examination;
- (i) a DOT physical examination shall be renewed every 24 months from the date of the last examination, or earlier as requested by a licensed medical professional;
- (ii) the current DOT physical examination form must be used; and
- (iii) additional DOT physical examinations may be requested by the employer or the department;
- (c) a driving record printed annually then verified for eligibility. The driver's current driving record shall be obtained through the New Mexico motor vehicle division or the national driver register or other states' motor vehicle division. The driver shall no longer be eligible:
 - (i) for three years if they receive a conviction for DWI or DUI. They may requalify if a written verification from a licensed counselor or physician is provided that the person has successfully completed an alcohol or drug abuse program. On-line programs are not acceptable. They are permanently ineligible if they have two or more DWI or DUI convictions;
 - (ii) for five years if they receive a suspension or revocation of their driver's license for any serious traffic offense;
 - (iii) for three years if they receive convictions for more than three serious traffic offenses; or
 - (iv) for 10 years if they receive a conviction for any felony or there exist other reasonable grounds related to the services of transporting students rendering the applicant ineligible;
- (d) documented in-service training as per the department's requirements;

- (i) in-service training shall be pro-rated for newly-hired school bus drivers, substitute school bus drivers, and activity bus drivers for their first year of employment for the number of quarters employed. Quarters during the calendar year are as follows: January 1 to March 31; April 1 to June 30; July 1 to September 30; and October 1 to December 31;
- (ii) to remain qualified, school bus drivers, substitute school bus drivers, and activity bus drivers shall complete a total of eight hours in-service training per semester. Semesters during the calendar year are as follows: January 1 to June 30 and July 1 to December 31;
- (iii) in-service training shall be documented by the transportation administrator or designee with the date of training, hours trained, trainer's name, printed and signed name of attendees, and topic or topics discussed. Such documents shall be stored in files maintained by the employer,
- (iv) drivers who do not complete the required hours of in-service training per semester are disqualified from duty until those hours of in-service training are completed. The department may determine the in-service training topics.
- (2) Employee files for school-owned activity vehicle drivers shall include:
 - (a) a copy of current driver's license;
 - (b) a current medical examiner's certificate indicating that a physical examination in accordance with DOT and federal motor carrier safety administration requirements was passed;
 - (i) the DOT physical examination form that is current on the date of the examination must be used; and
 - (ii) additional physical examinations on the DOT form may be requested by the employer or the department;

(c) a driving record printed annually then verified for eligibility pursuant to the requirements listed in Subparagraph (c) of Paragraph (1) of Subsection S of 6.41.4.9 NMAC.

(3) Employee files for school bus assistants and substitute school bus assistants shall include:

(a) a copy of current first aid and CPR certificate; and

(b) documented in-service training pursuant to the requirements listed in Subparagraph (d) of Paragraph (1) of Subsection S of 6.41.4.9 NMAC.

T. Planned LEA-sponsored activity trips: When a planned LEA-sponsored activity trip involves more than 18 people, including the drivers, or would require more than two school-owned activity vehicles to transport students during the same time frame to the same destination, the LEA shall use an activity school bus. Passenger management, as described in Paragraph (7) of Subsection T of 6.41.4.9 NMAC, shall not be an additional responsibility of the driver of the activity bus or a school bus assistant on a planned LEA-sponsored activity trip.

(1) When an activity bus is used for a planned LEA-sponsored activity trip:

(a) the activity bus shall meet the requirements pursuant to 6.40.2 NMAC;

(b) the activity bus shall not carry more than the manufacturer-rated seating capacity;

(c) the employer shall not use a school bus assigned to a school bus route to provide transportation for any planned LEA-sponsored activity trips if doing so will interfere with its operation on its assigned school bus route;

(d) the employer shall not temporarily reassign any students from one school bus route to another school bus route in order to free-up a school bus for a

planned LEA-sponsored activity trip; and

(e) on an activity bus that includes transporting equipment:

(i) items shall not occupy needed seating space;

(ii) items shall not be placed in the driver's compartment;

(iii) all items shall be properly secured; and

(iv) aisle and exits shall not be blocked.

(2) When a school-owned activity vehicle is used on a planned LEA-sponsored activity trip:

(a) the school-owned activity vehicle shall meet applicable federal motor vehicle safety standards (FMVSS);

(b) the driver operating a school-owned activity vehicle shall meet all requirements for school-owned activity vehicle drivers, pursuant to Subsection O of 6.41.4.9 NMAC;

(c) the school-owned activity vehicle shall not carry more than the manufacturer-rated seating capacity;

(d) the school-owned activity vehicle shall meet the following criteria:

(i) the school-owned activity vehicle shall not be vans or mini-vans;

(ii) the school-owned activity vehicle shall not seat less than six and no more than nine people including the driver;

(iii) the school-owned activity vehicle shall have seat belts available for all occupants, and all occupants are required to wear them while the vehicle is in motion;

(iv) the school-owned activity vehicle shall have available a cargo net or other adequate tie-down for securing items in the vehicle; excluding hitched trailers;

(v) trailers shall not be hitched to school-owned activity vehicles while the vehicle is transporting students;

(vi) the school-owned activity vehicle shall not exceed the manufacturer's gross vehicle weight rating (GVWR) as specified on the vehicle license and registration form; the GVWR includes the weight of the passengers and luggage; and

(vii) the school-owned activity vehicle shall be in compliance with all applicable federal, state, and department regulations, and with child restraint guidelines from the national highway traffic safety administration (NHTSA);

(e) on a school-owned activity vehicle that includes transporting equipment shall transport equipment pursuant to the requirements listed in items (i), (ii), and (iii) of Subparagraph (e) of Paragraph (1) of Subsection T of 6.41.4.9 NMAC;

(f) the school-owned activity vehicle shall be replaced in accordance with the LEA's policy which defines the replacement cycle for school-owned activity vehicles.

(3) The following time limits shall apply to drivers of planned LEA-sponsored activity trips.

(a) A driver shall not have more than eight hours continuous driving time and no more than 10 hours total driving time.

(b) A driver shall not be permitted to be on-duty more than 15 hours in a 24-hour period.

(c) A driver shall have eight consecutive off-duty hours before resuming on-duty time.

(d) A driver is considered off-duty if relieved of all duties and responsibilities for the care and custody of the vehicle, its accessories, cargo, and passengers.

(4) An activity trip ticket that documents

and authorizes the activity trip shall be prepared, signed by the LEA, and provided to the driver if the planned LEA-sponsored activity trip requires travel outside of the LEA's geographic boundary.

(5) LEAs are not required to have an activity trip ticket if a commercial common carrier is used to transport students on a planned LEA-sponsored activity trip. However, the LEA shall maintain a copy of the contract for the transportation services for the planned LEA-sponsored activity trip.

(6) Drivers shall be informed of and responsible for the following while driving on planned LEA-sponsored activity trips in addition to the applicable responsibilities of drivers pursuant to 6.41.4.11 NMAC:

(a) compliance with all federal, state, department and employer policies and regulations;

(b) care of and safe and efficient operation of the school bus or school-owned activity vehicle at all times;

(c) performance and documentation of a thorough pre-trip inspection of the vehicle and special equipment prior to departure, unless completed and documented by other qualified personnel;

(d) conducting an emergency evacuation drill or providing adequate alternate instruction to all passengers prior to departure. An LEA-approved document shall be provided to the driver for the driver and the sponsor to sign in evidence that such has been completed before beginning each planned LEA-sponsored activity trip;

(e) ensuring the safety of all passengers while they are in the school bus or school-owned activity vehicle;

(f) ensuring all passengers are properly seated with seat belts in use when the driver is operating a school-owned activity vehicle;

(g) maintaining an activity trip ticket

when one is required. The driver shall, upon request, show the signed activity trip ticket to any state police officer or other law enforcement officer, DOT officer, or staff member of the department;

(h) notifying the transportation administrator or designee and obtaining their approval prior to incorporating a change if there are any changes in the route or itinerary;

(i) notifying the transportation administrator or designee of all emergencies that arise;

(j) maintaining and submitting to designated employer personnel all records pertinent to the planned LEA-sponsored activity trip including signed documentation that adequate emergency evacuation instruction was conveyed to all passengers;

(k) ensuring that prior to departure and the return journey, the school bus or school-owned activity vehicle is clean, completely serviced, and inspected, noting the condition of the vehicle in writing on the appropriate form and signing the form;

(l) ensuring the school bus or school-owned activity vehicle shall not be fueled while passengers are on board unless there are exceptional circumstances when it is impractical to unload;

(m) ensuring that no students remain on the school bus or school-owned activity vehicle unless the driver or a school sponsor is on board. At the conclusion of the planned LEA-sponsored activity trip, ensure that no one is on the school bus or school-owned activity vehicle; and

(n) ensuring that the sponsors are actively supervising students on the bus.

(7) School sponsors shall be notified of the following responsibilities for each planned LEA-sponsored activity trip:

(a) preparing and submitting activity trip requests in accordance with federal,

state and department regulations as well as the LEA's policies;

(b) ensuring there are an adequate number of disciplinary staff;

(c) notifying the transportation administrator or designee of any schedule changes;

(d) assuring that student(s) are at the departure point(s) at the appointed time;

(e) supervising the loading and unloading of the vehicle;

(f) maintaining a student roster and taking roll each time students load onto the vehicle;

(g) assuring the orderly conduct and discipline of students on and off the vehicle;

(h) supervising and maintaining control of student passengers in case of an emergency;

(i) providing for adequate rest stops;

(j) making all arrangements on overnight planned LEA-sponsored activity trips for meals and lodging, including the driver's meals and lodging.

(8) Planned LEA-sponsored activity trips shall be paid from budgeted LEA-sponsored activity funds and not from current fiscal year to-and-from transportation funds.

(9) The LEA shall adopt a policy that addresses out-of-state transportation for planned LEA-sponsored activity trips. LEAs shall use the guidelines for school-owned activity vehicles provided in 6.41.4 NMAC whenever possible

U. Training:
(1)

Transportation administrators shall provide training for other LEA employees who are responsible for supervision of the school transportation program and school employed drivers.

(2) A minimum of two hours of in-service

training is required annually. The contents of the training will be determined by the department. [6.41.4.9 NMAC - Rp, 6.41.4.9 NMAC, 3/27/2018; A/E, 8/4/2023]

**REGULATION
AND LICENSING
DEPARTMENT
BARBERS AND
COSMETOLOGISTS, BOARD
OF**

**This is an amendment to 16.34.1
NMAC Section 7, effective
08/29/2023**

16.34.1.7 DEFINITIONS:

As used in the Barbers and Cosmetologists Act:

A. “applicant” [means a person who has applied for a license] has the same meaning as defined in Subsection B of Section 61-1-2 NMSA 1978;

B. “apprentice” means a person enrolled in a barber apprenticeship program approved by and registered with the state apprenticeship agency;

C. “approval number” means the number assigned by the board to designate an approved provider;

D. “approved” means accepted as a provider by the board;

E. “barber” [means a person, other than a student, who for compensation engages in barbering;] has the same meaning as defined in Subsection A of Section 61-17A-2 NMSA 1978;

F. “barber apprenticeship” means an apprenticeship program registered with the state apprenticeship agency;

G. “barbering” [means shaving or trimming the beard or cutting the hair, curling and waving, including permanent waving, straightening the hair, giving facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances, shampooing, bleaching or dyeing the hair or applying tonics or applying cosmetic

preparations, antiseptics, powders, oils, clays or lotions to the scalp, face, neck or upper part of the body, caring for and servicing wigs and hair pieces or removing of unwanted hair except by means of electrolysis;] has the same meaning as defined in Section 61-17A-3 NMSA 1978;

H. “board” [means the board of barbers and cosmetologists;] has the same meaning as defined in Subsection B of Section 61-17A-2 NMSA 1978;

I. “booth establishment license” means a license required of an individual who rents space within another licensed establishment for the purpose of rendering licensed services as a separate, independent business;

J. “branch campus/ additional location” means an additional location that provides the same administrative services as the main campus, and offers at least one complete program entered into the programs offered at the main campus; a branch campus/additional location must be approved by the board as a separate school with a stand-alone license;

K. “clean or cleansing” means washing with liquid soap and water, detergent, antiseptics, or other adequate methods to remove all visible debris or residue. Cleansing is not disinfection;

L. “contact hour” means one contact hour equals a minimum of 50 minutes of instruction;

M. “cosmetologist” [means a person, other than a student, who for compensation engages in cosmetology;] has the same meaning as defined in Subsection C of Section 61-17A-2 NMSA 1978;

N. “cosmetology” [means arranging, dressing, curling, waving, cleansing, cutting, bleaching, coloring, straightening or similar work upon the hair of a person, whether by hand or through the use of chemistry or of mechanical or electrical apparatus or appliances, using cosmetic preparations, antiseptics, tonics, lotions or creams or massaging, cleansing, stimulating,

manipulating, beautifying or performing similar work on the body of a person, manicuring and pedicuring the nails of a person, caring for and servicing wigs and hair pieces or removing of unwanted hair except by means of electrolysis. A cosmetologist shall not perform any type of shaving using a straight edge (or razor blade in any form) with or without a safety guard without obtaining appropriate licensure.] has the same meaning as defined in Section 61-17A-4 NMSA 1978;

O. “current work experience” means verified work that has occurred within the previous five years;

P. “department” [means the regulation and licensing department.] has the same meaning as defined in Subsection D of Section 61-17A-2 NMSA 1978;

Q. “disinfect or disinfection” means the use of chemical agents (after cleaning) to destroy potentially dangerous pathogens on non-porous items;

R. “disinfectant” means an EPA-registered bactericidal, virucidal and fungicidal chemical effective against pathogens of concern when used as directed on the manufacturer’s label. For purposes of this rule alcohol and UV light boxes are not approved for disinfection;

S. “electrologist” means a person, other than a student, who for compensation removes hair from or destroys hair on the human body through the use of an electric current applied to the body with a needle-shaped electrode or probe;

T. “electronic signature” means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record;

U. “enterprise” [means a business venture, firm, or organization;] has the same meaning as defined in Subsection F of Section 61-17A-2 NMSA 1978;

V. “expansion campus facility” means any separate classroom or clinic used for educational purposes that is separate,

detached and apart from the primary facility and main address; its purpose is to allow the licensed school to provide adequate space to train students who are enrolled through the primary facility and the expansion campus facility must be within a two-mile radius of the main campus;

~~[W:]~~ **V. “establishment”** [means an immobile beauty shop, barbershop, electrology clinic, salon or similar place of business in which cosmetology, barbering, eyebrow threading, hairstyling or electrolysis is performed;] has the same meaning as defined in Subsection G of Section 61-17A-2 NMSA 1978;

~~[X:]~~ **W. “esthetician”** [means a person, other than a student, who for compensation uses cosmetic preparations, including makeup applications, antiseptics, powders, oils, clays or creams or massaging, cleansing, stimulating or manipulating the skin for the purpose of preserving the health and beauty of the skin and body or performing similar work on any part of the body of a person; using the term or title of “medical esthetician” is not allowable under the act; this term is misleading and could be deemed deceptive or fraudulent;] has the same meaning as defined in Subsection H of Section 61-17A-2 NMSA 1978;

~~[Y:]~~ **X. “eyebrow threading”** [means a method of hair removal in which a thin thread is doubled, twisted and then rolled over areas of unwanted hair, removing the hair at the follicle level;] has the same meaning as defined in Subsection I of Section 61-17A-2 NMSA 1978;

Y. “eyelash extensions” means strands of silk, mink, or another synthetic or natural material that are applied one at a time and fixed to an individual’s natural eyelashes;

Z. “executive director” means the director for the board;

AA. “expansion campus facility” means any separate classroom or clinic used for educational purposes that is separate, detached and apart from the primary facility and main address; its purpose

is to allow the licensed school to provide adequate space to train students who are enrolled through the primary facility and the expansion campus facility must be within a two-mile radius of the main campus;

BB. “externship” means a student enrolled in any course licensed by this act may, at the school’s option, participate in an externship program upon completion of seventy-five percent of the contracted course of study. The externship program would allow students to train in a licensed establishment for one day or up to eight hours per week until graduation. The training would be supervised by a designated salon licensee and would include any activity that is routine in a salon except for offering complete services on the public, applying any chemicals, or receiving any compensation;

CC. “hairstylist” [means a person, other than a student, who for compensation engages in hairstyling;] has the same meaning as defined in Subsection J of Section 61-17A-2 NMSA 1978;

DD. “HSD” means the New Mexico human services department;

EE. “hands-on training” means student training on clients, students or models that includes active personal participation and practical experience necessary to gain knowledge. Training on mannequins is considered hands-on training;

FF. “instructor” means a person licensed to teach in a school of cosmetology, barbering or in a school of electrology;

GG. “journey worker” means a person who holds a current New Mexico barber license; is recognized by the sponsor as having attained and mastered a level of skill, abilities, and competencies in barbering and is authorized to provide related instruction and on-the-job training to licensed apprentices. The maximum allowable ratio of licensed apprentices to journey workers during on-the-job training is one to one;

HH. “jurisprudence exam” means the examination given regarding the laws, rules and regulations, which relate to the practice of barbers and cosmetologists in the state of New Mexico;

II. “license” means a certificate, permit or other authorization to engage in each of the professions and occupations regulated by the boards enumerated in Subsection A of the act;

JJ. “license in good standing” refers to a current, valid, board-issued license with no restrictions placed on the license by the board;

KK. “main campus” means a school, which has been licensed by the board; any change in location of the main campus must comply with the procedures set forth in 16.34.8 NMAC of these rules; the main campus includes the primary facilities and any separate or detached expansion campus facility of the primary training site within a two-mile radius;

LL. “manicurist-esthetician” means a person, other than a student, who for compensation performs work on the nails of a person, applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet and who uses cosmetic preparations, including makeup applications, antiseptics, powders, oils, clays or creams or massaging, cleansing, stimulating or manipulating the skin for the purpose of preserving the health and beauty of the skin and body or performing similar work on any part of the body of a person;

MM. “manicurist-pedicurist” means a person, other than a student, who for compensation performs work on the nails of a person, applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet;

NN. “multi-use” means non-porous instruments, items, equipment, implements or tools that must be cleaned and disinfected. The items must be disinfected by

a complete immersion in an EPA registered, bactericidal, virucidal and fungicidal (formulated for hospitals) disinfectant that is mixed and used according to the manufacturer's directions. Non-porous items are the only items that can be disinfected;

OO. "non-porous"

means multi-use items such as metal, glass and plastic;

PP. "outreach

enterprise" means an independent mobile unit, or system of units, equipped with or carrying both professional and special equipment used by a professional licensee of this act to a site or premises for the purpose of providing professional services to the handicapped, restricted, homebound, impaired, incapacitated, delicate, or otherwise constrained client;

QQ. "sponsor"

means the sponsor in whose name the standards of apprenticeship will be registered with the state apprenticeship agency, and which will have the full responsibility for administration and operation of a barber apprenticeship program;

RR. "provider"

means the person, firm, corporation, institution or agency approved to conduct or sponsor a continuing education program and ensure its integrity;

SS. ["revoke a

license" means to prohibit the conduct authorized by the license;] **"revocation"** has the same meaning as defined in Subsection J of Section 61-1-2 NMSA 1978;

TT. "sanitation"

[means the maintenance of sanitary conditions to promote hygiene and the prevention of disease through the use of chemical agents or products;] has the same meaning as defined in Subsection L of Section 61-17A-2 NMSA 1978;

UU. "school" [means

a public or private instructional facility approved by the board that teaches cosmetology or barbering;] has the same meaning as defined in Subsection M of Section 61-17A-2 NMSA 1978;

VV. "single use items"

means tools or supplies that come in contact with the public and are porous (made of anything other than plastic, metal or glass) cannot be disinfected (including, but not limited to: disposable razors, pedi-pads, emery boards, sponges, cotton pads, buffing blocks, toe separators, chamois, sandpaper drill bits, waxing strip, wood sticks, cotton balls, nail wipes, disposable towels, pumice stones, flip flops, and porous files, etc.) shall be disposed of immediately after use;

WW. "state

apprenticeship agency" means the department of workforce solutions' state apprenticeship agency;

XX. "statement of

compliance" means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support;

YY. "statement of

non-compliance" means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support;

ZZ. "sterilize or

sterilization" means to eliminate all forms of bacteria or other microorganisms;

AAA. "student" [means a

person enrolled in a school to learn or be trained in cosmetology, barbering or electrolysis;] has the same meaning as defined in Subsection N of Section 61-17A-2 NMSA 1978;

BBB. "supervising

licensee" means licensee designated by the establishment owner or manager to act on behalf of the enterprise or establishment in the absence of the owner or manager. The supervising licensee must be licensed in all aspects of the activity being practiced in the enterprise or establishment;

CCC. ["suspend a

license" means to prohibit, for a stated period of time, the conduct authorized by the license; "suspend a license" also means to allow for a stated period of time the conduct authorized by the license subject to conditions that are reasonably related

to the grounds for suspension;] **"suspension"** has the same meaning as defined in Subsection K of Section 61-1-2 NMSA 1978;

DDD. "verified work

experience" means work experience in the applicable discipline in a licensed establishment, enterprise or electrology clinic as verified by:

(1)

certified and notarized statement by employer(s);

(2)

certified and notarized statement by licensed co-worker(s);

(3)

certified and notarized statement by client(s);

(4)

copies of tax returns; or

(5)

copies of W-2's;

[16.34.1.7 NMAC - Rp 16 NMAC 34.1.7, 6/16/2001; A, 7/16/2004; A, 10/4/2007; A, 12/17/2015; A, 10/29/2016; A, 7/14/2018; A, 12/27/2022; A, 08/29/2023]

**REGULATION
AND LICENSING
DEPARTMENT
BARBERS AND
COSMETOLOGISTS, BOARD
OF**

This is an amendment to 16.34.4 NMAC Sections 6, 9, 10, 11, effective 08/29/2023

16.34.4.6 OBJECTIVE:

[Pursuant to the Barbers and Cosmetologists Act this establishes licensure requirements for all courses of study] To create and establish standards and fees for special licenses pursuant to Paragraph 8 of Subsection A of Section 61-17A-7 NMSA 1978 of the Barbers and Cosmetologists Act [16.34.4.6 NMAC - Rp 16 NMAC 34.4.6, 6/16/2001; A, 08/29/2023]

16.34.4.9 [SPECIAL LICENSES] BARBER

APPRENTICE LICENSE: The board shall issue a barber apprentice license to an applicant who submits the apprentice license fee, the

application form required and provided by the board, and a copy of the apprenticeship agreement between the apprentice and the registered apprenticeship program, issued by the state apprenticeship agency.

A. A barber apprentice license is valid during the time the apprentice is active in a registered apprenticeship program, but in no case longer than 36 months from the date of issuance. A barber apprentice license will automatically become invalid upon the apprentice’s cancellation from a registered apprenticeship program or deregistration of an apprenticeship program by the state apprenticeship agency. The apprentice is responsible for returning the invalid license to the board within 30 days of the apprentice’s cancellation or deregistration of the program.

B. The board may recommend to the state apprenticeship agency deregistration of a barber apprenticeship program for any violation of the board’s rules or regulations.

C. A barber apprentice may receive related instruction from a journey worker/licensed barber instructor outside of a licensed establishment; however, barber apprentice services may not be performed on the public and practical application may not be taught outside of a licensed establishment.
[16.34.4.9 NMAC - Rp 16 NMAC 34.4.9, 6/16/2001; Repealed, 10/4/2007; N, 10/29/2016; A, 08/29/2023]

16.34.4.10 [RESERVED] MANICURIST/ESTHETICIAN LICENSE (900 HOURS OR EQUIVALENT CREDIT):

A. A combined manicurist/esthetician license permits the practitioner to:

(1) trim the nails of a person, including the trimming of otherwise healthy ingrown toenails;

(2) reduce corns callouses by using softening preparations or abrasion in order to beautify the foot;

(3) use chemical substances on the nails for the purpose of strengthening, repairing or lengthening the nails using nail tips, wraps or acrylic nail products. Nail extensions may be applied only after the nails, cuticles and nail plate have been properly prepared for the service and applicable product;

(4) apply massage and manipulations to the hands, arms and feet for the purpose of stimulating and smoothing;

(5) apply polish, oils or other cosmetic preparations for the purpose of beautifying the hands and feet;

(6) use cosmetic preparations, antiseptics, powders, oils, clays or lotion to any part of the body of a person;

(7) apply massage and manipulation techniques using the hands or mechanical apparatus;

(8) apply light therapy, high frequency and other types of facial treatments; and use specialized skin care and facial machines in applying facial treatments;

(9) apply cosmetic makeup preparations to contour and beautify the skin;

(10) application of product to eyelashes and eyebrows, including eyelash extensions and lash and brow tinting procedures; and

(11) remove superfluous or unwanted hair from the body of a person by any means except electrolysis or other invasive techniques and shaving.

B. A manicurist/ esthetician shall not treat an obviously infected ingrown toenail or use any technique involving mechanical penetration of the skin beneath a callous or corn.

C. A manicurist/ esthetician shall not perform facial services on any person with a communicable skin disease.

D. A manicurist/ esthetician shall not perform any services other than those listed above. To do so may lead to revocation of the

license or other disciplinary action by the board.

[16.34.4.10 NMAC – Rp, 16 NMAC 34.4.10, 06/16/2001; Repealed, 07/16/2004; N, 08/29/2023]

16.34.4.11 [RESERVED] BARBER/COSMETOLOGY LICENSE (CROSSOVER):

A barber/cosmetology license may be issued to any licensee who has completed a crossover course in either barbering or cosmetology and has taken and passed the appropriate exams. Upon completion of the crossover, the licensee must contact the board office and request that their licenses be combined.

[16.34.4.11 NMAC – Rp 16 NMAC 34.4.10, 06/16/2001; Repealed, 04/12/2010; N, 08/29/2023]

REGULATION AND LICENSING DEPARTMENT BARBERS AND COSMETOLOGISTS, BOARD OF

This is an amendment to 16.34.5 NMAC Sections 8, 9, 10, 12, 15, 16, effective 08/29/2023.

16.34.5.8 GENERAL LICENSURE REQUIREMENTS:

A. Any person is eligible to be registered as a practitioner and is qualified to receive a license as a registered barber, cosmetologist, hairstylist, manicurist, esthetician, manicurist/esthetician, or electrologist who submits proof that the applicant:

(1) is at least 17 years of age;

(2) has completed the course of study for the license in a licensed school within the preceding 12 months; or for a barber license, proof that the applicant has either completed the course of study in a licensed school within the preceding [+2] 24 months or has successfully completed a barber apprenticeship program registered by the state apprenticeship agency within the preceding [+2] 24 months;

(3) has paid the required fees as set forth in these rules; and

(4) has passed the practical and written examination conducted by the board.

B. Any person is eligible for initial registration or re-registration as an instructor and is qualified to receive a license as an instructor who submits proof that the applicant has met all the above requirements and in addition:

(1) for barber instructors, has an education equivalent to the completion of four years of high school; and

(2) holds a current license in New Mexico as a practitioner in the field in which the applicant is seeking licensure as an instructor.

~~[C.] Applicants who have not completed a course of study equivalent to the license for which he/she is applying may submit notarized letters of employment or employment records to prove licensed, current, verified work experience. Six full months of work experience will equal 150 hours of training. Work experience less than six full months will not be considered toward training hours.~~

~~[D.]~~ (3) Applications are valid for one year from date of receipt.

~~[E.]~~ (4) All application fees are non-refundable. [16.34.5.8 NMAC - Rp 16 NMAC 34.5.8, 6/16/2001; A, 7/16/2004; A, 12/17/2015; A, 10/29/2016; A, 7/14/2018; A, 12/27/2022; A, 08/29/2023]

16.34.5.9 BARBER LICENSE (1200 HOURS OR EQUIVALENT CREDIT):

A. A barber license permits the practitioner to perform the following services upon the upper part of the human body for cosmetic purposes:

~~[A.]~~ (1) shave or trim beards;

~~[B.]~~ (2) cut and style hair whether by hand or mechanical or electrical apparatus;

~~[C.]~~ (3) curl, wave, permanent wave or chemically relax the hair;

~~[D.]~~ (4) give facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances;

~~[E.]~~ (5) shampoo, bleach, dye, or apply tonics to the hair;

~~[F.]~~ (6) apply cosmetic preparations, antiseptics, powders, oils, clays or lotions to the scalp, face, neck or upper parts of the body;

~~[G.]~~ (7) care for and service wigs and hairpieces; and

~~[H.]~~ (8) remove superfluous or unwanted hair from the body of a person by any means except electrolysis; and

(9) application of product to eyelashes and eyebrows, including eyelash extensions and lash brow tinting procedures.

~~[I.]~~ **B.** A barber shall not perform any type of nail services without obtaining appropriate licensure.

[16.34.5.9 NMAC - Rp 16 NMAC 34.5.9, 6/16/2001; A, 12/17/2015; A, 08/29/2023]

16.34.5.10 COSMETOLOGIST LICENSE (1600 HOURS OR EQUIVALENT CREDIT):

A. A cosmetologist license permits the practitioner to:

(1) cut and style hair whether by hand or mechanical or electrical apparatus;

(2) braid, natural hair braid, curl, wave, permanent wave or chemically relax the hair;

(3) give facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances, including removal of superfluous or unwanted hair except by means of shaving and electrolysis;

(4) shampoo, bleach, dye, or apply tonics to the hair;

(5) apply cosmetic preparations, antiseptics, powders, oils, clays or lotions to any part of the body of a person;

(6) manicure and pedicure the nails of a person and add nail extensions;

(7) care for and service wigs and hairpieces;

(8) cut or trim beards with clippers or scissors only; and

(9) application of product to eyelashes and eyebrows, including eyelash extensions and lash and brow tinting procedures.

B. A cosmetologist shall not perform any type of shaving using a straight edge (or razor blade in any form) with or without a safety guard without obtaining appropriate licensure.

[16.34.5.10 NMAC - Rp 16 NMAC 34.5.10, 6/16/2001; A, 10/4/2007; A, 12/17/2015; A, 08/29/2023]

16.34.5.12 ESTHETICIAN LICENSE (600 HOURS OR EQUIVALENT CREDIT):

A. An esthetician license permits the practitioner to:

(1) use cosmetic preparations on the skin for cleansing and stimulating;

(2) apply massage and manipulation techniques using the hands or mechanical apparatus;

(3) apply light therapy, high frequency and other types of facial treatments;

(4) use specialized skin care and facial machines in applying facial treatments;

(5) apply cosmetic makeup preparations, antiseptics, powders, oils, clays or lotions to any part of the body of a person;

~~(6) [perform lash and brow tinting procedures;]~~
application of product to eyelashes and eyebrows, including eyelash extensions and lash and brow tinting procedures;

(7) remove superfluous or unwanted hair from

the body of a person by any means except electrolysis or other invasive techniques and shaving.

B. An esthetician shall not perform any services other than those listed above. To do so may lead to revocation of the license or other disciplinary action by the board.

C. Using the term or title of “medical esthetician” is not allowable under the act. This term is misleading and could be deemed deceptive or fraudulent.
[16.34.5.12 NMAC - Rp 16 NMAC 34.5.12, 6/16/2001; A, 10/4/2007; A, 08/29/2023]

16.34.5.15 [MANICURIST/ ESTHETICIAN LICENSE (900-HOURS OR EQUIVALENT CREDIT):

A. A combined manicurist/esthetician license permits the practitioner to:

- ~~(1) trim the nails of a person, including the trimming of otherwise healthy ingrown toenails;~~
- ~~(2) reduce corns or callouses by using softening preparations or abrasion in order to beautify the foot;~~
- ~~(3) use chemical substances on the nails for the purpose of strengthening, repairing or lengthening the nails using nail tips, wraps or acrylic nail products. Nail extensions may be applied only after the nails, cuticles and nail plate have been properly prepared for the service and applicable product;~~
- ~~(4) apply massage and manipulations to the hands, arms and feet for the purpose of stimulating and smoothing;~~
- ~~(5) apply polish, oils or other cosmetic preparations for the purpose of beautifying the hands and feet;~~
- ~~(6) use cosmetic preparations, antiseptics, powders, oils, clays or lotion to any part of the body of a person;~~
- ~~(7) apply massage and manipulation techniques using the hands or mechanical apparatus;~~

~~(8) apply light therapy, high frequency and other types of facial treatments; and use specialized skin care and facial machines in applying facial treatments;~~

~~(9) apply cosmetic makeup preparations to contour and beautify the skin;~~

~~(10) perform lash and brow tinting procedures; and~~

~~(11) remove superfluous or unwanted hair from the body of a person by any means except electrolysis or other invasive techniques and shaving.~~

B. A manicurist/esthetician shall not treat an obviously infected ingrown toenail or use any technique involving mechanical penetration of the skin beneath a callous or corn.

C. A manicurist/esthetician shall not perform facial services on any person with a communicable skin disease.

D. A manicurist/esthetician shall not perform any services other than those listed above. To do so may lead to revocation of the license or other disciplinary action by the board. **[RESERVED]**
[16.34.5.15 NMAC - Rp 16 NMAC 34.5.15, 6/16/2001; A, 12/17/2015; Repealed, 08/29/2023]

16.34.5.16 [BARBER/ COSMETOLOGY LICENSE (CROSSOVER):

A barber/cosmetology license may be issued to any licensee who has completed a crossover course in either barbering or cosmetology and has taken and passed the appropriate exams. Upon completion of the crossover, the licensee must contact the board office and request that their licenses be combined. **[RESERVED]**
[16.34.5.16 NMAC - N, 12/17/2015; Repealed, 08/26/2023]

**REGULATION AND LICENSING DEPARTMENT
BARBERS AND COSMETOLOGISTS, BOARD OF**

This is an amendment to 16.34.6 NMAC Sections 7, 12, effective 08/29/2023.

16.34.6.7 DEFINITIONS:

A. “[~~E~~ligible] **Licensing jurisdiction**” [means]: has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978:

~~(1) any state or territory of the United States except those included in the list of disapproved licensing jurisdictions in 16.34.6.8 NMAC; and~~

~~(2) any foreign country included in 16.34.6.9 NMAC.]~~

B. “**Expedited license**” [means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board.] has the same meaning as defined in Subsection C of Section 61-1-2 NMSA 1978.

C. “**Good standing**” means a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

~~D.~~ “**Jurisdiction**” has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978:

~~E.] D.~~ “**Licensing fee**” has the same meaning as defined in Paragraph (1) of Subsection E of Section 61-1-34 NMSA 1978.

~~F.] E.~~ “**Military service member**” has the same meaning as defined in Paragraph (2) of Subsection E of Section 61-1-34 NMSA 1978.

~~G.] E.~~ “**Qualified applicant**” means an applicant who:

(1) holds a current license in good standing in another jurisdiction, provided that an applicant who is not a military service member or veteran must hold a current license in good standing in an eligible jurisdiction;

(2) does not have a disqualifying criminal conviction, as defined the board’s rules; and

(3) is not subject to pending disciplinary action in New Mexico.

[~~H.~~] ~~G.~~ "Veteran" has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34 NMSA 1978.

[16.34.6.7 NMAC - Rp, 16.34.6.7 NMAC, N, 12/27/2022; A, 08/29/2023]

16.34.6.12 EXPEDITED LICENSE DURATION AND RENEWAL

A. An expedited license shall be valid for the same length of time as a regular initial license issued by the board. Initial licenses, including expedited licenses, may be issued for a period greater than twelve months, but less than twenty-four months, in order to align the license expiration date with the board's renewal cycle.

B. A licensee holding an expedited license may apply for license renewal in the manner provided by the board's rules, provided that, upon renewal, the licensee shall be required to pass the practical and written examination conducted by the board as a prerequisite to license renewal.

C. Upon renewal, the board shall issue a regular license to a licensee holding an expedited license issued pursuant to these rules.

D. Licensees who have not completed a course of study equivalent to the requirements for regular licensure may submit notarized letters of employment or employment records to prove licensed, current, verified work experience. Six full months of work experience shall be equivalent to 150 hours of training. Work experience less than six full months will not be considered toward training hours. [16.34.6.12 NMAC - Rp, 16.34.6.12 NMAC, N, 12/27/2022; A, 08/29/2023]

REGULATION AND LICENSING DEPARTMENT BARBERS AND COSMETOLOGISTS, BOARD OF

This is an amendment to 16.34.7 NMAC Section 13, effective 08/29/2023.

16.34.7.13 [BOOTH ESTABLISHMENT LICENSE:

~~**A.** The lessee of the space must obtain a booth establishment license fifteen days prior to providing licensed activity. The booth establishment license must be posted where clearly visible to the public. The booth lessee also must have a valid, current practitioner license appropriate for the licensed activity offered.~~

~~**B.** If the licensee is paying the establishment owner rent, a percentage of income earned, operates as an independent business within a licensed establishment, has obtained a tax identification number or a required municipal business license, the licensee must obtain a booth establishment license.~~

~~**C.** The establishment licensee renting space to a booth lessee shall not allow an individual to render any licensed activity until the establishment licensee actually has seen a valid, current booth establishment license and a valid, current practitioner license appropriate for the licensed activity offered by the lessee.~~

~~**D.** A booth establishment license is nontransferable and must be renewed annually.~~

~~**E.** If a booth establishment licensee relocates anywhere within the state, the licensee must notify the board in writing, complete a relocation application, and pay the administrative fee. The establishment licensee must identify booth lessee(s) at the time of original licensure and at each annual renewal.~~

~~**F.** Each licensee is responsible for compliance with minimum sanitation and safety~~

standards. The establishment licensee remains primarily responsible for compliance with the sanitary and safety rules for establishments set forth in 16.34.7 NMAC. The booth establishment licensee will be subject to fines or other disciplinary action for any violation of the sanitary and safety rules within the reasonable control of the booth establishment licensee, including without limitation Paragraphs 5, 6, 7, 9, 10, 11, 13, 15 through 23, 25 and 26 of Subsection A of 16.34.7.9 NMAC.

~~**G.** The board shall notify the establishment licensee of any warnings issued to a booth establishment licensee for violations of the sanitary and safety rules. The board shall notify the establishment licensee if the booth establishment licensee's practitioner license has not been renewed or if the license has been restricted, suspended, or revoked. The board shall notify the booth establishment licensee(s) if the establishment license has not been renewed or if the license has been restricted, suspended, or revoked.]~~

[RESERVED]

[16.34.7.13 NMAC - Rp 16 NMAC 34.7.13, 6/16/2001; Repealed, 08/29/2023]

REGULATION AND LICENSING DEPARTMENT BARBERS AND COSMETOLOGISTS, BOARD OF

This is an amendment to 16.34.8 NMAC Section 23 effective 08/29/2023.

16.34.8.23 ADVANCED TRAINING: Educational programs provided for the purpose of continuing education or advanced education in a specific field of licensure that are more than 150 hours in length must be conducted in a licensed school and supervised by a licensed instructor whether or not the program leads to licensure. Programs for advanced or continuing education of 150 hours or less will be

~~considered seminars or workshops. They may or may not be conducted in a licensed establishment but must be supervised by a New Mexico licensee. Advanced training must be specific to the field of licensure.~~
[16.34.8.23 NMAC - N, 08/29/2023]

**REGULATION
AND LICENSING
DEPARTMENT
BARBERS AND
COSMETOLOGISTS, BOARD
OF**

This is an amendment to 16.34.9 NMAC Sections 6, 8, 9, 10 effective 08/29/2023.

16.34.9.6 OBJECTIVE:
Pursuant to the Barbers and Cosmetologists Act this part establishes continuing education requirements for licensees [~~icensed to engage or teach any course authorized under this act~~] and to set guidelines for continuing education providers.
[16.34.9.6 NMAC - Rp 16 NMAC 34.9.6, 6/16/2001; A, 08/29/2023]

16.34.9.8 CONTINUING EDUCATION REQUIREMENTS:
~~[A. — Instructors licensed to teach any course authorized under this act shall provide proof of attendance at a seminar of twelve contact hours or more per year for professional development or improvement of professional proficiency. Instructor licenses are renewed every March thirty first. Therefore, each instructor must obtain twelve contact hours of continuing education between April first and March thirty first of the following year in order to renew the license. Continuing education hours do not carry over and must be completed each year. For initial instructor licenses, the continuing education requirement will not apply until after the first full year of licensure.~~
B.]

A. [Entities that are automatically recognized as providers] Providers of continuing education are listed below. [These

~~entities do not have to obtain formal provider approval in order to offer recognized continuing education for instructors. These entities do not have to meet the approval, recordkeeping, and certificate of attendance requirements. However, the] The licensee must provide proof of attendance with license renewal. Educational programs provided for the purpose of continuing or advanced education must be specific to the field of licensure.~~

- (1) cosmetology educators of America (CEA) seminars and workshops conducted in any state;
- (2) adult continuing education association programs in professional development, education, counseling, instructing or related programs;
- (3) continuing education units (CEU's) recognized by four year institutions in any state in professional development, education, counseling, teaching or related programs;
- (4) all schools licensed by the New Mexico state board of barbers and cosmetologists;
- (5) credits recognized for teacher certification in any state according to the following conversion table:
 - (a) theory (cognitive/lecture): 1 credit hour = 30 clock hours;
 - (b) practice/demonstration: 1 credit hour = 45 clock hours.
- (6) attendance at accreditation and team training workshops and instructor continuing education programs offered by nationally recognized accrediting agencies;
- (7) certification of completion of Dale Carnegie professional development and business courses;
- (8) the pivot point instructor symposium classes;
- (9) educational classes or conferences sponsored by the Aveda institute;
- (10) conferences sponsored by the American aesthetics education

association;
 (11) classes sponsored by Milady/Thomson learning's career institute;
 (12) classes sponsored by Vidal Sassoon; or
 (13) local, state, regional, or national industry trade shows with credit not to exceed fifty percent of the annual requirement for continuing education, or six hours; in addition, no more than fifty percent of the hours scheduled at such a trade show can contribute to the six hour maximum; the licensee must provide verifiable proof of attendance including an agenda of the event, a receipt for payment of attendance, or other such reasonable evidence of attendance;
 (14) online faculty and professional development programs.

~~[C.]~~ **B.** Licensee may also submit, subsequent to their attendance, copies of other programs and seminars that are not automatically approved. The board will consider such programs at the next regularly scheduled meeting and determine if credit is approved or denied. Detailed documentation of the program length and content must be submitted for the board to make a determination. Notification of approval or denial will be sent to the licensee within 30 days after the board meeting.
[16.34.9.8 NMAC - Rp 16 NMAC 34.9.8, 6/16/2001; A, 10/4/2007; A, 12/17/2015; A, 08/29/2023]

16.34.9.9 [CONTINUING EDUCATION PROVIDERS:
A. Continuing education provider standards
 (1) In order for a continuing education provider to be considered for approval by the board, the provider must demonstrate his/her/its qualifications to conduct such programs on an application provided by the board. Educational programs provided for the purpose of continuing or advanced education must be specific to the field of licensure
 (2) Continuing education programs may be conducted

in segments of not less than two contact hours:

B. Provider approval for conducting continuing education programs

(1) All continuing education programs shall be directed and supervised by approved providers. If the provider is an institution or corporation, the entity must designate an individual to supervise all sponsored events and must notify the board of that designee. To obtain approval, the applicant must complete an application furnished by the board and pay the required provider fee. The application must provide evidence of expertise, competency, and qualifications of the provider to present continuing education programs. Qualifications can be demonstrated by means of a resume, education and work history or other appropriate documentation. The applicant must also provide a **SAMPLE DETAILED OUTLINE OF ONE TWELVE-HOUR PROGRAM** for the board's consideration and provide evidence that the organization has access to appropriate facilities and resources to implement the required programs:

(2) The board, at a regular scheduled meeting, shall verify that the application complies with these rules and determine whether approval is granted:

(3) Provider approval shall be granted for a period of two years and must be renewed in order to continue providing continuing education programs. Provider approval is subject to periodic review and may be withdrawn if the board determines that adherence to the standards of the board is not maintained, or if information submitted to the board by the provider is found to be material misrepresentation of fact. Disapproval does not prohibit resubmission of the application with evidence the deficiencies have been corrected. Approval is granted for a period of two years:

(4) A list of approved providers is available from

the board office upon request and receipt of an administrative fee:

(5) Applicants receiving approval will be assigned a provider number by the board.

The number will be used on all the programs and correspondence to the board:

(6) The provider will be notified within fifteen days after the next regularly scheduled meeting as to the status of application. Approval, if granted, is for a period of two years.

(7) All provider licenses will be renewed on March thirty first every two years. Requests for renewal must be submitted every two years and may be renewed administratively:

(8) Timely renewal of license(s) is the full and complete responsibility of the LICENSEE. Failure to renew the license by the expiration date will result in late fees as set forth in the act:

(9) If the provider application is not approved after the evaluation by the board, the application will be returned with an itemized list of deficiencies within fifteen days of the board's evaluation:

(10) An incomplete application will be returned to the applicant by the board office within thirty days, with an explanation for the return:

C. Record keeping

(1) Records of approved provider shall be maintained by the board office.

(2) Records shall include provider qualifications and hours and rosters of participants receiving certificates of attendance:

(3) Records will be maintained by the board office for a period of two years:

(4) The provider shall send a roster of all participants to the board within thirty days of completion of the program to be entered as an official part of the participant's files for the purpose of license renewal:

D. The program provider shall develop a certificate of

attendance that includes the following data:

(1) provider name, number and program name;

(2) name of participant;

(3) date program began and ended and number of hours offered; and

(4) number of contact hours to be credited to the participant:

E. The program provider shall develop a participant roster that includes the following data:

(1) provider name and number;

(2) program name and brief outline of contents;

(3) location of offering;

(4) name and license number of each participant receiving a certificate of attendance and how many hours were earned; and

(5) date program began and ended and number contact hours offered.] **[RESERVED]**
[16.34.9.9 NMAC - Rp 16 NMAC 34.9.9, 6/16/2001; A, 12/17/2015; Repealed, 08/29/2023]

16.34.9.10 [ADVANCED-TRAINING: Educational programs provided for the purpose of continuing or advanced education in a specific field of licensure that are more than one hundred fifty hours in length must be conducted in a licensed school and supervised by a licensed instructor whether or not the program leads to licensure. Programs for advanced or continuing education of one hundred fifty hours or less will be considered seminars or workshops. They may or may not be conducted in a licensed establishment but must be supervised by a New Mexico licensee or approved provider for continuing education. Advanced training must be specific to the field of licensure.]

[RESERVED]
[16.34.9.10 NMAC - Rp 16 NMAC 34.9.10, 6/16/2001; A, 7/16/2004; A, 12/17/2015; Repealed, 08/29/2023]

**REGULATION
AND LICENSING
DEPARTMENT
BARBERS AND
COSMETOLOGISTS, BOARD
OF**

This is an amendment to 16.34.14 NMAC Section 8, effective 08/29/2023.

16.34.14.8 FEES: The board or department, where applicable, may charge the following fees:

- A.** Enterprise or establishment license (original): \$200.00
- B.** Enterprise or establishment license (renewal): \$50.00
- C.** Booth establishment license (original): \$200.00
- D.** Booth establishment license (renewal): \$50.00
- E.** School license (original and renewal): \$500.00
- F.** Relocation of a school: \$185.00
- G.** Barber license (original and renewal): \$100.00
- H.** Barber/
cosmetologist license (original and renewal): \$100.00

~~[H:]~~ **L.** Cosmetologist license (original and renewal): \$100.00

~~[F:]~~ **J.** Hairstylist license (original and renewal): \$50.00

~~[F:]~~ **K.** Manicurist/ pedicurist license (original and renewal): \$100.00

~~[K:]~~ **L.** Manicurist/ esthetician license (original and renewal): \$100.00

~~[F:]~~ **M.** Electrologist license (original and renewal): \$100.00

~~[M:]~~ **N.** Esthetician license (original and renewal): \$100.00

~~[N:]~~ **O.** Instructor license (original and renewal): \$100.00

~~[O:]~~ **P.** Expedited license (original): \$150.00

~~[P:]~~ **Q.** Administrative fee (other examination administrative costs): a maximum of \$100.00

~~[Q:]~~ **R.** Administrative fee (lists on disks): \$95.00

~~[R:]~~ **S.** Administrative fee (relocation of establishments, etc.): \$25.00

~~[S:]~~ **T.** Examinations and re-examinations all licenses except instructor: a maximum of \$100.00

~~[T:]~~ **U.** Instructor examination and re-examination: a maximum of \$100.00

~~[U:]~~ **V.** Duplicate licenses: \$25.00

~~[V:]~~ **W.** Student permit license: \$25.00

~~[W:]~~ **X.** Barber apprentice license: \$25.00

~~[X:]~~ **Y.** Late fee: \$40.00

~~[Y:]~~ **Z.** Provider approval, initial and renewal: \$50.00

~~[Z:]~~ **AA.** Re-inspection fee: up to \$200.00.

[16.34.14.8 NMAC - Rp 16 NMAC 34.14.8, 6/16/2001; A, 7/16/2004; A, 10/04/2007; A, 4/12/2010; A, 10/29/2016; A, 7/14/2018; A, 4/15/2022; A, 12/27/2022; A, 08/29/2023]

**SECRETARY OF STATE,
OFFICE OF THE**

This is an amendment to 1.10.12 NMAC, Sections 1, 3, 6, 7, 8, 9, 11, 12, 13, 15, and 17, and adding new Sections 16 and 19, effective 8/31/2023.

1.10.12.1 ISSUING

AGENCY: Office of the Secretary of State [~~325 Don Gaspar, Suite 300, Santa Fe, New Mexico 87501~~].

[1.10.12.1 NMAC - Rp, 1.10.12.1 NMAC, 4/24/2018; A, 8/31/2023]

1.10.12.3 STATUTORY

AUTHORITY: Election Code, Section 1-2-1; [~~Section 1-6-5.4~~]; Section 1-6-5.6; Section 1-6-16.1; [~~and~~] Section 1-9-7.1; and Section 1-21A-8 NMSA 1978.

[1.10.12.3 NMAC - Rp, 1.10.12.3 NMAC, 4/24/2018; A, 8/31/2023]

1.10.12.6 OBJECTIVE: The objective of this rule is to establish procedures for protecting the integrity, security and secrecy of the absentee ballot, to establish procedures for

establishing mobile alternate voting locations in rural areas of the state, [~~and~~] to establish procedures for electronic ballot delivery of [~~absentee~~] mailed ballots for visually impaired voters, and to establish procedures for mailed ballot delivery to government official buildings designated by Indian nations, tribes or pueblos.

[1.10.12.6 NMAC - Rp, 1.10.12.6 NMAC, 4/24/2018; A, 8/31/2023]

1.10.12.7 DEFINITIONS:

A. "Absentee [~~ballot~~]" means [~~a method of voting by mail, accomplished by a voter who is absent from the voter's polling place on election day.~~] "Absentee ballot" has the same definition under the Absent Voter Act as a mailed ballot the ability of the voter to receive, mark and return a ballot at a place and time other than a polling location on the day of the election.

B. "Absentee ballot register" means a listing kept by the county clerk for each election with the information specified in the Election Code, Section 1-6-6 NMSA 1978.

C. "Adjudicate" means a decision made by [~~a precinct~~] an election board, in accordance with the Election Code, of a ballot signifying a voter's intent to mark their selection for a candidate contest or ballot question.

D. "Alternate voting location" means a location outside the office of the county clerk, established by the county clerk, where a voter may cast an early in person ballot on voting tabulator pursuant to Section 1-6-5.7 NMSA 1978, of the Election Code. This includes mobile alternate voting locations.

E. "Application" means a mailed ballot application, prescribed by the secretary of state pursuant to the Election Code, Section 1-6-4 NMSA 1978.

F. "Ballot markers" means the grid pattern around the voting response area on the ballot face used by the voting tabulator to distinguish the ballot style and voter's selection of alternatives allowed in any candidate contest or ballot question to record, count and produce a tabulation of votes cast.

G. “Blank ballot”

means a paper ballot on which the voter has not selected any of the alternatives allowed in any candidate contest or ballot question.

H. “Challenger”

means a voter of a precinct located in that county to which the voter is appointed in conformance with the Election Code, Section 1-2-21 to 1-2-22 NMSA 1978 for the purpose of carrying out such duties as prescribed in the Election Code, Section 1-2-23 to 1-2-26 NMSA 1978.

I. “County canvassing board”

means the board of county commissioners in each county or the board of registration if designated by the board of county commissioners pursuant to Section 1-13-1 NMSA 1978, convened for the purposes of conducting the county canvass.

J. “Early voter”

means a voter who votes in person before election day, and not by mail.

K. “Early voting daily report” means a physical form, or its digital equivalent, used to certify the daily early voting activity at the office of the county clerk, alternate voting location and mobile alternate voting location; the form shall be prescribed by the office of the secretary of state to be completed and filed daily during early voting, consisting of the voting tabulator serial number, beginning public counter number, ending public counter number, total number of ballots cast early per tabulator and those to be hand tallied.

L. “Electronically transmitted ballot” means a ballot provided through an electronic transmission system to federal qualified electors pursuant to Section 1-6B-7 NMSA 1978 or to blind or visually impaired voters as provided in Section 1-9-7.1 NMSA 1978.

M. “Inner envelope”

means the official envelope, prescribed by the secretary of state, given to the voter along with an absentee or provisional ballot into which the voter places the ballot after it is voted and which is used to preserve the secrecy of the voter’s ballot.

N. “Mailed ballot”

means a ballot that is sent to a voter pursuant to the provisions of the Election Code and does not include a ballot that is provided to a voter an early voting location.

~~[N:]~~ **Q. “Official transmittal envelope”** means the official envelope used by the county clerk to ~~[mail absentee]~~ send mailed ballot materials, to include the inner and outer envelopes.

~~[O:]~~ **P. “Outer envelope”** means the official envelope, prescribed by the secretary of state, which has information that will identify the voter and contains a sworn affidavit, into which the voter places the inner envelope, containing ~~[an absentee]~~ a mailed ballot.

~~[P:]~~ **Q. “Overvoted ballot”** means a ballot on which the voter has selected more than the number of candidates to be elected for that contest, or in both the affirmative and negative on a ballot question.

~~[Q:]~~ **R. “Provisional ballot envelope”** means the official envelope, prescribed by the secretary of state, which has information that will identify the provisional voter, purpose the provisional ballot was issued and contains a sworn affidavit and a blank voter registration certificate, into which the provisional voter places the inner envelope.

~~[R:]~~ **S. “Replacement [absentee] ballot”** means:

(1) a ballot that is processed as a provisional ballot, provided to a voter whose name appears on the absentee ballot register or signature roster as having been issued ~~[an absentee]~~ a mailed ballot and who has affirmed that the mailed ballot was not received or voted on pursuant to the Election Code, Section 1-6-16 NMSA 1978. The ballot shall be placed in a provisional ballot envelope prescribed by the secretary of state and processed within the timeframe specified in the Election Code, Section 1-6-16 NMSA 1978 ~~[A voter may also be issued]~~ ; or

(2) a ballot issued at the office of the county clerk, an alternate voting location, a mobile alternate voting location, or

at a polling location on election day, to be filled out and fed by the voter into the electronic voter tabulator if that voter affirms that their ~~[absentee]~~ mailed ballot was not voted and returned.

~~[S:]~~ **T. “Undervoted ballot”** means a ballot that is not a blank ballot and on which the voter has selected at least one candidate or answered at least one ballot question in accordance with the instructions for that ballot type, but on which the voter has selected fewer than the number of alternatives allowed in a candidate contest or on a ballot question.

~~[T:]~~ **U. “Voting response area”** means the place on a ballot the voter is instructed to mark the voter’s selection for a candidate or question. [1.10.12.7 NMAC - Rp, 1.10.12.7 NMAC, 4/24/2018; A, 4/7/2020; A, Rn, 8/31/2023]

1.10.12.8 APPLICATION:

A. An application for ~~[an absentee]~~ a mailed ballot ~~[may]~~ shall be made on ~~[a blank]~~ the official form prescribed by the secretary of state, either on paper with an original signature or through the official electronic ~~[absentee]~~ mailed ballot application portal. The form may not be altered, to include the pre-population of voter information, without prior approval from the secretary of state. Completed applications shall require the information specified in the Election Code, Section 1-6-4 NMSA 1978.

B. Upon receipt of ~~[an absentee]~~ a mailed ballot application, the county clerk shall review it for completeness in accordance with the Election Code, Section 1-6-5 NMSA 1978. When it is determined that the applicant does not have a valid certificate of registration on file in that county or the application is not completed or has incorrect information, the application shall be marked “rejected”. The county clerk shall notify the applicant in writing of the reasons for rejection and include the internet address for the official electronic absentee application portal

and may also include the paper form [absentee] mailed ballot application.

C. An application by a federal qualified elector as defined in the Election Code, Section 1-1-4.1 NMSA 1978, consists of one of the methods listed in the Election Code Section 1-6B-3 NMSA 1978.

(1) The county clerk shall review each application by a federal qualified elector for completeness and compliance with the voter registration requirements prescribed in the Election Code, Section 1-6B-5 NMSA 1978 and determine whether the requirements are met. The county clerk shall immediately notify the federal qualified elector if the application is rejected, to include the reasons for rejection, according to the applicant's preferred method of communication, pursuant to the Election Code, Section 1-6B-7 NMSA 1978.

(2) An application for [an absentee] a mailed ballot or a military overseas ballot received by the office of the county clerk or secretary of state for a voter registered in a differing county shall be forwarded within 24 hours of receiving the application, or if received less than [five] seven days before the election, shall be electronically transmitted to the appropriate county clerk. [1.10.12.8 NMAC - Rp, 1.10.12.8 NMAC, 4/24/2018; A, 8/31/2023]

1.10.12.9 ABSENTEE VOTING:

A. A voter shall have the right to vote by absentee ballot for all candidate contests and ballot questions as if the voter were casting the ballot in person at their election day polling place. Absentee [ballots-are] voting is provided as follows:

(1) By mail - by completing and signing an application as provided in the Election Code, Section 1-6-5 NMSA 1978 and received by the office of the county clerk, pursuant to the Election Code, Section 1-6-10 NMSA 1978 during the regular hours and days of business.

(a) A voter who is required to present identification and has not done so at the time the voter's ballot is to be mailed to them, shall be sent a ballot that is processed as a provisional ballot, and shall include instructions on how to provide the required identification pursuant to the Election Code, Section 1-4-5.1 NMSA 1978.

(b) A blind or visually impaired voter pursuant to the Election Code, Section 1-9-7.1 NMSA 1978, may request an electronically transmitted ballot by completing an absentee application and executing a statement certifying blindness. The county clerk shall provide [an absentee] a mailed ballot through electronic transmission, enabling the use of one's personal nonvisual or low vision access technology to independently mark the ballot. The electronic transmission shall also include instructions on how the voter accesses the ballot, marks their selections, returns the ballot, as well as, the voter certificate as required in the Election Code, Subsection C of Section 1-6-8 NMSA 1978, which shall be completed, signed and included with the returned ballot, in the outer envelope.

(i) The secretary of state shall prescribe an official transmittal envelope such that the blind or visually impaired voter can distinguish it for the purposes of returning the [absentee] mailed ballot.

(ii) Delivery of electronically transmitted ballots shall be by a computer system secured by intrusion detection and protection systems.

(2) Early - by completing and signing an application at the office of the county clerk beginning 28 days before the election, or 20 days prior to the election at an alternate voting location or mobile alternate voting location in accordance with the Election Code, Section 1-6-5 NMSA 1978.

(a) Each county clerk shall ensure that the employee issuing ballots at the office of the county clerk and

[precinct] election board members at the alternate voting location or mobile alternate voting location are trained on the accessible voting device of the voting tabulator so that any voter may mark a ballot independently.

(b) A voter who is required to present a physical form of identification and does not submit it upon requesting to vote early shall be issued a provisional ballot in accordance with the Election Code, Section 1-12-7.1 NMSA 1978.

(3) A federal qualified elector or emergency response provider may apply for [an absentee] a mailed ballot in accordance with the Uniform Military and Overseas Voter Act.

B. [A] Unless the voter is certified to participate in the confidential substitute address program pursuant to the Confidential Substitute Address Act, a voter who has been issued [an absentee] a mailed ballot by mail or via electronic delivery shall not be allowed to vote [in-person], other than under the following conditions:

(1) In accordance with the Election Code, Section 1-6-16 NMSA 1978, a voter who has not received, or if received, has not voted the ballot, [with] may request a replacement ballot and shall be issued and mailed a replacement [absentee] ballot that [is] shall be processed as a provisional ballot. The replacement [absentee] ballot may be mailed to the voter seven or more days before election day, to include express mail, if the county clerk deems necessary, [~~or issued in person at the office of the county clerk, alternate voting location or mobile alternate voting location~~]. Once voted, the voter shall place the replacement [absentee] ballot in an inner envelope, then in an outer envelope and shall [~~complete and sign the attached~~] enclose a completed and signed sworn affidavit.

(2) [The] If the county clerk does not have real-time synchronization between a voting location and the qualification of mailed ballots, the voter, by

executing a sworn affidavit [~~at their election day polling place affirms~~] at the office of the county clerk, alternate voting location, mobile alternate voting location or election day polling place affirming that they have not received, or if received, have not voted the ballot, [~~with~~] shall be issued a replacement absentee ballot that is processed as a provisional ballot, along with a provisional ballot envelope prescribed by the secretary of state.

~~(3)~~ (3) A replacement absentee ballot issued [~~at the office of the county clerk, alternate voting location, mobile alternate voting location or election day polling place~~] pursuant to this section must be voted on prior to the voter leaving the premises of the office of the county clerk, alternate voting location, mobile alternate voting location or election day polling, provided however, that the ballot shall be not be cast in the voting tabulator, but placed and sealed in a provisional ballot envelope prescribed by the secretary of state to undergo the subsequent provisional qualification process by the county clerk.

~~(4)~~ (3) [~~The~~] If the county clerk does have real-time synchronization between the voting location and the qualification of mailed ballots, the voter, by executing a sworn affidavit affirming that they did not and will not vote the mailed ballot that was issued, may appear at the office of the county clerk, an alternate voting location [~~or~~] a mobile alternate voting location, or election day voting location and be issued a replacement ballot to be filled out and fed by the voter into the electronic vote tabulator.

(4) A voter who is certified to participate in the confidential substitute address program pursuant to the Confidential Substitute Address Act shall not vote in person but may request and receive a replacement ballot by appearing in person only at the office of the county clerk and by executing an affidavit pursuant to Subsection C of Section 1-6C-6 NMSA 1978 stating that the voter participant wishes to void any

previously mailed ballot that was mailed in that election.

[1.10.12.9 NMAC - Rp, 1.10.12.9 NMAC, 4/24/2018; A, 4/7/2020; A, 8/31/2023]

1.10.12.11 ALTERNATE VOTING LOCATIONS AND MOBILE ALTERNATE VOTING LOCATIONS:

A. Alternate voting locations are established by the county clerk for early voting and shall meet the standards set out in the Election Code, Sections 1-6-5.6 to [~~1-6-5.8~~] 1-6-5.7 NMSA 1978. [~~Reimbursement to the county for the cost of voting equipment and personnel on Indian nation, tribal area or pueblo land shall only be provided for those invoices received by the office of the secretary of state no later than the fifth week after the date of the election.~~]

(1) 90 days prior to the beginning of early voting, the county clerk shall notify the secretary of state of the dates, times of operations, and addresses of the established alternate voting locations or mobile alternate voting locations and shall publicize the information using media outlets directed to, and appropriate for, the voters of that area.

(2) Alternate voting locations and mobile alternate voting locations shall be staffed in accordance with the Election Code, Section 1-2-12 NMSA 1978 and may not be staffed by the county clerk if the county clerk's name appears on the ballot or by the county clerk's deputy if the county clerk's deputy's name appears on the ballot.

(3) The county clerk shall prepare a list of authorized individuals who have access to each alternate voting location or mobile alternate voting location, to include authorized custodians of the voting tabulator or ballot box keys. Access to each alternate voting location or mobile alternate voting location for those authorized shall not be controlled by any third party. A copy of the list shall be provided to the office of the secretary of state and, in a primary, general or special election

for U.S. representative, the chairs of each county's political parties.

B. Lawfully appointed challengers, watchers and observers shall be allowed in an alternate voting location or mobile alternate voting location as provided in the Election Code.

(1) An interposed challenge shall be handled in accordance with the Election Code, Section 1-12-20 to 1-12-22 NMSA 1978.

(2) Challengers, watchers or observers shall not violate the permitted or prohibited provisions as outlined in the Election Code including Sections 1-2-23, 1-2-29, 1-2-25, 1-2-31 and 1-2-32 NMSA 1978. If a violation occurs, the incident shall be documented in reasonable detail by the of the presiding judge and election judges of an election board on a form prescribed by the secretary of state and retained by the county clerk pursuant to Subsection C of Section 1-2-22 NMSA 1978. The presiding judge and election judges of an election board who unanimously vote to remove a challenger, watcher or observer as a result of a violation shall sign and record the vote of the board on the violation form.

[1.10.12.11 NMAC - N, 4/24/2018; A, 8/31/2023]

1.10.12.12 VOTING TABULATOR PROGRAMMING, CERTIFICATION, CUSTODY AND SECURITY:

A. Each certified voting tabulator designated for use during an election, shall be programmed, tested for accuracy and used for the tabulation of ballots in accordance the Election Code, Section 1-9-1 to 1-9-22 NMSA 1978.

(1) Official tabulator envelopes for each voting tabulator shall be prepared and shall contain the tabulator serial number, seal number, a printed and signed results reporting tape indicating the clearing of any votes recorded on the tabulator's removable storage media device cartridge and set at zero, and any keys or tokens needed to access,

operate and secure the tabulator. Such envelopes shall be provided to the presiding judge of the alternate voting location or mobile alternate voting location.

(2) At least one day before each voting tabulator is deployed for [~~absentee-by-mail~~] mailed ballot tabulation and early voting, the county clerk shall provide the voting tabulator type and serial number to the secretary of state and the county chair of each political party represented on the ballot.

(a) Each certified voting tabulator deployed to an alternate voting location or mobile alternate voting location shall be transported with the care and custody set out in the Election Code, Section 1-9-12 NMSA 1978, delivered in accordance with the Election Code, Section 1-11-11 NMSA 1978 and shall be secured by a lock, key and seal.

(b) The placement of each voting tabulator used for absentee or early voting shall safeguard the secrecy of each voted ballot, protect the security of the voting tabulator and shall be compliant with accessibility requirements of the Americans with Disabilities Act.

(3) Each day during the early voting period, the county clerk or [~~precinct~~] election board member shall, in the presence of one other county clerk employee or [~~precinct~~] election board member, unlock the office where the voting tabulator, ballot box, preprinted paper ballots or voting systems needed to issue ballots are located and unlock the voting tabulator, ballot box or other container securing preprinted paper ballots or voting systems needed to issue ballots.

(4) Each day upon close of the early voting location, the above procedure shall be followed to lock and secure the voting tabulator, ballot box or other container securing preprinted paper ballots or voting systems needed to issue ballots.

(5) Assigned user names and passwords needed to

access voting systems used to issue ballots or the voting tabulator shall not be shared or disclosed to any person other than the intended user.

(6) Immediately after unlocking or locking the early voting location, the county clerk or [~~precinct~~] election board member present shall complete and sign the early voting daily report and shall submit it to the office of the secretary of state for the previous day's activity. Any discrepancy between the daily number of ballots issued and the number of ballots cast shall be reconciled prior to the submission of the early voting daily report.

B. A voting tabulator shall be used for the entire early voting period for the casting of ballots. The tabulator shall remain in open status and the result reporting tape shall be prompted only by the [~~absentee-precinct~~] absent voter election board, when convened, for the counting and recording of [~~absentee-by-mail~~] mailed and early voted ballots.

(1) If a voting tabulator is inadvertently prompted to close, the presiding judge shall notify the county clerk immediately. The county clerk, after determining that the tabulator should be reopened, shall dispatch a voting technician, who in the presence of the presiding judge and two election judges, one of a differing party than the presiding judge, shall enable the reopen polls function and verify the number of ballots counted on the tabulator screen. An audit log of the reopen polls transaction will be recorded by the voting tabulator and will be visible on the results reporting tapes. The results reporting tapes shall be signed by the presiding judge and two election judges, one of a differing party than the presiding judge, and remain connected to the voting tabulator.

(a) If the number of ballots counted does not match the number of ballots cast prior to the inadvertent close of the voting tabulator, the county clerk shall instruct the voting technician,

who in the presence of the presiding judge and two election judges, one of a differing party than the presiding judge, to clear the removable storage media device cartridge, removing all previously recorded votes and reopen the polls of the voting tabulator. The presiding judge and two election judges, one of a differing party than the presiding judge, will inspect the generated results reporting tapes to ensure the ballots cast number and all candidate contests and ballot questions are cleared and set to zero. The presiding judge and two election judges, one of a differing party than the presiding judge shall sign the certificate at the end of the generated results reporting tapes, affirming their inspection and reinsert the ballots from within the bin into the voting tabulator. The results reporting tapes shall remain connected to the voting tabulator. Once complete, the presiding judge and two election judges, one of a differing party than the presiding judge will verify the ballots cast on the public counter of the voting tabulator matches the total ballots cast on the voting tabulator prior to the inadvertent close.

(b) The voting tabulator may then be put back into use and the county clerk shall immediately notify the office of the secretary of state, in writing, of the occurrence. The presiding judge will provide the results reporting tapes from the inadvertent tabulator closure to the voting technician, who will deliver the results reporting tapes directly to the county clerk to be filed and kept confidential.

(2) If a voting tabulator is inadvertently closed, generating the results reporting tapes during the days and hours of operation of early voting, the presiding judge shall immediately notify the county clerk and ensure the voting tabulator, ballots within the bin and results reporting tapes are not tampered with.

(a) The county clerk shall dispatch a voting technician, who in the presence of the presiding judge and two election judges, one of a differing party than the presiding

judge, will instruct the presiding judge to verify the total number of ballots cast on the voting tabulator before it was inadvertently closed. The voting technician will clear the removable storage media device cartridge, removing all previously recorded votes and reopen the polls of the voting tabulator. The presiding judge and two election judges, one of a differing party than the presiding judge, will inspect the generated results reporting tapes to ensure the ballots cast number and all candidate contests and ballot questions are cleared and set to zero. The presiding judge and two election judges, one of a differing party than the presiding judge shall sign the certificate at the end of the generated results reporting tapes, affirming their inspection and reinsert the ballots from within the bin into the voting tabulator. The results reporting tapes shall remain connected to the voting tabulator. Once complete, the presiding judge and two election judges, one of a differing party than the presiding judge will verify the ballots cast on the public counter of the voting tabulator matches the total ballots cast on the voting tabulator prior to the inadvertent close.

(b)

The voting tabulator may then be put back into use and the county clerk shall immediately notify the office of the secretary of state, in writing, of the occurrence. The presiding judge will provide the results reporting tapes from the inadvertent tabulator closure to the voting technician, who will deliver the results reporting tapes directly to the county clerk to be filed and kept confidential.
[1.10.12.12 NMAC - N, 4/24/2018; A, 8/31/2023]

1.10.12.13 VOTE TABULATION:

A. Ballots shall be tabulated for the reporting of votes pursuant to the Election Code, Section 1-12-70 NMSA 1978.

(1)

Early voted ballots, not by mail, cast on a voting tabulator shall be counted separately from ~~[absentee by-mail]~~

mailed ballots in accordance with the Election Code and recorded in the early vote by machine counting group.

(a)

If an early voted ballot is returned by the voting tabulator as overvoted or blank, the ballot shall be accepted by the voting tabulator only after requesting and receiving a declaration by the voter of their intent to cast the overvoted or blank ballot as is.

(b)

An early voter who declares their intent to cast the overvoted or blank ballot, shall have their ballot cast on the voting tabulator. For overvoted ballots, only those contests receiving no more than the allotted selections for the number of candidates to be elected or ballot questions where there is one selection for either the affirmative or negative will be tabulated; for blank ballots, no votes will be tabulated.

(c)

An early voter who declares their intent to not cast the overvoted or blank ballot shall have their ballot rejected by the voting tabulator without the tabulation of votes. The overvoted ballot shall be spoiled in conjunction with Section 1-12-62 NMSA 1978. The county clerk or ~~[precinct]~~ election board member shall instruct the voter to insert the spoiled ballot into a spoiled ballot envelope and return the spoiled ballot envelope to the county clerk. The voter shall then be issued a new ballot, be instructed how to mark their selection of alternatives allowed in any candidate contest or ballot question in the voting response area and how to personally feed the ballot into the voting tabulator.

(i)

In the event the voter does not wish to spoil their voted ballot and declines a new ballot, the overvoted ballot shall be delivered to the ~~[absentee precinct]~~ absent voter election board, after the close of early voting, to be hand tallied in accordance with 1.10.23 NMAC. The ballot will be counted and recorded in the early vote by hand tally counting group; or,

(ii)

If deemed necessary by the county clerk, a ~~[high-speed]~~ high-speed central cast tabulator may be designated, programmed and certified for the tabulation of such ballots. The ~~[absentee precinct]~~ absent voter election board will adjudicate the overvoted or blank ballot and count and record it in the early vote by hand tally counting group.

(d)

If an early voted ballot cast is misread after being fed into the voting tabulator, the voter shall be instructed to insert the ballot in a different orientation. If the ballot is misread again, the ballot will be spoiled, and the county clerk or ~~[precinct]~~ election board member shall instruct the voter to insert the spoiled ballot into a spoiled ballot envelope and return it to the county clerk in conjunction with the Election Code, Section 1-12-62 NMSA 1978. The voter shall then be issued a new ballot, be instructed how to mark their selection of alternatives allowed in any candidate contest or ballot question in the voting response area and how to personally feed the ballot into the voting tabulator. In the event the voter does not wish to spoil their voted ballot and declines a new ballot, the misread ballot shall be delivered to the ~~[absentee precinct]~~ absent voter election board, after the close of the early voting period, by the ~~[precinct]~~ election board, to be hand tallied in accordance with 1.10.23 NMAC. The ballot will be counted and recorded in the early vote by hand tally counting group.

(2)

~~[Absentee by-mail]~~ Mailed ballots, either returned by mail or hand-delivered, shall be fed into a voting tabulator by an ~~[absentee precinct]~~ absent voter election board member in accordance with the Election Code, Sections 1-6-11 and 1-6-14 NMSA 1978 as follows:

(a)

An overvoted or blank ~~[absentee by-mail]~~ mailed ballot shall be accepted by the voting tabulator after it has been adjudicated by the ~~[absentee precinct]~~ absent voter election board. The ballot will be counted and

recorded in the absentee by machine counting group.

(b)

If [an absentee by mail] a mailed ballot is misread after being fed into a voting tabulator, an [absentee-precinct] absent voter election board member shall feed it into the voting tabulator a second time. [An absentee by mail] A mailed ballot that is rejected after two attempts shall be adjudicated by the [absentee-precinct] absent voter election board, hand tallied by precinct as provided in 1.10.23 NMAC and counted and recorded in the absentee by hand tally counting group.

(c)

Returned [absentee] mailed ballots that were issued via electronic transmission to a blind or visually impaired voter will not contain programmed ballot markers necessary for tabulation by the voting tabulator. These ballots shall be hand tallied by the [absentee-precinct] absent voter election board, by precinct and shall be counted and recorded in the absentee by hand tally counting group.

(3) Returned

military-overseas ballots, either mailed back or electronically submitted shall be counted separately from all other [absentee by mail] mailed or early voted ballots. The county clerk shall determine whether returned military-overseas ballots are to be hand-tallied, or if necessary, to designate, program and certify a voting tabulator for the tabulation of such ballots.

(a)

Returned military-overseas ballots that do not contain programmed ballot markers necessary for tabulation by a voting tabulator, shall be hand tallied by the [absentee-precinct] absent voter election board, by precinct and shall be counted and recorded in the federal overseas hand tally counting group.

(b)

When a voting tabulator is used for the tabulation of military-overseas ballots that contain programmed ballot markers, the ballots shall be fed into the voting tabulator by an [absentee-precinct] absent voter

election board member and the votes shall be counted and recorded in the federal overseas by machine counting group.

(c)

An overvoted or blank military-overseas ballot shall be accepted by the voting tabulator after it has been adjudicated by the [absentee-precinct] absent voter election board. The ballot will be counted and recorded in the federal overseas by machine counting group.

(d) If

a military-overseas ballot is misread after being fed into a voting tabulator, an [absentee-precinct] absent voter election board member shall feed it into the voting tabulator a second time. A military-overseas ballot that is rejected after two attempts shall be adjudicated by the [absentee-precinct] absent voter election board, hand tallied by precinct as provided in 1.10.23 NMAC and counted and recorded in the federal overseas hand tally counting group.

(4)

Undervoted ballots shall be accepted by the voting tabulator, regardless of either being cast early at the county clerk's office, an alternate voting location or mobile alternate voting location or [absentee by mail] mailed ballot and only those contests or ballot questions receiving a selection by the voter will be tabulated.

B. The public counter

number of the voting tabulator will not increase in the above scenarios involving an overvoted or blank ballot, unless the ballot is accepted by the voting tabulator after requesting and receiving a declaration by the voter of their intent to cast the overvoted or blank ballot as is or by adjudication of the [absentee-precinct] absent voter election board. An undervoted ballot fed into the voting tabulator will increase the public counter number.

C. Overvoted, blank,

undervoted or misread ballots required to be hand tallied shall be recorded on the prescribed hand tally sheet, by precinct, as follows:

(1) Each ballot

shall increase the ballots cast count by one;

(2) On an

overvoted ballot, only those candidate contests or ballot questions receiving no more than the allotted selections for the number of candidates to be elected or ballot questions where there is one selection for either the affirmative or negative will be hand tallied;

(3) No votes

for either candidate contests or ballot questions will be hand tallied on a blank ballot;

(4) On

an undervoted ballot, only those candidate contests or ballot questions receiving a selection by the voter will be hand tallied; and,

(5) Only those

contests receiving no fewer, nor more than the allotted selections for the number of candidates to be elected or ballot questions where there is one selection for either the affirmative or negative will be hand tallied on a misread ballot.

D. An overvoted,

blank or undervoted ballot cast by a voter, after going through the above process shall be recorded as a "ballot cast" and proper voting credit shall be given on the respective voter registration record on file with the county clerk.

E. In accordance with

the Election Code, Section 1-12-70 NMSA 1978, the reporting of vote totals by precinct and voting method shall be combined to the extent necessary to protect the secrecy of each voter's ballot. [1.10.12.13 NMAC - Rp, 1.10.12.13 NMAC and 1.10.12.14 NMAC, 4/24/2018; A, 4/7/2020; A, 8/31/2023]

1.10.12.15 ELECTION [PRECINCT] BOARD, COUNTY CLERK AND COUNTY CANVASS BOARD DUTIES:

A. An [absentee-

precinct] absent voter election board shall be created for the purpose of determining voter eligibility, counting and tabulating [absentee by mail] mailed and early voted ballots cast. The board shall be comprised of [precinct] election board members in accordance with the Election Code,

Section 1-2-12 NMSA 1978 provided that the counting and tabulation of ~~[absentee-by-mail]~~ mailed ballots shall remain separate from early voted ballots.

(1) Pursuant to the Election Code, Section 1-6-11 NMSA 1978, the ~~[absentee-by-mail]~~ mailed ballots shall be delivered along with all necessary supplies, including red pencils or red pens, to be used as a writing instrument, for ~~[absentee-precinct]~~ absent voter election board members. Only the presiding judge shall be issued a black or blue ink pen for signing and filling out required documents.

(2) Before opening the outer envelope, the presiding judge and the election judges shall determine that the county clerk has verified the required information by reviewing the outer envelope for the presence of a signature and the presence of the last four digits of a social security number and by reviewing the clerk's confirmation of verification on the absentee ballot register. If the information under the privacy flap appears to need further review by the county clerk, the absent voter election board shall immediately notify the county clerk, and the county clerk shall verify the information under the privacy flap.

~~(2)~~ (3) The processing of ~~[absentee-by-mail]~~ mailed ballots shall be in accordance with the Election Code, ~~[Section]~~ Sections 1-6-10 and 1-6-14 NMSA 1978.

(a) ~~[An absentee-by-mail]~~ A mailed ballot inner envelope containing two ballots shall be counted if the determination can be made that the outer envelope is signed by both voters, the absentee ballot register confirms the county clerk verified that both voters provided the last four digits of their social security numbers, the absentee ballot registered confirms the issuance of ~~[absentee-by-mail]~~ mailed ballots to the voters who signed, and it has been determined that the voters have not already voted in the election. ~~[Absentee ballot]~~ Mailed ballot

envelopes not in compliance with one or more of the above requirements shall be changed to "rejected" in the absentee ballot register, with the reason for rejection.

(b) ~~[An absentee-by-mail]~~ A mailed ballot inner envelope containing no ballot shall be "accepted" if the outer envelope is signed by the voter, the absentee ballot register confirms the issuance of the ballot to the voter who signed the outer envelope, the absentee ballot register confirms the county clerk verified that the voter provided the last four digits of their social security number, and the voter has not voted in any other manner during the election. ~~[Absentee]~~ Mailed ballot envelopes not in compliance with one or more of the above requirements shall be changed to "rejected" in the absentee ballot register, with the reason for rejection.

~~(3)~~ (4) Pursuant to the Election Code, Subsections C and D of Section 1-6-14 NMSA 1978, ~~[an absentee-by-mail]~~ a mailed ballot envelope may be challenged by a lawfully appointed challenger. A voter who satisfies the reason for the affirmed challenge before the conclusion of the county canvass shall have their ballot accepted and counted. The voter's record on the absentee ballot register shall be changed from "rejected" to "accepted", and the notation "challenged-affirmed" on the ~~[absentee-by-mail]~~ mailed ballot envelope shall be crossed out, signed and dated by either the presiding judge of the ~~[absentee-precinct]~~ absent voter election board or a member of the county canvassing board, dependent upon when the voter satisfies the reason for the affirmed challenge. If the ballot is hand tallied it shall be recorded in the ~~[absentee-by-mail]~~ mailed ballot hand tally counting group. If the ballot is tabulated by a voting tabulator, it shall be recorded in the ~~[absentee-by-mail]~~ mailed ballot machine counting group.

(5) A lawfully appointed challenger or watcher shall not be permitted to take pictures or

otherwise make copies of documents containing protected personal information.

~~(4)~~ (6) ~~[An absentee-by-mail]~~ A mailed ballot, processed as a provisional ballot, in a provisional ballot envelope, prescribed by the secretary of state because the first-time voter did not provide the required form of physical identification prior to the ballot issuance, shall be separated from all other ~~[absentee-by-mail]~~ mailed ballots and provided to the county clerk. The county clerk shall perform the required provisional qualification process to the ballots in accordance with the Election Code, Section 1-6-14 NMSA 1978 and with 1.10.22 NMAC.

B. Upon the last day to early vote, all early voted ballots shall be delivered to the county clerk, who will transfer custody to the ~~[absentee-precinct]~~ absent voter election board. A receipt containing the serial number and public counter number indicating the votes recorded on the voting tabulator, number of ballot boxes, number of provisional ballots, number of ballots to be hand tallied and the signature of the respective alternate or mobile alternate voting location presiding judge shall be provided. After verifying the information for accuracy, the county clerk or ~~[absentee-precinct]~~ absent voter election board presiding judge shall sign the receipt indicating custody of the early voting returns, voting tabulator and ballot boxes. Keys to the alternate or mobile alternate voting location and the key or security token to access the voting tabulator shall also be transferred to the county clerk. The receipt shall be maintained on file with the county clerk.

(1) The ~~[absentee-precinct]~~ absent voter election board shall process early voted ballots cast by closing the polls and running the results reporting tapes for each voting tabulator used during the early voting period. The ~~[absentee-precinct]~~ absent voter election board shall be responsible for hand tallying any early voted ~~[ballot]~~ candidate contest or ballot question

not tabulated by the voting tabulator in accordance with the Election Code, Section 1-1-5.2 NMSA 1978.

(2) Provisional ballots issued during early voting in the office of the county clerk, alternate voting location or mobile alternate voting location for the reasons set out in the Election Code, shall be provided to the county clerk.

C. The county canvassing board shall canvass the election returns and ascertain whether any discrepancies, omissions or errors appear on the face of the election returns, in accordance with the Election Code, Section 1-13-1 to 1-13-22 NMSA 1978.

D. All provisional ballots issued to absent or early voters are subject to requalification in the event of a recount or contest as prescribed in the Election Code, Section 1-14-22 NMSA, 1978. [1.10.12.15 NMAC - Rp, 1.10.12.15 NMAC, 4/24/2018; A, 4/7/2020; A, 8/31/2023]

1.10.12.16 ~~[[RESERVED]]~~
MAILED BALLOT CURING PROCESS:

A. Within one day of receipt of a mailed ballot, the county clerk shall remove the privacy flap to verify that the voter signed the outer envelope and to confirm that the last four digits of the social security number provided by the voter matches the information on the voter's certificate of registration pursuant to Subsection B of Section 1-6-10 NMSA 1978.

(1) If either voter's signature or the last four digits of the voter's social security number are not provided, the county clerk shall reject the mailed ballot and make a notation of "rejected" in the absentee ballot register and provide the applicable rejection reason, either "no signature" or "incomplete," and shall transfer the ballot the special deputy for mailed ballots for delivery to the absent voter election board in accordance with Subsection F of Section 1-6-10 NMSA 1978.

(2) If the last four digits of the social security

number do not match the electronic voter registration certificate, the following procedures shall be followed:

(a) The county clerk shall review the original voter registration application to ensure the mismatch is not the result of a typographical error in the voter database. If the error is in the electronic voter registration record, the voter record shall be corrected, and the ballot will not require a curing process.

(b) If the issue is deemed not to be a typographical error in the electronic voter registration record, the county clerk shall query the driver history record system through the New Mexico department of taxation and revenue using the name and date of birth of the voter. If the query returns the same social security number as provided by the voter under the privacy flap, the ballot shall be accepted.

B. The county clerk shall immediately attempt to contact a voter whose ballot qualification was rejected to provide notice to the voter of the rejection, opportunity to satisfy the reason for the rejection, and the process for curing reason for the rejection.

(1) The county clerk shall contact the voter by phone and email, if this information is available.

(2) If contact is not made by email or phone, the county clerk shall send a notice by regular mail with a postage pre-paid envelope.

(3) If a voter requests translation, the county clerk must provide translation in the voter's preferred language.

C. Voters may cure a rejected ballot in-person at the county clerk's office of the county where the ballot was issued or by electronic means or by regular mail by completing one of the following procedures:

(1) If either the voter's signature is missing or the voter did not provide the last four

digits of the voter's social security number, the voter shall complete the required information under the privacy flap or complete and sign an affidavit.

(2) If the last four digits of the provided social security number do not match the electronic voter registration record and cannot be ascertained through Subsection A of this section, the voter shall be required to complete and sign an affidavit on a form prescribed by the secretary of state and provided further documentation in order to affirm the required voter identification information.

D. Pursuant to Subsection F of Section 1-6-10 NMSA 1978, if the required information is submitted by the voter, the clerk shall update the absentee ballot register record as "accepted" and shall transfer the ballot, affidavit, and any other document that evidences the cured mailed ballot to the special deputy for mailed ballots for delivery to the absent voter election board or an election board appointed for the preparation of the county canvass. County clerks shall conceal or redact the full social security number and full date of birth on any provided documents prior to transferring those materials.

E. All documents containing personal protected information shall be kept in a secure place by the county clerk and the absent voter election board. [1.10.12.16 NMAC - N, 8/31/2023]

1.10.12.17 **PAPER BALLOT TRANSFER:**

A. Paper ballots cast in a voting tabulator for early voting shall remain in the custody of the [precinct] election board assigned to the alternate voting location or mobile alternate voting location in either the ballot holding bin of the voting tabulator, or if deemed necessary, in a locked ballot box with two padlocks or numbered seals, designated for the specific tabulator.

B. Paper ballots removed from the ballot holding bin of the voting tabulator on a

daily basis shall only be removed after voting hours by the presiding judge and two election judges, one of a differing political party than the presiding judge. The ballots shall be placed into a locked ballot box, with two padlocks or numbered seals designated for the specific tabulator.

(1) Those ballots diverted to the write-in holding bin and those ballots placed in the hand tally bin shall also be removed daily. Tabulated, write-in and hand tally ballots shall be kept separate from each other, but shall be retained by date and specific to the tabulator.

(2) The presiding judge and two election judges, one of a differing party than the presiding judge must execute a certificate containing the date and voting tabulator serial number for each ballot type, after the transfer of ballots on a daily basis.

(3) The locked ballot box shall be placed in a locked room at the county clerk's office, alternate voting location or mobile alternate voting location. If a location does not have a locked room, the county clerk shall either provide a cabinet with a locking device to be placed at the location for the presiding judge to place the ballot box, or the county clerk shall take possession of the locked ballot box and store it at the county clerk's office until it is transferred to the [absentee precinct] absent voter election board. The presiding judge or county clerk shall have sole possession of the key to the locked room.

C. Paper ballots that remain in the ballot holding bin of the voting tabulator for the duration of voting, shall be checked daily before voting hours begin by two election judges, one of a differing party than the presiding judge, and in the presence of the presiding judge. If the ballots are touching or near the diverter device, they shall be laid down in a stack, as to avoid a jam in the diverter.

(1) If the ballot holding bin of the voting tabulator becomes full during voting hours, the presiding judge and two

election judges, one of a differing party than the presiding judge, shall unlock the bin and transfer the ballots to a locked ballot box, with two padlocks or numbered seals, specific to the tabulator. The presiding judge shall, in an audible tone, explain the reason for the removal and transfer of ballots.

(2) The presiding judge and two election judges, one of a differing party than the presiding judge must execute a certificate containing the date and voting tabulator serial number for each ballot type, after the transfer of the ballots. Those ballots diverted to the write-in holding bin and those ballots placed in the hand tally bin shall also be removed, kept separate from each other and specific to the tabulator.

(3) The locked ballot box shall be placed in a locked room at the county clerk's office, alternate voting location or mobile alternate voting location. If a location does not have a locked room, the county clerk shall either provide a cabinet with a locking device to be placed at the location for the presiding judge to place the ballot box or shall take possession of the locked ballot box and stored at the county clerk's office until transferred to the [absentee precinct] absent voter election board. The presiding judge or county clerk shall have sole possession of the key to the locked room.

D. After the transfer, recording and securing of ballots in accordance with this section, the voting tabulator will remain in open polls status, put back into use for the duration of the voting period and the removable storage media device cartridge will not be cleared out.

[1.10.12.17 NMAC - Rp, 1.10.12.17 NMAC, 4/24/2018; A, 8/31/2023]

**1.10.12.19 ~~[[RESERVED]]~~
USE OF GOVERNMENTAL
AND OFFICIAL BUILDING
AS MAILING ADDRESSES
ON MAILED BALLOT
APPLICATIONS:**

A. Upon written request from an Indian nation, tribe

or pueblo, the secretary of state may designate a government or official building for the delivery of mailed ballots or for use on voter registrations for members of that Indian nation, tribe or pueblo. The written request must be in compliance with Subsection D of Section 1-21A-1 NMSA 1978.

B. The written request designating the government or official building shall be submitted to the secretary of state in March or April of any year. It should include the common name for the building, the mailing address of the building, and the name(s) and phone number(s) of lead person(s) charged with the oversight of the mailed ballot process at the building.

C. Upon receipt of a written request, the secretary of state shall perform a security evaluation of the building to ensure the building has a space to safely keep the official mailing envelope in a locked and number-sealed ballot box or envelope. The secretary of state shall respond in writing within 60 days of the request.

D. An approved designation will take effect at the general election or regular local election of the year in which the request was approved.

E. If the request is approved and upon implementation, the secretary of state shall send a notification of new designations in writing and shall provide an updated list of approved government and official buildings by county to each county clerk with an Indian nation, tribe or pueblo in the county.

(1) The lead person(s) designated pursuant to Subsection B of this section shall ensure that mailed ballots received at the designated location are secured safely in a locked and number-sealed ballot box or envelope until they are retrieved by voters.

(2) Only a voter who requested a mailed ballot may retrieve a mailed ballot at a designated and approved government or official building.

(3) A chain of custody form shall be completed

by the voter collecting their mailed ballot every time a ballot is collected. A copy of the chain of custody form shall be sent to the county clerk who issued the mailed ballot within 24 hours. The chain of custody form shall be prescribed by the secretary of state and shall include:

- (a) _____
the location of the officially designated building;
- (b) _____
date and time of arrival;
- (c) _____
printed full name of the person retrieving the ballot;
- (d) _____
signature of the person retrieving the ballot;
- (e) _____
printed full name of the person providing the ballot to the voter;
- (f) _____
signature of the person providing the ballot to the voter;

(4) The lead person(s) designated pursuant to Subsection B of this section shall maintain a log of the number of mailed ballots received each day and the names of the voters reflected on the outer envelopes of received mailed ballots. The log shall be prescribed by the secretary of state and a lead person shall send a copy of the updated log to the county clerk who issued the mailed ballots each week beginning 28 days prior to the election and on the Saturday following an election day.

(5) The lead person(s) designated pursuant to Subsection B of this section shall return any ballots not retrieved by voters to the county clerk by the Friday following an election day.
[1.10.12.19 NMAC - N, 8/31/2023]

**SECRETARY OF STATE,
OFFICE OF THE**

This is an amendment to 1.10.19 NMAC, Sections 3, 7, 8, 9, 13, and 14 effective 8/31/2023.

1.10.19.3 STATUTORY AUTHORITY: This rule is

authorized by Section 1-2-1 and Section 1-6-9 NMSA 1978.
[1.10.19.3 NMAC - N, 8/24/2021]

1.10.19.7 DEFINITIONS:

A. “Permanent ballot drop box” means the same thing as “secured container,” and the terms may be used synonymously.

B. “Secured container” means a permanent and secure receptacle, that meets the requirements of Subsection E of Section 1-6-9 NMSA 1978, and is established by the county clerk whereby voters and those authorized to deliver a voted mailed ballot pursuant to Section 1-6-10.1 NMSA 1978 may return an official mailing envelope to the election official from whom it was obtained.

C. “Temporary ballot drop box” means a secure receptacle supervised by election workers or county employees located inside the office of the county clerk, an alternate voting location, a mobile voting location, or election day voting location to collect official mailing envelopes dropped off pursuant to Subsection D of Section 1-6-9 NMSA 1978.

D. “Video surveillance” means internet security systems or internet protocol cameras that use the internet by networking to send and receive data.

E. “Sensors” means a device which detects or measures physical property and records, and indicates, or otherwise responds to them.

F. “Sensor alert” means when a device detects events that are not part of the normal working environment and then sends signals to warn of abnormality.
[1.10.19.7 NMAC – N, 8/24/2021; A. 8/31/2023]

1.10.19.8 CAPACITY REQUIREMENTS:

A. To meet the requirement of Subsection E of Section 1-6-9 NMSA 1978, which provides that all voters have the option to use a secured container to return official mailing envelopes,

county clerks shall provide one ballot box per 25,000 registered voters in the county with a minimum of two secured containers required per county. County clerks may request a waiver from the secretary of state to the minimum requirement set by the formula with consideration given for special geographic or security constraints.

B. Secured containers shall be located in a manner that provides the greatest convenience and accessibility to voters. County clerks may consider providing secured containers at main county or city office buildings. Other locations to consider include college campuses, libraries, community centers, and other public buildings with adequate accessibility, lighting, and [the ability] network access to install the required video surveillance system.

C. When possible, secured containers should be placed in such a way to be accessible to voters with disabilities. For example, the secured container should be placed along an accessible path near an Americans with Disabilities [(ADA)] Act compliant parking space. If there is no accessible pathway from the parking lot, there should be signs directing the voter to the nearest accessible secured container.

D. In accordance with Paragraph (1) of Subsection E of Section 1-6-9 NMSA 1978, the county clerk shall set the days and times the secured containers are available. To maximize the convenience to the voters, the county clerk shall, whenever possible, make secured containers available for use by a voter 24 hours a day starting 28 days before an election and on election day.

E. A temporary ballot drop box shall be made available to drop off official mailing envelopes inside all in-person voting locations pursuant to Subsection D of Section 1-6-9 NMSA 1978. This is to ensure that a dedicated receptacle is available to secure and isolate voted mailed ballots being returned to a voting location.

F. Only ballots secured in the absentee official mailing

envelope placed inside of a permanent and temporary ballot drop box shall be counted. Under no circumstance should provisional ballots, hand tally sheets, or ballots voted in person be intermingled with voted mailed ballots collected in the drop boxes. [1.10.19.8 NMAC – N, 8/24/2021; A, 8/31/2023]

1.10.19.9 SECURED CONTAINER SECURITY REQUIREMENTS:

A. A county clerk shall request approval from the secretary of state prior to installation of a secured container to ensure it meets minimum security requirements. The secretary of state shall respond to such requests within 14 days.

~~[A]~~ B. A secured container shall be permanently bolted to the ground in accordance with the instructions provided by the container manufacturer. A secured container shall be constructed of weather-resistant metal and capable of securely receiving and holding voted mailed ballots. ~~[A county clerk shall request approval from the secretary of state prior to installation of a secured container to ensure it meets minimum security requirements.]~~ A secured container shall have network accessibility and shall have installed heat, humidity and motion sensors.

~~[B]~~ C. A secured container and monitoring network hardware shall be secured and locked at all times. Only the county clerk or deputy county clerk, election board member or appointed messenger shall have access to the keys or combination of the lock. ~~[In addition to locks, all secured containers shall be sealed with one or more tamper-evident seals while in use]~~ The county clerk shall maintain a key control log on a form prescribed by the secretary of state to document the utilization of and to account for secured container keys. All keys issued by the secretary of state shall be controlled, accounted for, and not easily accessible. Upon the election or appointment of a new county clerk and after each U.S. presidential election, lock combinations shall be changed and

documented on a form prescribed by the secretary of state. All forms utilized pursuant to this section shall be retained by the county clerk as a record related to voting pursuant to Subsection G of Section 1-12-69 NMSA 1978.

D. In addition to locks, all secured containers shall be sealed with one or more tamper-evident seals while in use. Lock combinations shall be changed when a new clerk is appointed or elected and after each U.S. presidential election. Combination lock changes shall be documented by the county clerk.

~~[C]~~ E. Secured containers shall be installed in a lighted area and monitored by a centralized video surveillance camera system provided by the secretary of state. The video surveillance system shall otherwise be monitored and controlled by the county clerk through a video surveillance dashboard. The county clerk shall ~~[, at a minimum,]~~ immediately review [and monitor] video surveillance footage upon receiving a report of an irregular or illegal incident or upon receipt of a ~~[system]~~ sensor alert and:

(1) beginning 28 days prior to election day and through the certification of the county canvass, the county clerk shall log into the video surveillance dashboard each day. During all other weeks of a calendar year, the county clerk shall log into the video surveillance dashboard on a weekly basis.

(2) The county clerk shall maintain a list of the clerk's office personnel with access to the video surveillance dashboard and shall notify the secretary of state's office of any changes to the list. The county clerk shall contact the secretary of state for required training and shall ensure that all persons granted dashboard access complete required training, provided by the secretary of state, prior to utilizing the dashboard.

F. The county clerk shall contact the secretary of state's office with security or operational concerns immediately upon discovery.

~~[D]~~ G. When secured containers are not in use and immediately after 7:00 P.M. on election day as is practical, the county clerk shall install the slot closer on the secured container to prevent access. Covers may also be placed over the secured container to protect the container when not in use. [1.10.19.9 NMAC – N, 8/24/2021; Rn & A, 8/31/2023]

1.10.19.13 BALLOT RETRIEVAL PROCEDURES:

A. ~~[Paragraph (5)]~~ Pursuant to Paragraph (5) of Subsection E of Section 1-6-9 NMSA 1978, the county clerk, ~~[or a full-time]~~ deputy county clerk, election board member or an appointed messenger shall collect the ballots from a secured container. One or more ~~[full-time]~~ deputy county clerks may be hired by the county clerk on a temporary basis to fulfill this requirement for the time period in which a secured container is available for use. Only personnel designated to retrieve the ballots may transport the retrieved ballots.

B. The county clerk shall provide the approximate time the ballots will be collected from a secured container. Ballots shall be collected at least once ~~[a day every day]~~ every three days beginning 28 days prior to election day through 7:00 P.M. on election day.

C. Ballots shall be transported in a secure ballot transport container.

D. A chain of custody form shall be completed by the person collecting the ballots every time ballots are collected. A separate chain of custody form is required for each permanent or temporary drop box. The chain of custody form shall be prescribed by the secretary of state and shall include:

- (1) the location of the drop box;
- (2) date and time of arrival;
- (3) number of ballots retrieved;
- (4) security seal number when box is opened;

(5) security seal number when box is locked and sealed again;

(6) full name of the person retrieving the ballots; and

(7) any other observations of note to include any appearance of tampering or damage to the drop box.

E. The person collecting the ballots from the permanent or temporary drop box shall also record the date, time, drop box location, and identity of the person collecting the boxes on each of the official mailing envelopes collected.

F. Upon the arrival of the collected ballots at the office of the county clerk or other designated ballot intake or central count location, the county clerk or designee shall receive the ballots and complete the bottom of the chain of custody form to include:

(1) date and time of receipt;

(2) number of ballots received (which should match the number in the upper section of the form provided by the person collecting the ballots);

(3) a verified comparison to the previous days seal number, if applicable; and

(4) full name and signature of the receiving staff member.

G. Any ballots retrieved from a permanent or temporary ballot drop box shall be processed and secured in the same manner as those absentee ballots otherwise delivered to the office of the county clerk, such as by the United States postal service.

H. All temporary ballot drop boxes and ballot transport containers shall be numbered and kept in a log to ensure all are returned at the end of a voting day and on election night.

[1.10.19.13 NMAC – N, 8/24/2021; A, 8/31/2023]

1.10.19.14 REIMBURSEMENT BY THE SECRETARY OF STATE:

~~[A.] County clerks may request reimbursement from the secretary of state for the costs of hiring additional staff necessary for:~~

~~(1) monitoring secured container video surveillance,~~

~~(2) installing and maintaining secured containers, and~~

~~(3) collecting ballots from permanent and temporary ballot drop boxes.~~

~~[B.] A.~~ County clerks may request reimbursement from the secretary of state for purchasing approved containers and supplies related to maintaining permanent and temporary ballot drop boxes.

~~[C.] B.~~ Requests for reimbursement made to the secretary of state are required to be submitted in a manner prescribed by the secretary of state no later than 45 days after election day.

~~[D.] C.~~ The secretary of state shall reimburse county clerks for all expenses deemed by the secretary of state to be in compliance with this section.

[1.10.19.14 NMAC – N, 8/24/2021; A, 8/31/2023]

**SECRETARY OF STATE,
OFFICE OF THE**

This is an amendment to 1.10.22 NMAC, Sections 7, 10, and 11 effective 8/31/2023.

1.10.22.7 DEFINITIONS:

A. **“Adjudicate”** means a decision made by a precinct board, in accordance with the Election Code, of a ballot signifying a voter’s intent to mark their selection for a candidate contest or ballot question.

B. **“Alternate voting location”** means a location outside the office of the county clerk, established by the county clerk, where a voter may cast an early in person ballot on voting tabulator. This includes mobile alternate voting locations.

C. **“Blank ballot”** means a paper ballot on which the voter has not selected any of the alternatives allowed in any candidate contest or ballot question.

D. **“Canvass”** means the process of qualifying and verifying paper ballots and counting and tallying votes for each precinct beginning upon the closing of the polls and ending with the certification and announcement of the results by the county canvassing board pursuant to Subsection F of Section 1-2-31 NMSA 1978.

E. **“Challenger”** means a voter of a precinct located in that county, who has completed the required training pursuant to Section 1-2-22 NMSA 1978, and to which the voter is appointed in conformance with the Election Code, [Section 1-2-21 to 1-2-22 NMSA 1978] for the purpose of carrying out such duties as prescribed in the Election Code, [Section 1-2-23 to 1-2-26 NMSA 1978].

F. **“Contest”** means court litigation that seeks to overturn the outcome of an election pursuant to the Election Code, Section 1-14-1 NMSA 1978.

G. **“County canvass observer”** a voter of the county, who has completed the required training pursuant to Section 1-2-22 NMSA 1978, and to which they are appointed, in accordance with the Election Code, Section 1-2-31 NMSA 1978, and permitted to be present at any time from the time the county canvassing begins until the completion of the canvass, and strictly limited to observing and documenting the canvassing process.

H. **“County canvassing board”** means the board of county commissioners in each county, convened for the purposes of conducting the county canvass or the board of registration as designated by the board of county commission pursuant to Section 1-13-1 NMSA 1978.

I. **“County voter file”** means the computerized version of the county register, comprising a portion of the statewide voter file.

J. “Health care provider” means an individual licensed, certified or permitted by law to provide health care in the ordinary course of business or practice of a profession.

K. “Inner envelope” means the official envelope, prescribed by the secretary of state, given to the voter along with ~~[an absentee]~~ a mailed or provisional ballot into which the voter places the ballot after it is voted and which is used to preserve the secrecy of the voter’s ballot.

L. “Naked ballot” means a provisional or ~~[absentee]~~ mailed ballot that has not been placed in the inner envelope by the voter.

M. “Overvoted ballot” means a ballot on which the voter has selected more than the number of candidates to be elected for that contest, or has voted in both the affirmative and negative on a ballot question.

N. “Precinct” means ~~[a part of a county with definite boundaries established for electoral administrative functions]~~ a designated division of a county for election and redistricting.

O. “Provisional ballot envelope” means the official envelope, prescribed by the secretary of state, which has information that will identify the provisional voter, purpose the provisional ballot was issued and contains a sworn affidavit and a blank voter registration certificate, into which the provisional voter places the inner envelope.

P. “Provisional ballot transmission envelope” means a sealed envelope or pouch marked and designated by the county clerk to transmit provisional ballots from the polling place or alternate location to the office of the county clerk.

Q. “Qualification process” means the process used by a county clerk to determine the qualifications of a voter who voted on a provisional ballot.

R. “Replacement absentee ballot” means a ballot that is processed as a provisional ballot, that is provided to a voter whose

name appears on the absentee ballot register or signature roster as having been issued an absentee ballot, and who has affirmed that the ballot was not received or voted on pursuant to the Election Code, Section 1-6-16 NMSA 1978. The ballot shall be placed in a provisional ballot envelope prescribed by the secretary of state and processed within the timeframe specified in the Election Code, Section 1-6-16 NMSA 1978.

S. “Signature roster” means ~~[the certified list of voters at a polling place, which is signed by a voter or county voter file at a consolidated polling place]~~ a physical or electronic copy of a voter list with space provided opposite each voter’s name for the voter’s signature or witnessed mark.

T. “Tally sheet” means a ~~[document]~~ form prescribed by the secretary of state used for the counting and tallying of votes cast on a ballot that has not been fed into a voting tabulator.

U. “Undervoted ballot” means a paper ballot that is not a blank ballot, and on which the voter has selected at least one candidate or answered at least one ballot question in accordance with the instructions for that ballot type, but on which the voter has selected fewer than the number of alternatives allowed in a candidate contest or on a ballot question.

[1.10.22.7 NMAC - Rp, 1.10.22.7 NMAC, 4/24/2018; A, 8/31/2023]

1.10.22.10 TABULATION AND CANVASSING OF QUALIFIED PROVISIONAL BALLOT PROCEDURES:

A. Qualified provisional ballots shall be counted for the reporting of votes by precinct and voting method for each candidate contest or ballot question, as specified in the Election Code, Section 1-12-70 NMSA 1978. Only the votes for those candidate contests or ballot questions for which the voter is eligible to vote shall be counted, as follows:

(1) A qualified ~~[absentee by-mail]~~ mailed ballot,

processed as a provisional ballot, in a provisional ballot envelope prescribed by the secretary of state because the first time voter did not provide the required form of physical identification prior to the ballot issuance, shall be hand tallied and recorded in the absentee provisional by hand tally counting group, or tabulated by a voting tabulator designated, programmed and certified for such specific use, and recorded in the absentee provisional by machine counting group.

(2) A qualified absentee replacement ballot, processed as a provisional ballot, in a provisional ballot envelope prescribed by the secretary of state because the absentee voter did not receive, or if received, did not vote the ~~[absentee-by-mail]~~ mailed ballot, shall be hand tallied and recorded in the absentee provisional by hand tally counting group, or tabulated by a voting tabulator designated, programmed and certified for such specific use, and recorded in the absentee provisional by machine counting group.

(3) A qualified provisional ballot issued during early voting in the office of the county clerk, alternate voting location or mobile alternate voting location shall be hand tallied and recorded in the early voting provisional by hand tally counting group, or tabulated by a voting tabulator designated, programmed and certified for such specific use, and recorded in the early voting provisional by machine counting group.

(4) A qualified provisional ballot issued on election day shall be hand tallied and recorded in the election day provisional by hand tally counting group, or tabulated by a voting tabulator designated, programmed and certified for such use, and recorded in the election day provisional by machine counting group.

(5) A qualified federal write-in absentee ballot shall be hand tallied and shall be counted and recorded in the federal overseas hand tally counting group.

(6) The hand tally of votes from qualified provisional ballots shall be conducted in accordance with 1.10.23 NMAC by a team of at least two persons. The team shall consist of one reader and one marker, not of the same political party, if possible. The reader shall read the ballot to the marker and the marker shall observe whether the reader has correctly read each vote from the ballot; the marker shall then mark the tally sheet of the precinct, voting method and voting location where the ballot was cast, and the reader shall observe whether the marker correctly marked the tally sheet. The hand tally team shall observe the following:

(a) Only the votes for the candidates or ballot questions from the precinct the voter is eligible to vote for shall be counted;

(b) Each ballot shall increase the ballots cast count by one;

(c) Only those contests receiving no more than the allotted selections for the number of candidates to be elected or ballot questions where there is one selection for either the affirmative or negative will be hand tallied on overvoted ballots;

(d) No votes for either candidate contests or ballot questions will be hand tallied for blank ballots;

(e) Only those candidate contests or ballot questions receiving a selection by the voter will be hand tallied on an undervoted ballot; and,

(f) Overvoted, blank or undervoted ballots cast by voters, after going through the above process shall be recorded as a "ballot cast" and proper voting credit shall be given on the respective voter registration record on file with the county clerk.

(7) When a voting tabulator is used for the counting and recording of qualified provisional ballots of voters who were issued a ballot for their correct voting precinct, a member of the county

canvassing board shall feed the ballots into the voting tabulator.

(a) An overvoted or blank provisional ballot shall be accepted by the voting tabulator after it has been adjudicated by the county canvassing board. The ballot will be counted and recorded in the appropriate machine counting group, as detailed above.

(b) If a provisional ballot is misread after being fed into a voting tabulator, a county canvass board member shall feed it into the voting tabulator a second time. A provisional ballot that is rejected after two attempts shall be adjudicated by the county canvass board, hand tallied, counted and recorded in the appropriate hand tally counting group, as detailed above.

B. During the counting of qualified provisional ballots, the county clerk shall ensure that observers are not permitted to see the identity of any voter whose ballot is being tallied. If, in the instance of only one provisional ballot cast in an alternate voting location, mobile voting location or election day polling place, the observer may know the identity of the voter, but may not observe the tally of the ballot.

C. Upon the conclusion of the county canvass, the county clerk shall transmit the provisional ballot results to the office of the secretary of state in accordance with the Election Code, Subsection H of Section 1-12-25.4 NMSA 1978, and the county canvassing board shall direct the county clerk to prepare the required provisional ballot report.

D. If there is a discrepancy in the number of provisional ballots returned based on the number of provisional ballots issued, the county canvassing board shall follow the procedures set out in the Election Code, Section 1-13-1 to 1-13-22 NMSA 1978.

[1.10.22.10 NMAC - N, 4/24/2018; A, 8/31/2023]

1.10.22.11 PROVISIONAL VOTER NOTIFICATION AND HEARING PROCESS:

A. In accordance with

[Subsection A of] Section [1-12-12.2] 1-12-25.2 NMSA 1978, the county clerk shall notify each provisional voter whose provisional ballot was rejected and inform the voter of ~~[their ability]~~ the right to appeal such rejection and provide information or documentation to cure the reason the ballot was rejected until the Friday prior to the meeting of the state canvassing board. ~~[-by requesting a hearing-]~~ The appeal process shall be conducted as follows:

(1) the voter shall submit a written request for a hearing to appeal the rejection, and at any time up to and including the appeal hearing, the voter may provide information or documentation to satisfy the reason the ballot was rejected;

~~(1)~~ (2) the county clerk shall select a hearing officer(s) from staff or a person who is not affiliated with any candidate to be voted for at the election and knowledgeable of election law;

~~(2)~~ (3) the county clerk shall provide a disability accessible room for the appeal hearing to be held;

~~(3)~~ (4) the voter shall schedule an appointment time for an appeal by calling the county clerk's office and shall appear under oath and show by a preponderance of the evidence that the vote should be counted;

~~(4)~~ (5) the voter may appear with an advocate;

~~(5)~~ (6) the appeal hearing shall be a public meeting, but the voter's date of birth and social security number shall not be stated out loud and the public shall not be in the line of sight or view or make notes of the voter's personal information;

~~(6)~~ (7) the county clerk and the public may make a brief public comment and offer relevant exhibits but only the hearing officer shall be permitted to cross examine the witness;

~~(7)~~ (8) the hearing officer shall not be bound by the rules of civil procedure, but may use them for guidance and shall make an immediate oral decision explaining

the decision by citing a provision of the Election Code;
 [(8) — there is no statutory right of appeal; and]
 (9) if the voter prevails, the hearing officer shall direct the county clerk to handle the ballot as a qualified provisional ballot.
B. The county clerk shall notify the county canvassing board of the completion and results of the appeals process.
 [1.10.22.11 NMAC - N, 4/24/2018; A & Rn, 8/31/2023]

**SECRETARY OF STATE,
 OFFICE OF THE**

This is an amendment to 1.10.24 NMAC, Sections 2, 3, 6, 7, 8, 9 and 10, effective 8/31/2023.

1.10.24.2 SCOPE: This rule applies to any referendum petition submitted or filed with the office of the secretary of state pursuant to Article IV, Section 1 of the Constitution of New Mexico and pursuant to the provisions of Section 1-17-1 through 1-17-14, NMSA 1978.
 [1.10.24.2 NMAC - N, 4/15/2004; A, 8/31/2023]

1.10.24.3 STATUTORY AUTHORITY: [Election Code, Paragraph (2) of Subsection A] Subsection B of Section 1-2-1 NMSA 1978 and Article 17 of the Election Code. [The issuing authority shall adopt rules and regulations to carry out the provisions of the Election Code.]
 [1.10.24.3 NMAC - N, 4/15/2004; A, 8/31/2023]

1.10.24.6 OBJECTIVE: The objective of this rule is to establish administrative procedures for the review of submitted draft referendum petitions prior to circulation and to establish administrative procedures for the review of signatures [for] on completed referendum petitions.
 [1.10.24.6 NMAC - N, 4/15/2004; A, 8/31/2023]

1.10.24.7 DEFINITIONS:
A. “Certified list” means the alphabetized listing of registered voters of a county that is under the signature and seal of the [county clerk] secretary of state.
B. “Designated agent” means the sole individual authorized by the referendum sponsors to act on behalf of sponsors.
C. “Fictitious, forged or otherwise clouded signatures” means signatures including, but not limited to, the names of celebrities and actors that are not registered voters or qualified electors of New Mexico, cartoon characters, historical figures, animal companions or livestock, or any signature where the address is not legible and the signer could not be sufficiently identified by a judge.
D. “Petition” means the referendum form, approved, certified, and circulated pursuant to Article 17 of the Election Code.
E. “Petitioner” means an individual, group of persons or organization circulating a referendum petition pursuant to Article IV, Section 1 of the New Mexico Constitution and the provisions of Article 17 of the Election Code.
F. “Qualified elector” means any [person] resident of this state who is qualified to vote under the provisions of the Constitution of New Mexico and the Constitution of the United States and includes any qualified resident.
G. “Registered voter” means a qualified elector, registered to vote pursuant to the provisions of the Election Code.
H. “Signer” means a qualified elector or registered voter who signs his name to a referendum petition.
I. “Solicitor” means a person who circulates a referendum petition and requests the signatures of qualified electors or registered voters.
J. “Sponsor” means the individual, group of persons or organization circulating a referendum petition pursuant to Article IV, Section 1 of the New Mexico Constitution and the provisions of Article 17 of the Election Code.

[1.10.24.7 NMAC - N, 4/15/2004; A, 8/31/2023]

1.10.24.8 COMPLETED PETITION FILING:

A. Only the designated agent shall file the petition on behalf of the sponsors.
B. A completed referendum petition filed pursuant to Section 1-17-10 NMSA 1978, shall not be withdrawn nor added to at the time of initial filing, but may be later amended subject to the provisions of Section 1-17-12 NMSA 1978.

C. At the time of filing, the designated agent shall submit a certified list or the registered voters of each county represented in the petition. The secretary of state shall provide the certified lists to the designated agent upon completion of a request affidavit on a form prescribed by secretary of state. The affidavit shall inform the designated agent of the requirement to comply with Section 1-5-5.6 and Subsection A of Section 1-5-22 NMSA 1978. The certified list shall be [in both electronic media and paper] provided electronically.

D. If a signer of a referendum petition is a qualified elector, but not a registered voter pursuant to the provisions of the Election Code [(NMSA 1-1-1 through 1-24-4, NMSA 1978)] the qualified elector shall write “qualified elector” in lieu of a voting precinct on the petition page, and the designated agent shall submit documentation that the signer is 18 years of age and a resident of the county listed above the signature of the signer. Acceptable documentation consists of a government issued verification of the age of the signer and other documents that indicate county of residence.

E. The secretary of state shall determine the acceptability of any documents submitted.

[1.10.24.8 NMAC - N, 4/15/2004; A, 8/31/2023]

1.10.24.9 COMPLETED PETITION VERIFICATION:

A. The secretary of state shall examine each page of the

petition to determine the validity of signatures consistent with the requirements of Article 17 of the Election Code.

B. Fictitious, forged or otherwise clouded signatures shall be deleted from the petition consistent with Section 1-17-11, NMSA 1978. [1.10.24.9 NMAC - N, 4/15/2004; A, 8/31/2023]

1.10.24.10 PETITION APPROVAL BEFORE CIRCULATION:

A. Before any referendum petition is circulated for signatures, the sponsors shall submit the original draft thereof to the secretary of state to determine if it meets the requirements of law for referendum petitions pursuant to Section 1-17-1, Section 1-17-2, Section 1-17-5, Section 1-17-6, Section 1-17-8 NMSA 1978 and Article IV, Section 1 of the Constitution of New Mexico.

B. Requirements as outlined in Section 1-17-2 and Subsection E of Section 1-17-5 NMSA 1978 shall appear on the front of the petition page, as only the required certificate shall appear on the back of each petition page pursuant to Section 1-17-6 NMSA 1978.

C. Pursuant to Section 1-2-1.1 NMSA 1978, the secretary of state shall contact the attorney general for review of referendum petition submissions and request signature for petitions certified as meeting all requirements of law for referendum petitions as required by Section 1-17-8 NMSA 1978.

D. The secretary of state shall respond to the draft submission in accordance with Subsection B of Section 1-17-8 NMSA 1978 within 30 days of submission. [1.10.24.10 NMAC – N, 8/31/2023]

History of 1.10.24 NMAC:
[RESERVED]

**SECRETARY OF STATE,
OFFICE OF THE**

This is an amendment to 1.10.35 NMAC, Sections 6, 7, 8, 9, and 12 effective 8/31/2023.

1.10.35.6 OBJECTIVE:
The Election Code [~~Section 1-1-1 NMSA through 1-24-4 NMSA 1978~~] was amended by Chapter 270, Laws 2005. The purpose of the amendment is to require the secretary of state to adopt such rules as are necessary to establish and administer the statewide computerized voter registration system and to require timelines for the updating of voter files. It is also the objective of this rule to provide for uniform administrative practices to carry out the provisions of the Election Code.

[1.10.35.6 NMAC - N, 3/15/2012; A, 8/31/2023]

1.10.35.7 DEFINITIONS:

A. “Active voter” means a registered voter who has not been declared an inactive voter.

B. “Board of registration” means the voters of a county who are appointed by the board of county commissioners and serve under the provisions of Sections 1-4-34 NMSA 1978.

C. “Cancelled” means the status of a person’s voter registration record when that person is no longer eligible to vote due to death; transfer of residence to another county or state; [~~a finding by a court of legal insanity;~~] felony conviction while the person is in [~~prison, on parole, or on supervised probation~~] a correctional facility; or at the voter’s request.

D. “Certificate of registration” means the form, prescribed by the SOS or the federal form complying with the National Voter Registration Act of 1993, used by qualified electors or by federal qualified electors to register to vote.

E. “Confirmation card” means a postage prepaid and preaddressed notice, with language in compliance with the National Voter Registration Act of 1993 and

Subsection C of Section 1-4-28 NMSA 1978, sent by forwardable mail, with a postage prepaid return postcard on which a voter may state the voter’s current address.

F. “Confirmation mailing” means a non-discriminatory mass mailing; conducted by the office of the SOS to voters flagged as NVRA on the statewide voter file and to voters who have filed a change of address request with the postal service since the last confirmation mailing.

G. “County” means an administrative district of the state of New Mexico.

H. “County register” means a physical file of voter registration records kept in fire resistant containers at the county clerk’s office.

I. “County voter file” means the computerized version of the county register, comprising each county’s portion of the statewide voter file.

J. “Data recording media” means physical material that holds data expressed in any existing electronic format.

K. “District” means a distinct territorial subdivision containing a body of eligible voters within the represented area.

L. “Duplicate search” means the process of verifying that voters are not registered in more than one county of the state, or registered more than once in a single county.

M. “Election” means a statewide election that is a general election, political party-primary election, local elections included in the Local Elections Act, or elections to fill vacancies in the office of United States representative.

N. “File maintenance” means the total activities undertaken by county or state election officials to ensure the accuracy and integrity of the statewide voter file.

O. “Inactive voter” means a voter who has been mailed a confirmation card in accordance with 52 U.S.C. 20501 to 20511, and who has either failed to respond or has failed to vote in any election

conducted after the mailing of the confirmation card.

P. “Initial mailing” means the first non-discriminatory mailing to a voter, by the county clerk or SOS, which is returned as undeliverable by the postal service.

Q. “Mailing address” means the address at which a voter receives correspondence; it is the address in the “physical street address where you live now” box on the certificate of registration, unless the voter’s address has been updated by the county clerk and the updated address is attached to the certificate of registration, or unless a voter has entered a different mailing address in the “address where you get your mail (if different from above) box on the certificate of registration.

R. “Module” means a portion of the statewide voter records system program that carries out a specific function and may be used alone or combined with other modules of the same program.

S. “New registrant” means a voter who has never been registered in any county within the state.

T. “Non-standard address” means an unnamed street, unknown structure or directional address not on the county street file.

U. “NVRA” means National Voter Registration Act and is a designation in the statewide voter file indicating a voter was sent an initial mailing other than a confirmation mailing, which was returned to the county clerk as undeliverable.

V. “Online voter registration system” means the system authorized by the SOS for the purpose of accepting voter registration applications through the internet.

W. “Physical address” means the location of a voter’s residence even if provided in the form of a map or geographic description pursuant to Section 1-4-5.3 NMSA 1978.

X. “Positive match” means that two records match based on a strong match or that a match has been determined to exist based on

further investigation by a county clerk of a weak match.

Y. “Precinct” means a part of a county with definite boundaries established for electoral administrative functions.

Z. “Precinct part” means the designation given when a precinct is divided by one or more districts.

AA. “Precinct voter list” means a voter list arranged in alphabetical order of voter surname within and for each precinct.

BB. “Public service request” means information prepared for an individual or organization requesting certain information from the voter records system.

CC. “Registrant detail” means all data entered into the voter records system for an individual voter.

DD. “Removable” means the designation in the statewide voter file for the voter registration record of a person registered to vote whose voter registration has been cancelled due to death, transfer of residence to another state, [~~a finding by a court of legal insanity;~~] felony conviction while the person is in [~~prison, on parole or on supervised probation]~~ a correctional facility, at the voter’s request, or, if after 45 days, a county clerk is unable to fulfill an incomplete application received online or electronically.

EE. “Scanned image” means the digital capture of the certificate of registration and any other physical documents relating to the voter’s record.

FF. “Select groups” means a group of voters selected based upon their party registration, or lack thereof, gender, residence, age, or any other protected class as defined by law.

GG. “Special voter list” means a prepared list of selected voters arranged in the order in which requested.

HH. “State agency that provides public assistance or services to persons with disabilities” means a designated agency pursuant to 1.10.8 NMAC and Section 1-4-5.2 NMSA 1978.

~~[HH:]~~ **II. “Street file”** means a method of geocoding or manually managing street segments, including address ranges, road networks and providing for incremental updates in the statewide voter registration system.

~~[H:]~~ **JJ. “Strong match”** means that two records in different databases have: (1) the same name, (2) same date of birth (DOB), and (3) the same full social security number (SSN)

~~[H:]~~ **KK. “Suspense status”** means an applicant for voter registration whose status as a voter is held in abeyance until certain voter qualifications are met.

~~[KK:]~~ **LL. “Undeliverable mailing”** means correspondence sent to a voter and returned by the postal service indicating that the voter no longer receives mail at that address.

~~[H:]~~ **MM. “Voter”** means any qualified elector or federal qualified elector who is registered under the provisions of the Election Code.

~~[MM:]~~ **NN. “Voter data”** means selected information from the voter file.

~~[NN:]~~ **OO. “Voter file”** means all voter information required by law and by the secretary of state that has been extracted from the certificate of registration of each voter in the county, stored on the voter records system and certified by the county clerk as the source of all information required by the Voter Records System Act.

~~[OO:]~~ **PP. “Voter history”** means extracted voter information from the voter file indicating the jurisdiction where a voter voted, election and date, political party, if any, precinct or precinct part, location and method of voting.

~~[PP:]~~ **QQ. “Voter list”** means any prepared list of voters.

~~[QQ:]~~ **RR. “Voter records system”** means the statewide computerized voter registration system and database, in compliance with the Help America Vote Act

of 2002, developed, implemented, established, supervised and maintained by the SOS. The system is used by the SOS to exchange electronic information with the county clerks.

~~RR:~~ **SS.** “**Weak match**” means that two records in different databases have any of the two following matching: (1) name, (2) DOB, (3) SSN, or (4) address. [1.10.35.7 NMAC - N, 3/15/2012; A, 2/12/2016; A, 4/7/2020; A, 8/31/2023]

1.10.35.8 PROCESSING VOTER REGISTRATION CERTIFICATES:

A. Adding and transferring voters.

(1) Upon receipt of a voter registration certificate, the county clerk shall run a duplicate search to determine if the voter is already registered in the registration records of the county. To determine if a record already exists in the statewide voter registration system, the duplicate search criteria shall be based on a strong match. The county clerk may also conduct additional duplicate searches using different criteria to minimize the chance of entering a duplicate record. Additional search criteria may be based on weak match criteria. Upon running a duplicate search, if the voter’s information on the voter registration certificate matches with an existing record, the voter shall be updated and transferred from another county.

(2) If the qualified elector submits a paper voter registration form and provides all other required voter information, but only provides the qualified elector’s driver’s license or state identification number, or last four digits of the voter’s SSN, the county clerk will first verify that the voter has a matching MVD record with the provided information. If the county clerk can verify and match a MVD record with the qualified elector then the county clerk should complete the search stated in Paragraph (1), of Subsection A, of 1.10.35.8 NMAC. If the county clerk is unable to verify the voter has

a matching MVD record, the clerk shall, within five days, email and mail the voter information with directions on how to provide their full SSN on the secure SOS portal.

(3) Upon receipt of a voter registration certificate, the county clerk shall run a search in the statewide voter registration system to determine if the applicant has been previously marked as deceased or ~~as having~~ is incarcerated in a correctional facility as a result of a felony conviction prior to acceptance of the application. If a strong match is found, the application shall be ~~rejected~~ processed pursuant to Subsection C of 1.10.35.8 NMAC. The county clerk may conduct additional searches to determine a possible match for purposes of ensuring a death ~~or felony~~ record does not exist prior to entering the voter registration certificate.

(4) ~~[AH]~~ Unless the voter is a public official with a designated confidential home address pursuant to 1.10.37 NMAC, all registrant detail and statutorily required data must be entered from the certificate of registration into the voter file including: name, full social security number (SSN), physical address, DOB, and an image of the signature. If the voter is a public official with such a designation, the voter record shall be marked as containing a confidential address, and “confidential” shall be entered in the address fields that correspond with the confidential address except for the zip code. The zip code indicated on the confidential home address designation shall be entered into the voter file.

(5) The county clerk may establish a best practice of proofreading data entry to prevent errors and duplicate voter entry. Proofreading may be done by a staff member who did not complete the original entry and the proofreading search for the record may be conducted using different criteria (i.e. DOB or name rather than SSN).

(6) The county clerk shall scan each certificate of voter registration in the county register and attach to the electronic

voter record. All scanned images attached to a voter record transferred to another county shall be retained as attached to that record.

(7) Pursuant to Subsection C of Section 1-4-15 NMSA 1978, a voter who does not declare a political party preference shall be entered into the voter file as “decline to select”. County clerk staff shall not check the “no party” box on the certificate of voter registration, but shall leave it blank.

(8) A voter who does not declare a qualified political party preference shall be entered into the voter file as “decline to select.”

(9) A voter who is not 18 years of age at the time of registration shall be placed in “suspense” status. At 35 days and 21 days prior to the next election, the county clerk shall run a suspense query report of the county voter file and activate suspense voters on the appropriate date prior to the election. At 21 days prior to an election, the county clerk shall activate all those suspense voters who will be 18 on or before the election.

(10) If the age question is checked “no” or left blank the application shall nonetheless be accepted if the DOB demonstrates that the applicant is over the age of 18 or placed in suspense status if the DOB demonstrates the applicant is under the age of 18.

(11) When a voter registration agent number is provided on an application, the county clerk shall note the agent number and the registration form number in the statewide voter registration system.

B. Matching with MVD database: All online and MVD electronic registrations have been verified with the MVD database prior to transmission to the county clerk. Upon receiving a paper voter registration certificate, the county clerk may conduct a search in the MVD database for investigative purposes.

(1) If the county clerk determines that a conflict exists between the MVD database

and the voter registration record the county clerk may contact the registrant to request clarification. If it is determined that the information provided on the voter registration form needs to be corrected, the county clerk shall request that the voter fill out a new voter registration form with the corrected information before processing the application.

(2) The MVD database shall not be used to fill in information that is not included on incomplete applications or applications not otherwise in proper form.

C. Rejection of voter registration forms.

(1) Rejection for incomplete information: Voter registration forms that do not contain the qualified elector's name, address, DOB, and signature or usual mark shall be rejected. A full social security number is required to finish processing a new voter registration. For voter registration forms that only provide incomplete information or the county clerk cannot ascertain the qualified elector's full SSN, the county clerk shall make the appropriate notation in the statewide voter file, and return the form to the qualified elector with an explanation of the reasons for rejection and indicate that the voter shall provide the full SSN prior to receiving a ballot and, if not, may only vote on a provisional ballot until the incomplete information is provided, within five business days of the county clerk rejecting the voter registration form.

(2) Rejection for non-citizenship: For voter registration forms in which the citizenship question is answered in the negative, the county clerk shall reject the form. The county clerk shall also reject any voter registration certificate in which the question regarding citizenship is not answered. The county clerk shall send a notice within five business days to the applicant with an explanation that non-citizens are not eligible to vote in New Mexico elections. If the box was checked in error, the applicant may fill out a new form.

(3) Rejection of forms containing commercial mailbox locations as the physical address: The county clerk shall maintain a listing of addresses for commercial mail box establishments, if any, to prevent the entry of a non-residential address as a residence address into the voter file. When any voter registration form is received containing a commercial mail box location as the physical address, it shall be rejected, and the form returned to the voter with an explanation of the reason for the rejection along with a new voter registration form and instructions on how to register online, if available to that voter, within five business days, but as soon as is practicable.

(4) Rejection for felony ~~[conviction]~~ incarceration confirmation: For voter registration forms submitted that have a positive match with a ~~[felon]~~ felony record in the voter records system, the county clerk shall confirm the application was submitted personally before a county clerk, the clerk's authorized representative or a precinct board member, at an office of the motor vehicle division of the taxation and revenue department or at a state agency that provides public assistance or services to persons with disabilities. If the clerk confirms this information, the registration shall be accepted. If the clerk does not confirm this information, the county clerk shall process the application with a status of "not eligible" and a status reason of "felony incarceration" and send a notice to the applicant with an explanation that ~~[felons are not allowed to vote while in prison, on parole or on supervised probation, and]~~ an otherwise qualified elector is ineligible to register to vote while incarcerated in a correctional facility for a felony conviction. The notice shall also provide the elector with information on how they can become eligible or how to update or correct the information in the voter records system, within five business days, but as soon as is practicable.

(5) Rejection for deceased confirmation: For voter

registration forms submitted that have a positive match with a death record in the voter records system, the county clerk shall contact the secretary of state who will work with the department of health or other authorized agencies to confirm that a death certificate exists. If the death is confirmed, the county clerk shall reject the voter registration form and shall refer the matter to the assigned election prosecutor within the district attorney's office for investigation.

(6) Voter registration applications that contain an invalid series of numbers for SSN shall be rejected. Within five business days, but as soon as is practicable of the rejection, the form shall be returned to the voter with an explanation of the reason for the rejection. The social security administration has provided information regarding invalid or impossible SSNs as follows:

(a) SSN's never begin with the first three digits of 000, 666, or 900 series; and

(b) prior to June 25, 2011, SSN's did not begin with the first three digits of 800 series or above 772 in the 700 series.

(7) If applications are complete, but the county clerk reasonably believes an application is fraudulent, a copy of such registration shall be sent to the assigned election prosecutor within the district attorney's office located in the same county, along with a statement of the reasons the application(s) are considered suspicious for further investigation. The county clerk may contact the SOS to request assistance in researching suspicious applications.

(8) The county clerk may contact the applicant via phone or e-mail if necessary, however, in no case shall a change in registrant information be processed unless provided in writing.

D. Processing online voter registration forms received from the SOS.

(1) In order for an applicant to use the online voter registration system, a positive

match of identity is required with the MVD database. The match criteria shall be a current or expired MVD driver's license ID number or state ID number, full SSN, and full DOB. If a positive match is not found in the MVD database, the applicant shall be provided with a notice that the application cannot be processed online because of non-matching MVD information. The applicant shall be provided a link to print a paper voter registration application and an option to provide contact information and request to be contacted by the county clerk. If a positive match is made with the MVD database, the applicant shall be allowed to proceed with online registration and the MVD will send an image of the signature and photo as part of the voter registration application.

(2) If the applicant answers no to the questions regarding citizenship, the voter will not be allowed to continue with the online application process.

(3) If the applicant answers no to the question regarding age, the voter will be allowed to continue with the online application process, however, the clerk will place the record in suspense status in the statewide voter registration system.

(4) If the applicant answers yes to the question regarding currently being in [~~prison, on parole, or on supervised probation~~] a correctional facility as a result of a felony conviction, the voter will not be allowed to continue with the online application process.

(5) The applicant shall be provided the opportunity to enter all information as prescribed by the paper registration form, except the voter will not be allowed to modify the SSN or DOB after receiving confirmation of a positive match with the MVD database.

(6) The online voter registration system shall allow the applicant to designate from the list of qualified political parties or choose not to designate a political party. The online voter registration system shall

not permit an applicant to designate a political party that is not a qualified political party pursuant to Article 7 of the Election Code.

(7) The online voter registration system shall not allow incomplete voter registration applications to be submitted to the statewide voter registration system. The registrant shall receive a system notification when attempting to submit incomplete information and shall not be allowed to proceed until all required information has been provided. Required information shall include the voter's first name, last name, DOB, SSN, gender, physical address, mailing address in the event a non-standard physical address is provided, answers to citizenship and age questions, and party designation or choice of no party designation.

(8) Upon receipt of any online or electronic application forwarded to the county clerk via the voter records system, the application shall be processed as described in Subsection A of 1.10.35.8 NMAC.

(9) The online voter registration system will generate a digital image of a voter registration certificate which shall be included as part of the statewide voter registration system and shall be printed and maintained as part of the county register pursuant to Section 1-4-12 NMSA 1978.

(10) The online voter registration system shall transmit all information provided by the voter via a secured and encrypted transmission path and an audit log of all attempts, both successful and unsuccessful, to use the online voter registration system will be maintained by the secretary of state.

E. Processing electronic voter registration forms received from the MVD.

(1) Upon receipt of any electronic application forwarded to the county clerk via the voter records system, the application shall be processed as described in Subsection A of 1.10.35.8 NMAC.

(2) The electronic voter registration system

will generate an image of a voter registration certificate which shall be included as part of the statewide voter registration system and shall be printed and maintained as part of the county register pursuant to Section 1-4-12 NMSA 1978.

F. Processing incomplete or ineligible electronic or online voter registration applications: This section applies to all electronically submitted voter registration applications.

(1) Upon determining that the electronic or online voter registration application does not contain a valid physical address, includes a non-standard address with no mailing address, or is otherwise not filled out in proper form, the county clerk shall place the voter in "suspense" status with the status reason of "incomplete application." The county clerk shall attempt to contact the applicant to request a corrected voter registration form within five business days, but as soon as is practicable.

(2) After 45 days of an electronic record remaining in "suspense" status, the county clerk shall place the voter in "removable" status with a reason of "incomplete application" until such time the voter submits a completed application. Additionally, the clerk shall print the affected voter registration certificate image(s), mark as removable with the applicable status reason, and maintain as part of the county register pursuant to Section 1-4-12 NMSA 1978.

(3) Upon determining that the electronic or online voter registration application is ineligible by reason of felony [~~conviction~~] incarceration, death, or other applicable reason pursuant to Section 1-4-24 NMSA 1978, the county clerk shall process the application with the applicable status and status reason code as follows:

(a) If a county clerk determines that the applicant has a death record in the voter records system, the county clerk shall contact the SOS to receive confirmation and a copy of the state vital records death certificate.

Upon confirmation, the application shall be processed with a status of “removable” and a status reason of “deceased” and shall refer the matter to the assigned election prosecutor within the district attorney’s office for investigation.

(b)

If a county clerk determines that the applicant ~~[has a felony conviction record in the voter records system that has not been satisfied and the county clerk has received no information satisfying the county clerk that the felon is no longer in prison or on parole or on supervised probation]~~ is incarcerated in a correctional facility as a result of a felony conviction, the county clerk shall process the application with a status of “not eligible” and a status reason of “felony ~~[conviction]~~ incarceration.” Additionally, the county clerk shall send a notice to the applicant with an explanation that ~~[felons are not allowed to vote while in prison, on parole or on supervised probation, and]~~ an otherwise qualified elector is ineligible to register to vote while incarcerated in a correctional facility for a felony conviction. The notice shall also provide the elector with information on how they can become eligible or how to update or correct the information in the voter records system, within five business days, but as soon as is practicable.

(c)

If a county clerk determines that the applicant is ineligible for any other reason, the county clerk shall process the application with a status of “removable” and the applicable status reason.

[1.10.35.8 NMAC - N, 3/15/2012; Repealed, 2/12/2016; 1.10.35.8 NMAC - N, 2/12/2016; A, 4/7/2020; A, 8/31/2023]

1.10.35.9 FILE

MAINTENANCE: List maintenance activities shall be conducted in a non-discriminatory manner and in no instance shall select groups of voters be targeted for cancellation or removal from the voter file.

A. Confirmation mailings for voters designated as

NVRA under Section 1-4-28 NMSA 1978 (change of address).

(1) The SOS shall contract with a postal service approved vendor of the national change of address program (NCOA) pursuant to Section 1-4-28 NMSA 1978. The entire statewide voter file shall be compared to the NCOA listings for the confirmation mailing.

(2) The SOS shall also create a file of all active voters designated NVRA on the statewide voter file due to an initial undeliverable mailing returned to the county clerk or SOS and so designated by the county clerk in the county voter file.

(3) All active voters appearing in either the NCOA or the NVRA files shall be marked with a status of “inactive” and a status reason of “confirmation mailing” and mailed a confirmation card to the voter’s mailing address by the SOS.

(4) The SOS shall deliver returned and address corrected confirmation cards to the county clerk and the county clerk shall enter the corrected address into the voter file, scan the confirmation card and attach the scanned image to the voter’s record in the voter file. The physical confirmation card shall be attached to the voter’s certificate of registration to be filed in the county register.

(5) The SOS shall return to the county clerk any confirmation card with an address indicating that the voter has moved to another state or county. If the voter has moved to another county, the county clerk shall forward a photocopy or scanned image of the confirmation card to the county clerk of that county and the voter shall be mailed a new certificate of registration by the county clerk of the county where the voter now resides.

(6) The SOS shall return to the county clerk any confirmation card that indicates the voter has moved to another state or country. The county clerk shall mark the record with a status of “removable” and a status reason of “moved outside of county/city,”

remove the certificate of registration from the county register with the confirmation card attached, and retain it for six years. The county clerk shall also scan the card and attached it to the electronic voter record.

(7) The SOS shall return to the county clerk any confirmation card that is returned as undeliverable. The county clerk shall log the mail as undeliverable in the electronic voter record and attach the confirmation card to the certificate of registration in the county register. The county clerk shall also scan the card and attached it to the electronic voter record.

(8) A voter is eligible for removal from the voter file if the voter has not been returned to active status, corrected the voter’s address on the certificate of registration and not appeared to vote during a period beginning on the date of the confirmation mailing and ending on the day after the date of the second general election that occurs after the date of the confirmation mailing.

(9) Cancellation of voter registration shall be by the board of registration and subject to the provisions of the Election Code. Upon cancellation, the county clerk shall remove the certificate of registration from the county register and retain it for six years.

B. Street file maintenance: The county clerk shall establish a street file of standard 911 residential addresses within the voter file to determine a registrant’s physical address and shall attempt to correct all non-standard addresses, if any.

C. Precinct assignments: The county clerk shall ensure that all political subdivision changes due to reapportionment, redistricting or annexations are entered into the voter file and voters are assigned to correct voting districts, precincts or precinct parts, if any. The county clerk shall also conduct an audit in every odd numbered year to ensure that all precinct assignments are correct and

shall ensure all discrepancies that are discovered in the audit are corrected as soon as possible and at least by the end of the odd numbered year.

D. Felony ~~[convictions and satisfactions]~~ incarceration.

(1) The SOS, via the voter records system, shall enter, as the method of forwarding to county clerks, information on state and federal felony ~~[convictions]~~ incarcerations into the statewide voter file upon receipt from the administrative office of the courts, the department of corrections, the department of justice, or other legally recognized source. Within five business days of receiving information from the voter records system, the county clerk shall check to see if there is a strong or weak match with a voter in the voter file. If there is a strong match, the county clerk shall remove the voter's voter registration certificate from the county register and mark the record in the electronic voter file system with a status code of "not eligible" and a status reason of "felony ~~[conviction]~~ incarceration." If there is a weak match, the county clerk shall conduct a further investigation to determine if there is actually a match between the felon record and the voter in the voter file. The county clerk may contact the appropriate agency to resolve weak matches of data. The county clerk may contact the SOS to request assistance in resolving weak matches of data in the felon records.

(2) Upon determining a positive match due to felony ~~[conviction]~~ incarceration, the county clerk shall ~~[send a notice to the cancelled registrant explaining that the person's registration has been cancelled due to a positive match with a felony conviction with]~~ confirm the applicant appeared personally before a county clerk, the clerk's authorized representative or a precinct board member, at an office of the motor vehicle division of the taxation and revenue department or at a state agency that provides public assistance or services to persons with disabilities. If the county clerk confirms this information, the

registration shall be accepted. If the county clerk does not confirm this information, the county clerk shall process the application with a status of "not eligible" and a status reason of "felony incarceration" and send a notice to the applicant with an explanation that an otherwise qualified elector is ineligible to register to vote while incarcerated in a correctional facility for a felony conviction. The notice shall provide information on how they can reinstate their registrant status if the person believes the cancellation has occurred in error, within five business days, but as soon as is practicable.

~~[(3) When the SOS receives notice of satisfaction of felony conditions for a voter, the SOS shall enter the voter's restoration of eligibility into the voter records system. The SOS shall send regular notices of restoration to each county clerk via mail or secure electronic transport.~~

~~[(4) (3) Upon [satisfaction of felony conditions, the qualified elector must re-register by providing a new voter registration form. The county clerk shall consider receipt of acceptable documentation from the voter of satisfaction of conditions or restoration of eligibility in the voter records system as satisfactory proof of eligibility to register. The county clerk may consider additional evidence of satisfaction for restoration of eligibility and may contact the SOS for further investigation. Upon re-registering, the voter's record shall be changed to active status.]~~ release from a correctional facility, a voter or a qualified elector who appears personally before a county clerk, the clerk's authorized representative or an election board member, at an office of the motor vehicle division of the taxation and revenue department or at a state agency that provides public assistance or services to persons with disabilities is presumed to meet the voting and voter registration eligibility requirement of not being incarcerated.

E. Deceased voters.

(1) The SOS, via the voter records system, shall enter, as the method of forwarding to county clerks, the list of deceased voters received from the DOH into the statewide voter registration system. Within five business days of receiving information in the voter records system, the county clerk shall determine if there is a strong or weak match with a voter in the voter file. If there is a strong match, the county clerk shall mark the record in the statewide voter registration system with a status code of "removable" and a status reason of "deceased." If there is a weak match, the county clerk shall conduct a further investigation to determine if there is actually a match between the death record and the voter in the voter file and may contact appropriate agencies in an attempt to resolve weak matches of data. The county clerk may contact the SOS to request assistance in resolving weak matches of data in the death records.

(2) The county clerk may also utilize information provided in the obituaries in the local newspaper of record, online sites containing such records, or signed and notarized statements from family members to positively confirm deceased status. The county clerk may also use probate information, death certificates, or information pursuant to Subsection F of Section 1-4-25 NMSA 1978, to determine strong or weak matches with a voter in the voter file. If there is a strong match, the county clerk shall mark the record in the statewide voter registration system with a status code of "removable" and a status reason of "deceased." If there is a weak match, the county clerk shall conduct a further investigation to determine if there is actually a match between the death record and the voter in the voter file and may contact appropriate agencies in an attempt to resolve weak matches of data. The county clerk may contact the SOS to request assistance in resolving weak matches of data in the death records.

(3) Upon designating a voter as cancelled in

the voter file, the county clerk shall remove the voter's certificate of registration from the county register and retain it for six years.

F. Native American deceased processing: For counties that include tribal or pueblo land and precincts, that county's Native American coordinator shall coordinate with the tribe or pueblo officials at least three times per year to identify deceased voters on the rolls as follows:

(1) The county Native American coordinator shall request a notarized list of deceased residents since the last time period requested, that includes full name, DOB, gender, address, SSN, and place and date of death from the tribe or pueblo. Pursuant to Subsection F of Section 1-4-25 NMSA 1978, the notarized list must be provided by the president or governor of an Indian nation, tribe or pueblo, or from a tribal enrollment clerk.

(2) Upon receipt of the notarized listing, the county shall determine if there is a strong or weak match with a voter in the voter file. If there is a strong match, the county clerk shall mark the record in the statewide voter registration system with a status code of "removable" and a status reason of "deceased." If there is a weak match, the county clerk shall conduct a further investigation to determine if there is actually a match between the death record and the voter in the voter file. In the case of a weak match, the county clerk may send a letter to the residence address or relative requesting confirmation of the death. The relative will be asked to provide a signed statement from a family member indicating that the voter in question is deceased. If no response or no supporting documentation is provided, the voter's record is left unaltered and will remain on the voter registration rolls. The record will be subject to the normal NVRA purge process.

G. Other state notifications: Upon receiving notification by another state of a voter registering to vote in that state,

the county clerk shall cancel that voter's registration and designate as "removable" and status reason to "moved outside of county/city." [1.10.35.9 NMAC - N, 3/15/2012; A, 2/12/2016; A, 4/7/2020; A, 8/31/2023]

1.10.35.12 ~~[[RESERVED]]~~
USE OF GOVERNMENTAL AND OFFICIAL BUILDING AS MAILING ADDRESSES ON VOTER REGISTRATION CERTIFICATES:

A. Upon written request from an Indian nation, tribe or pueblo, the secretary of state may designate a government or official building for use for mailing addresses on voter registrations for members of that Indian nation, tribe or pueblo. The written request must comply with Subsection D of Section 1-21A-1 NMSA 1978.

B. The written request designating the government or official building shall be submitted to the secretary of state in March or April of any year. It shall include the common name for the building, the mailing address of the building, and the name(s) and phone number(s) of lead person(s) charged with the oversight of election mail at the building.

C. Upon receipt of a written request, the secretary of state shall perform a security evaluation of the building to ensure: the building has a space to safely keep the official election mail in a locked and number-sealed ballot box or envelope.

D. The secretary of state shall respond in writing within 60 days of the request.

E. An approved designation will take effect at the general election or regular local election of the year in which the request was approved.

F. Election mail shall only be provided to the voter to whom it is addressed. The lead person(s) charged with the oversight of election mail at the building shall maintain a log of election mail that includes:

(1) the location of the officially designated building

(2) date and time of arrival of the election mail

(3) printed full name of the voter retrieving the mail

(4) signature of the voter retrieving the mail

(5) printed full name of the person providing mail to the voter

(6) signature of the person providing the ballot to the voter

G. If the request is approved and upon implementation, the secretary of state shall send a notification of new designations in writing and shall provide an updated list of approved government and official buildings by county to each county clerk with an Indian nation, tribe or pueblo in the county.

H. If a county clerk receives a voter registration certificate that lists a government or official building on Indian nation, tribe or pueblo land by common name only, the county clerk shall not reject the certificate and, if the certificate is otherwise in the proper form, shall mail information to the voter using the address for the government or official building.

[1.10.35.12 NMAC - N, 8/31/2023]

End of Adopted Rules

Other Material Related to Administrative Law

**REGULATION
AND LICENSING
DEPARTMENT
BARBERS AND
COSMETOLOGISTS, BOARD
OF**

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Regulation and Licensing Department, Board of Barbers and Cosmetologists gives Notice of a Minor, Nonsubstantive Correction to 16.34.4 NMAC and 16.34.6 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:

16.34.4 NMAC

Section 6: Made a correction to the statutory citation to read, "... Paragraph 8 of Subsection A of Section 61-17A-7 NMSA 1978..."

Section 10: In Paragraph 10, removed the bracketed, strikethrough text, "[perform lash and brow-tinting procedures]..." as that text is extraneous to the new, underlined text.

Section 23: Removed the phrase "one hundred fifty" and parentheses around 150, as that text is extraneous and not correct legislative style.

16.34.6 NMAC

Section 7: For Subsections D, E and G respectively, the statutory citation was corrected to read: "... Paragraph (1) of Subsection E..." ; "...Paragraph (2) of Subsection E..." ; and "...Paragraph (3) of Subsection E..." for each respective subsection to

conform to correct statutory citation style.

Section 12: Removed the phrase "one hundred fifty" and parentheses around 150, as that text is extraneous and not correct legislative style.

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**

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Issue 2	January 19	January 31
Issue 3	February 2	February 14
Issue 4	February 16	February 28
Issue 5	March 2	March 14
Issue 6	March 16	March 28
Issue 7	March 30	April 11
Issue 8	April 13	April 25
Issue 9	May 4	May 16
Issue 10	May 18	May 31
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Issue 22	November 9	November 21
Issue 23	November 22	December 5
Issue 24	December 7	December 19

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