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New Mexico Register

The official publication for all official notices of rulemaking
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New Mexico Register

Volume XXXV, Issue 1

January 16, 2024

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Notices of Rulemaking and Proposed Rules

ENVIRONMENT DEPARTMENT

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF SCHEDULED PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.3.4.404 NMAC, 20.3.4.455 NMAC, 20.3.5.15 NMAC, 20.3.12.13 NMAC, AND 20.3.15.1519 NMAC OF THE RADIATION PROTECTION REGULATIONS EIB 23-59

The New Mexico Environmental Improvement Board (“Board”) will hold a public hearing beginning at 9 a.m. on February 29, 2024, and continuing at the direction of the Board, to consider the matter of EIB 23-59, proposed amendments to regulations at 20.3.4 NMAC (“STANDARDS FOR PROTECTION AGAINST RADIATION”), 20.3.5 (“RADIATION SAFETY REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHERS”), 20.3.12 NMAC (“LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING”), and 20.3.15 NMAC (“LICENSES AND RADIATION SAFETY REQUIREMENTS FOR IRRADIATORS”). The hearing is expected to last for one hour; however, the hearing will last as long as required to hear all testimony, evidence and public comment.

Meeting and meeting access details will be available no later than February 9, 2024, on the Board’s webpage at <https://www.env.nm.gov/opf/docketed-matters/> and the New Mexico Environment Department (“NMED”) Events Calendar at <https://www.env.nm.gov/events-calendar/>, on the calendar entry corresponding to the hearing start date.

The hearing will be conducted in a

hybrid format to allow for both in-person and virtual participation.

If you have difficulties joining the meeting, please contact Pamela Jones at (505) 660-4305 or Madai Corral at (505) 490-5803.

The proposed regulations and related information, including technical information, may be reviewed on the Radiation Control Bureau’s (RCB) webpage containing public notices and related documents: <https://www.env.nm.gov/rcb/public-notice-of-radioactive-materials-licensing-actions-and-rulemakings/>; during regular business hours at the RCB, Joseph Montoya Building, 1100 St. Francis Drive, Suite 2022, Santa Fe, NM 87505; or by contacting RCB’s Radiation Protection Program Manager, Michael Ortiz, at (505) 699-0060.

From now until the conclusion of the hearing, public comments will be received via SmartComment at <https://nmed.commentinput.com?id=KGcbeTDp9>; via electronic mail to or via physical mail to Pamela Jones, P.O. Box 5469, 1190 St. Francis Drive, S-2103, Santa Fe, NM 87502. Comments received after the conclusion of the hearing will not be viewed.

The purpose of the public hearing is for the Board to consider and take possible action on a petition by the New Mexico Environment Department (“NMED”) requesting the Board to adopt proposed amendments to the following regulations: 20.3.4.404 NMAC “Radiation Protection Programs”; 20.3.4.455 NMAC “Reports of Transactions involving Nationally Tracked Sources”; 20.3.5.15 NMAC “Personnel Monitoring”; 20.3.12.13 NMAC “Personnel Monitoring”; 20.3.15.1519 NMAC “Personnel Monitoring”. The proposed amendments are attached as Exhibit 2 to [the Petition to Amend 20.3.4.404 NMAC, 20.3.4.455 NMAC 20.3.5.15 NMAC, 20.3.12.13 NMAC, and](#)

[20.3.15.1519 NMAC of the Radiation Protection Regulations and Request for Hearing](#) (“Petition”), docket number EIB 23-59, available for viewing online at <https://www.env.nm.gov/rcb/public-notice-of-radioactive-materials-licensing-actions-and-rulemakings/>. If you need assistance obtaining a copy of the proposed amendments, the Petition, or any other documents related to this matter, then please contact: Pamela Jones, Board Administrator, P.O. Box 5469, 1190 St. Francis Drive, Suite S-2103, Santa Fe, New Mexico, 87502; Pamela.Jones@env.nm.gov; (505) 660-4305. In your correspondence, please reference docket number EIB 23-59.

The proposed amendments requested by the Radiation Control Bureau (“Bureau”) of the New Mexico Environment Department (“NMED”) are necessary to align certain provisions within the state regulations with mandatory federal requirements. As an agreement state under 42 U.S.C. § 2021 and NMSA 1978, Section 74-3-15 (1977), New Mexico’s state regulations must be compatible to the U.S. Nuclear Regulatory Commission’s (“NRC”) regulations. 42 U.S.C. § 2021(d) (2). The compatibility requirement is met through the promulgation of state regulations when necessary. The majority of the amendments currently being proposed are intended to align certain provisions within the state regulations with the federal NRC regulations. Pursuant to NMSA 1978, Section 74-3-5(A) (2000), the proposed amendments were provided to the Radiation Technology Advisory Council (“RTAC”) at its September 20, 2023, meeting. The RTAC consented to the amendments as proposed. Finally, the EIB has the authority to amend the Radiation Protection Regulations under NMSA 1978, Section 74-1-8(A)(5) (2020), NMSA 1978, Section 74-1-9 (1985), and Section 74-3-5(A).

The hearing will be conducted in accordance with the Board’s

Rulemaking Procedures found at 20.1.1 NMAC; the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Radiation Protection Act, Section 74-3-1 et seq. NMSA 1978, and other applicable procedures.

The Board may make a decision on the proposed rule immediately at the conclusion of the hearing, or the Board may convene a meeting on a later date after the hearing to consider action on the proposed rule. Alternatively, the Board may continue the hearing beyond the expected conclusion date, leaving the hearing record open and continuing to receive comments. Notice of continuation will be posted on the Board's and NMED's websites.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing via SmartComment at <https://nmed.commentinput.com?id=KGcbeTDp9>; by electronic mail at Pamela.Jones@env.nm.gov; or by physical mail to Pamela Jones, P.O. Box 5469, 1190 St. Francis Drive, Suite S-2103, Santa Fe, New Mexico, 87502. Any statements received after the conclusion of the hearing will not be viewed.

Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The requirements for a notice of intent can be found in 20.1.1.302 NMAC. Technical testimony means scientific, engineering, economic, or other specialized testimony, whether oral or written, but does not include legal argument, general comments, or statements of policy concerning matters at issue in the hearing. Notices of intent for the hearing must be received by the Board by 5:00 p.m. MST at least 20 days prior to

the hearing, and should reference the name of the regulations, the date of the hearing, and docket number EIB 23-59.

Persons requiring language interpretation services or have a disability and need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing should contact Pamela Jones no later than February 15, 2024, at (505) 660-4305 or pamela.jones@env.nm.gov. TDD or TDY users please access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779; TTY users: 1-800-659-8331).

STATEMENT OF NON-DISCRIMINATION

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations.

NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact:

Kate Cardenas, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855 nd.coordinator@env.nm.gov.

If you believe that you have been

discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.

ENVIRONMENT DEPARTMENT

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF SCHEDULED PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.3.16 NMAC OF THE RADIATION PROTECTION REGULATIONS EIB 23-75

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing beginning at 9 a.m. on February 29, 2024, and continuing at the direction of the Board, to consider the matter of EIB 23-75, proposed amendments to regulations at 20.3.16 NMAC ("Fees for Licensure of Radioactive Materials"). The hearing is expected to last for up to two days; however, the hearing will last as long as required to hear all testimony, evidence and public comment.

Meeting and meeting access details will be available no later than February 9, 2024, on the Board's webpage at <https://www.env.nm.gov/opf/docketed-matters/> and the New Mexico Environment Department ("NMED") Events Calendar at <https://www.env.nm.gov/events-calendar/>, on the calendar entry corresponding to the hearing start date.

The hearing will be conducted in a hybrid format to allow for both in-person and virtual participation.

To attend the meeting:

- IN PERSON, go to:

- Marquez Building, 525 Camino De Los Marquez, Santa Fe, New Mexico 87505.
- ONLINE via video conference, click on this link: <https://nmed-oit.webex.com/nmed-oit/j.php?MTID=m431b5a46004719eade0a5a52c2ab575f>
- Meeting number: 2459 934 8536
- Password: WpcGwJZF236
- The link also may be found at <https://www.env.nm.gov/events-calendar/>
- Via telephone, call:
- +1-415-655-0001, and enter U.S. Access Code # 2459 934 8536.

If you have difficulties joining the meeting, please contact Pamela Jones at (505) 660-4305 or Madai Corral at (505) 490-5803.

The proposed regulations and related information, including technical information, may be reviewed on the Radiation Control Bureau's (RCB) webpage containing public notices and related documents: <https://www.env.nm.gov/rcb/public-notices-of-radioactive-materials-licensing-actions-and-rulemakings/>; during regular business hours at the RCB, Joseph Montoya Building, 1100 S. St Francis Drive, Suite 2022 Santa Fe, NM 87505; or by contacting RCB's Radiation Protection Program Manager, Michael Ortiz, at (505) 699-0060.

From now until the conclusion of the hearing, public comments will be received via SmartComment at <https://nmed.commentinput.com?id=KGcbeTDp9>; via electronic mail to Pamela.Jones@env.nm.gov; or via physical mail to Pamela Jones, P.O. Box 5469, 1190 St. Francis Drive, S-2103, Santa Fe, NM 87502. Comments received after the conclusion of the hearing will not be viewed.

The purpose of the public hearing is for the Board to consider and take possible action on a petition by the New Mexico Environment Department ("NMED") requesting the

Board to adopt proposed regulatory changes to 20.3.16 NMAC ("Fees for Licensure of Radioactive Materials"). The proposed regulatory changes are attached as Exhibit 2 to the Petition to Amend NMAC 20.3.5.16 NMAC of the Radiation Protection Regulations and Request for Hearing ("Petition"), docket number EIB 23-75, available for viewing online at <https://www.env.nm.gov/rcb/public-notices-of-radioactive-materials-licensing-actions-and-rulemakings/>. If you need assistance obtaining a copy of the proposed amendments, the Petition, or any other documents related to this matter, then please contact: Pamela Jones, Board Administrator, P.O. Box 5469, 1190 St. Francis Drive, Suite S-2103, Santa Fe, New Mexico, 87502; Pamela.Jones@env.nm.gov; (505) 660-4305. In your correspondence, please reference docket number EIB 23-75.

The proposed regulatory changes requested by the Radiation Control Bureau ("Bureau") of the New Mexico Environment Department ("NMED") are necessary for the Bureau to effectively operate the Radioactive Materials Program ("Program") in the State, pursuant to a signed agreement with the U.S. Nuclear Regulatory Commission ("NRC"). As an agreement state under 42 U.S.C. § 2021 and Section 74-3-15 NMSA 1978, the State must maintain a satisfactory and adequately staffed Program to keep its agreement status. To achieve this, the State is proposing radioactive materials licensing fee changes that would provide the much needed funding to adequately staff and equip the Program to protect public health and safety and the environment from radiation hazards. The fees described in the proposed rules are necessary to retain the authority granted to the State by the NRC to effectively operate the Program. The proposed regulatory changes are necessary to bring the 2002 radioactive materials licensing fees more in line with current times to better support Program costs and are based largely on the NRC's fiscal year 2021 fees. Without the proposed

regulatory changes, the Program cannot be run effectively, and the NRC could take over the Program and impose its current fiscal year fees.

Pursuant to NMSA 1978, Section 74-3-5(A) (2000), the proposed regulatory changes will be presented to the Radiation Technology Advisory Council ("RTAC") at its December 19, 2023. Finally, the EIB has the authority to amend the Radiation Protection Regulations under NMSA 1978, Section 74-1-8(A)(5) (2020), NMSA 1978, Section 74-1-9 (1985), and Section 74-3-5(A).

The hearing will be conducted in accordance with the Board's Rulemaking Procedures found at 20.1.1 NMAC; the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Radiation Protection Act, Section 74-3-1 et seq. NMSA 1978, and other applicable procedures.

The Board may make a decision on the proposed rule immediately at the conclusion of the hearing, or the Board may convene a meeting on a later date after the hearing to consider action on the proposed rule. Alternatively, the Board may continue the hearing beyond the expected conclusion date, leaving the hearing record open and continuing to receive comments. Notice of continuation will be posted on the Board's and NMED's websites.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing via SmartComment at <https://nmed.commentinput.com?id=48EQNGeVC>; by electronic mail at Pamela.Jones@env.nm.gov; or by physical mail to Pamela Jones, P.O. Box 5469, 1190 St. Francis Drive, Suite S-2103, Santa Fe, New

Mexico, 87502. Any statements received after the conclusion of the hearing will not be viewed.

Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The requirements for a notice of intent can be found in 20.1.1.302 NMAC. Technical testimony means scientific, engineering, economic, or other specialized testimony, whether oral or written, but does not include legal argument, general comments, or statements of policy concerning matters at issue in the hearing. Notices of intent for the hearing must be received by the Board by 5:00 p.m. MST at least 20 days prior to the hearing, and should reference the name of the regulations, the date of the hearing, and docket number EIB 23-75.

Persons requiring language interpretation services or have a disability and need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing should contact Pamela Jones no later than February 15, 2024, at (505) 660-4305 or pamela.jones@env.nm.gov. TDD or TDY users please access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779; TTY users: 1-800-659-8331).

STATEMENT OF NON-DISCRIMINATION

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations.

NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act

of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact:

Kate Cardenas, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855 nd.coordinator@env.nm.gov.

If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.

HEALTH, DEPARTMENT OF

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the proposed repeal and replacement of rule, 16.11.2 NMAC, "Certified Nurse-Midwives". The public hearing will be held on February 20, 2024 at 9:00 a.m. MDT via web video conference and telephone. The hearing will be conducted to receive public comments regarding the proposed repeal and replacement of the current rule, 16.11.2 NMAC, concerning the licensing, scope of practice, and disciplining of certified nurse-midwives (CNM).

The proposed replacement rule includes the following amendments and changes to the following rule parts:

1. Amended 16.11.2.7 NMAC Definitions to add definitions for

audit, client, continuing education, continuing education unit, substance use disorder, and changing the definition of prescription monitoring program, and valid CNM-client relationship. The purpose of these definition changes is to provide a clear definition of what an audit is to a CNM and to provide a clear understanding to the CNM of what is expected of each licensee for the continuing education requirement. The purpose of the definition change to the prescription monitoring program is to remove any stigmatizing verbiage associated with addiction. The purpose of the change to the definitions to include substance use disorder is to use this phrase in the rule in relation to prescribing activities of a CNM and continuing education requirements, and it follows the National Institute of Mental Health definition. The purpose of the change to the definition of a valid CNM-client relationship is to move the description of the relationship from the definition further into the regulation in the section on the practice of midwives to more appropriately define the prescriptive practice.

2. Amended 16.11.2.9 NMAC Licensure to clear up confusion over the fact that multi-state license regulations have random license expiration dates and some of those licensees in other states do not have a New Mexico nursing license. The purpose of adding Paragraph (3) of Subsection B of 16.11.2.9 NMAC is to provide clarity on refunds on incomplete applications.

3. Amended Subparagraph (c) of Paragraph (3) of Subsection C of 16.11.2.9 NMAC to specify that a new category of continuing education shall focus on health equity topics. The purpose of this amendment is to bring the New Mexico license regulation into line with national competency standards set forth by the American Midwifery Certification Board (AMCB).

4. Amended Item (i) of Subparagraph (d) of Paragraph (3) of Subsection C of 16.11.2.9 NMAC to reflect the current requirements of the

New Mexico CNM’s contact hours per licensure period.

5. Added a new Section 16.11.2.10 NMAC Continuing Education to be as descriptive as possible to the licensee as to what is required for continuing education (CE) content. The purpose is to provide clarity to licensees as to what is included in a CE audit, and from what recognized approved bodies CE taken will be approved, and to outline to the licensee the duties in reporting CE to the program.

6. Amended Subsection A of 16.11.2.11 NMAC Practice of the Certified Nurse-Midwife “Scope of Practice” to change the description of those persons whom a CNM may provide services to from “women” and “patients” to “clients”. The purpose of the section change is to clarify that CNMs can provide care to all persons who seek midwifery care regardless of gender identity or sexual orientation.

7. Amended Subsection B of 16.11.2.11 NMAC Practice of the Certified Nurse-Midwife “Prescriptive Authority” to include the language for a CNM-client relationship previously set forth in the definitions section. The purpose of placement of the text in this section is because it is more appropriate in this section of the regulation dealing with the practice of the licensee.

8. Amended Subsection A of 16.11.2.12 NMAC “License, Denial, Suspension, or Revocation: Disciplinary Action. Grounds for action” to specify additional specific actions that may result in disciplinary action. The purpose of these additions is to clarify for licensees the sections of the regulation which non-compliance with may result in a disciplinary action.

9. Amended 16.11.2.13 NMAC Advisory Board to include additional members. The purpose of the changes is to provide more memberships for representatives who are currently practicing and to provide a specific seat on the board for a student who may remain on the board after graduation.

The purpose of the proposed repeal and replacement rule is to adopt the changes and amendments to the rule. The purpose of repeal and replacement is also necessary because the New Mexico Commission of Public Records has stated in its Guide that a repeal and replacement of an existing rule is very helpful when a rule has been substantially rewritten and restructured such that a detailed section by section comparison is not possible and may be confusing to the public.

The legal authority authorizing the proposed rule by the Department is at Subsection E of Section 9-7-6 NMSA 1978, Subsections S and V of Section 24-1-3 NMSA 1978, and 24-1-4.1 NMSA 1978.

The foregoing are summaries of the proposed rule. The proposed rule includes various additional substantive revisions not identified here. Free copies of the full text of the proposed rule may be obtained online from the Department’s website at <https://nmhealth.org/publication/regulation/>.

Any interested member of the public may attend the hearing, and anyone may offer public comments on the proposed rule orally at the hearing. To access the hearing by telephone: please call 1-505-312-4308, phone conference i.d. code 749241820 #. To access the hearing via internet: please go to <https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting>, enter the following meeting i.d. code and passcode where indicated on screen—meeting i.d. code 230 233 080 029, Passcode: ZoTVtA, then click the “Join a meeting” button. All oral comments will be recorded.

Any person may submit written public comment concerning the rule amendments. Written comments may be submitted to the mailing address shown below. Please submit any written comments regarding the proposed rules to the attention of:

Abigail Reese, PhD, CNM
Maternal Health Program Manager
Family Health Bureau/Public Health Division
2040 S. Pacheco (Colgate Building)
Santa Fe, New Mexico 87505
Abigail.reese@doh.nm.gov
(505) 231-6817

Mailed written comments must be received no later than 5:00 p.m. MDT on February 20, 2024, the day of the public hearing. Written comments may also be submitted to the email address shown above through 5:00 pm MDT on the date of the hearing. All written comments will be published on the agency website at <http://nmhealth.org/publication/regulation/> within 3 business days of receipt, and will be available at the Office of the New Mexico Department of Health, at the address above, for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Christine Guillen by telephone at (505) 709-5538. The Department requests at least ten (10) days’ advance notice to provide requested special accommodations.

**HUMAN SERVICES
DEPARTMENT
INCOME SUPPORT DIVISION**

NOTICE OF PUBLIC COMMENT

The United States Department of Health and Human Services requires the New Mexico Human Services Department to meet certain Temporary Assistance for Needy Families (TANF) work participation requirements. To assist in meeting these requirements, federal regulations (45 CFR 261.40) allow New Mexico to decrease its work participation rate percentage by the number of percentage points that the FY 2023 caseload fell in comparison to the FY 2005 caseload. This is termed the TANF Caseload Reduction Credit. The total Federal expenditures

and Maintenance of Effort (MOE) expenditures that are included in this report are subject to change due to fluctuations during year end budget close out and increases in MOE funding.

The estimated changes and corresponding methodologies are reported in the proposed TANF Caseload Reduction Credit Report which is available on the Human Services Department website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-plans-and-reports.aspx>. If you do not have Internet access, a copy of the proposed report may be requested by contacting Paula Garcia with the Income Support Division's Budget Bureau at paula.garcia@hsd.nm.gov or (505) 699-3457.

If you are a person with a disability and you require this information in an alternative format, please contact the American Disabilities Act Coordinator at (505) 827-7701 or through the New Mexico Relay system at 711 or toll free at 1-800-659-1779. The Department requests at least 10 days advance notice to provide the requested alternative formats.

The proposed comment period will begin at 8:00 a.m. on January 16, 2024, and end at 4:00 p.m. on February 15, 2024. Individuals wishing to comment on the TANF Caseload Reduction Credit Report should contact Paula Garcia with the Human Services Department, Income Support Division, Budget Bureau by email paula.garcia@hsd.nm.gov. Written comments will be posted to the agency's website within 3 days of receipt.

Interested persons may address written or recorded comments to:

Human Services Department
Income Support Division
Budget Bureau
Attn: Paula Garcia
P.O. Box 2348

Santa Fe, NM 87504-2348

Interested persons may also address comments via electronic mail to: HSD-isdrules@state.nm.us.

**INFORMATION
TECHNOLOGY,
DEPARTMENT OF
CONNECT NEW MEXICO
COUNCIL**

**NOTICE OF PROPOSED
RULEMAKING**

NOTICE IS HEREBY GIVEN that the Department of Information Technology ("DoIT") and the Connect New Mexico Council ("Council"), pursuant Paragraphs A and B of Section 9-27-6 NMSA 1978 and Paragraph C of Section 63-9K-4 NMSA 1978, proposes to amend 1.12.21 NMAC, GRANT PROGRAM RULES

PURPOSE OF THE PROPOSED NEW RULE IS: The purpose of these amendments to the rules is to ensure that sponsoring bodies comply with the State Tribal Collaboration Act in the development or administration of programs subject to the rules that directly affect American Indians. To add electric cooperatives and telephone cooperatives to the definition of grantee or subrecipient for purposes of assistance grants.

STATUTORY AUTHORITY: Paragraphs A and B of Section 9-27-6 NMSA 1978; Paragraph C of Section 63-9K-4 NMSA 1978.

Copies of the Notice of Proposed Rulemaking and proposed rule are available by electronic download from the DoIT website <https://www.doit.nm.gov/category/latest-news/> or the New Mexico Sunshine Portal.

DoIT will hold a public in-person/virtual hearing on the proposed amendments on Thursday, February 29, 2024 at 11:00 a.m. at the New Mexico State Capitol, 490 Old Santa Fe Trail, Room #311, Santa Fe,

NM 87501. Oral comments will be accepted at the in-person/virtual hearing from members of the public and any interested parties.

Interested Parties may submit written comments by mail or via the DoIT website. Written comments and proposals will be accepted until 5:00 pm on February 15, 2024. Comments may be submitted online at <https://www.doit.nm.gov/category/latest-news/> or by sending original copies to:

Renee Narvaiz, Department of Information Technology
715 Alta Vista St., Santa Fe, NM 87505

Written comments suggesting changes or alternatives to the proposed amendments should provide justification for each suggested change or alternative and include all suggested rule language necessary to effectuate the suggested change or alternative. Suggested changes should be provided in a redline format showing proposed deletions and additions.

Written comments must be received no later than 5 p.m. (MDT) on February 15, 2024. DoIT encourages the early submission of written comments.

SPECIAL NEEDS: Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other auxiliary aid or service to attend or participate in the hearing should contact Renee Narvaiz at 505-827-2416 at least ten (10) business days prior to the hearing.

The Council and DoIT will consider all oral comments and will review all timely submitted written comments and responses.

NURSING, BOARD OF

**NOTICE OF PROPOSED
RULEMAKING**

The New Mexico Board of Nursing (hereinafter the “Board”) will hold a public rule hearing on Wednesday, February 21, 2024, at 9:00 a.m. The rule hearing will be held in person at CNM Workforce Training Center, 5600 Eagle Rock Ave NE, Albuquerque, NM 87113. A Board staff member will also be present on the day of the hearing from approximately 8:00 a.m. to 9:00 a.m. at 6301 Indian School Rd, NE, Suite 710, Albuquerque, NM 87110, to accept comments in written form and submit those comments to the board during the hearing.

To attend the hearing:

Please attend the meeting at CNM Workforce Training Center, 5600 Eagle Rock Ave NE, Albuquerque, NM 87113.

The purpose of the rule hearing is to consider proposals to amend 16.12.1 NMAC (“General Provisions”), 16.12.2 NMAC (“Nurse Licensure”), 16.12.3 NMAC (“Nursing Education Programs”), 16.12.4 NMAC (“Hemodialysis Technicians”) 16.12.9 NMAC (“Management of Chronic Pain with Controlled Substances”). The rules hearing will also consider a new 16.12.14 NMAC (“Nursing Practice in Aesthetic Medical Facilities”).

Persons desiring to view the proposed rules may download them from <https://www.bon.nm.gov>. If you do not have internet access, a copy of the proposed rules may be requested by contacting NMBON at (505) 841-9083.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes via email to sheena.ferguson@bon.nm.gov. Alternatively, members of the public may submit written comments by sending an original, signed copy to:

New Mexico Board of Nursing
ATTN: NMBON Public Comments
6301 Indian School Rd. NE, Suite 710
Albuquerque, NM 87110

The Board will accept written public comment received at or before 5:00 PM on Tuesday, February 20, 2024, as well as written public comment hand-delivered between approximately 8:00 a.m. to 9:00 a.m. at the above-referenced address on the date of the rule hearing. All written comments will be posted to the Board’s website no later than three business days following receipt to allow for public viewing.

The board will preside over the hearing. The board will hear public comments, review written public comments, and any exhibits admitted during the hearing.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact the NMBON at (505) 841-9083.

The NMBON requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Statutory Authority: Subsection A of Section 61-3-10 NMSA 1978 of the Nursing Practice Act, Sections 61-3-1 to -30 NMSA 1978, specifically authorizes the Board to “promulgate rules in accordance with the State Rules Act (Chapter 14, Article 4 NMSA 1078) as necessary to enable it to carry into effect the provisions of the Nursing Practice Act and to maintain high standards of practice.” In addition, Section 61-1-31.1 NMSA 1978 of the Uniform Licensing Act, requires the Board to “determine those states and territories of the United States and District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure. The list of disapproved licensing jurisdictions shall be posted on the board’s website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval.”

Purpose of the proposed rules:

The proposed rules are intended to provide greater clarity in existing regulatory and statutory requirements, ensure continued high levels of professionalism among licensees and certificate holders, and to generally satisfy the Board’s statutory obligation to “promote, preserve and protect the public health, safety and welfare.” Section 1 of section 61-3-2 NMSA 1978.

Summary of Proposed Changes:

The Board summarizes its proposed changes to its administrative rules as follows:

16.12.1 NMAC - General Provisions

The proposed changes to Part 1 of the Board’s current rules consist of amending existing language. The new Part 1 would set forth critical definitions applicable to all the Board’s rules.

16.12.2 NMAC - Nurse Licensure

The proposed changes to Part 2 of the Board’s current rules consist of amending existing language.

16.12.3 NMAC - Nursing Education Programs

The proposed changes to Part 3 of the Board’s current rules are to amend the existing language. The amended Part 3 proposed to change the definition of clinical preceptor, change the way the pass rates are calculated for nursing education programs, adds requirements for nursing programs offering clinical instruction in the state, and changes the education requirements for full-time education faculty.

16.12.4 NMAC - Hemodialysis Technicians

The proposed changes to Part 4 of the Board’s rules consist of amending existing language. The amended part 4 rules make a correction to the objectives of the rules, updates the definition of continuing education, revises eligibility requirements for certification, and changes the scope of function of the hemodialysis technician.

16.12.9 NMAC - Management of Chronic Pain with Controlled Substances

The proposed changes to Part 9 of the Board's rules consist of amending existing language for consistency with the Pain Relief Act, Sections 24-2D-1 through 24-2D-7 NMSA 1978. Two definitions beginning with "O" were added. Language was added to reflect changes in the Pain Relief Act.

16.12.14 NMAC - Nursing Practice in Aesthetic Medical Facilities

The proposed new Part 14 of the Board's rules

Technical Information: No technical information provided the basis for either of the proposed rules.

REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

NOTICE OF PUBLIC RULE HEARING AND BOARD MEETING

The Regulation and Licensing Department (Department) in consultation with the New Mexico Real Estate Appraiser Board (Board) will hold a rule hearing on Friday, February 23, 2024 at 9:00 a.m. pursuant to 61-30-7 (A), immediately followed by a Regular meeting of the Board to discuss and consider adoption of the proposed rules listed below. The rule hearing and subsequent Board meeting will be held at the Regulation and Licensing Department, 5500 San Antonio Drive NE, Albuquerque, NM 87109.

The hearing and subsequent board meeting may also be accessed via Cisco Webex Meetings by using the following link:
<https://nmrld.webex.com/nmrld/j.php?MTID=maee209c7b8dfe42ad2b14d640eb112b3>
Meeting Number: 2662 556 1154
Call In: 1-(844)-621-3956

The purpose of the rule hearing is to receive public comments related to proposed amendments, repeal, and/or replacement of the following rules that address changes to

16.62.6 NMAC - Examinations 16.62.7 NMAC – Issuance/ Renewal of Apprentice Registration/Licenses/Certificates 16.62.8 NMAC – Educational Programs/Continuing Education

On January 16, 2024 copies of the proposed rules may be obtained by going to the Boards and Commissions Division, Real Estate Appraiser Board website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/real-estate-appraisers/statutes-rules-and-rule-hearings/> or by contacting the Board Administrator for the Board at (505) 222-9882.

The Department and the Board will begin accepting public comments on the proposed rules beginning January 16, 2024. Please submit written comments on the proposed changes to Sarah McGeath, Board Administrator, via electronic mail at: NM.REAB@rld.nm.gov, or by regular mail at 5500 San Antonio Drive NE, Albuquerque, NM 87109 no later than February 22, 2024 at 5:00p.m.

Written comments received during the public comment period will be posted to the Board's website page linked above. Any person in attendance will be given the opportunity to present their comments at the rule hearing.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing or the special board meeting, please contact Sarah McGeath, Board Administrator (505) 222-9882 at least 7 days prior to the rule hearing and special board meeting. Public documents, including the proposed rules, meeting agenda and minutes, can be provided in various accessible formats.

Statutory Authority: Section 61-30-7(A)

Purpose of Proposed Rules: The purpose of the proposed amendments are to make the licensure process more efficient by removing the requirement of passing a jurisprudence exam with every license renewal.

Summary of Proposed Changes: The proposed amendments would remove the requirement of passing a jurisprudence exam with every license renewal.

Proposed Rule Changes are shown, with information to be removed with a strikethrough and bracketed [removed] and information to be added is underlined added.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 62 REAL ESTATE APPRAISERS PART 6 EXAMINATIONS

16.62.6.1 ISSUING
AGENCY: Regulation and Licensing Department - NM Real Estate Appraisers Board.
[1/14/00; 16.62.6.1 NMAC - Rn, 16 NMAC 62.61.1, 09/13/2004; A, 01/01/2015]

16.62.6.2 SCOPE: All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.
[1/14/00; 16.62.6.2 NMAC - Rn & A, 16 NMAC 62.61.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

16.62.6.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Real Estate Appraisers Act, Section 61-30-1 to -24, NMSA 1978.
[1/14/00; 16.62.6.3 NMAC - Rn, 16 NMAC 62.61.3, 09/13/2004; A, 09/26/2023]

16.62.6.4 DURATION:
Permanent.
[1/14/00; 16.62.6.4 NMAC - Rn, 16 NMAC 62.61.4, 09/13/2004]

16.62.6.5 EFFECTIVE DATE: January 14, 2000, unless a later date is cited at the end of a section.
[1/14/00; 16.62.6.5 NMAC - Rn & A, 16 NMAC 62.6.5, 09/13/2004]

16.62.6.6 OBJECTIVE:
This part provides for a national examination on real estate appraisal as a requirement for licensure or certification and for a state examination on state law and rules as a requirement for registration, licensure or certification.
[1/14/00; 16.62.6.6 NMAC - Rn, 16 NMAC 62.61.6, 09/13/2004]

16.62.6.7 DEFINITIONS:
[RESERVED]

16.62.6.8 EXAMINATION REQUIREMENTS: All candidates for licensure or certification must successfully complete the appraiser qualifications board endorsed uniform state certifications/licensing examination or its equivalent.

A. The examination will be approved by the appraisal qualifications board of the appraisal foundation and will cover standard appraisal concepts.

B. Prior to issuance of an examination ticket, all credible education hours, qualifying experience credit, and the experience log, must be verified and found to be completed in full and acceptable to the board.

C. An applicant for licensing or certification will be denied and the results of the examination will be invalidated if: the applicant uses or possesses anything that gives the applicant an advantage other than silent, cordless, non-programmable calculator, Hewlett Packard calculator 12C or its equivalent; the applicant gives or receives any kind of aid during the examination; or someone other than the applicant takes the test or attempts

to take the test for the applicant.
D. All calculator memories must be cleared before the examination. Operating manuals will not be allowed at the testing site.

E. The board will administer an examination on the New Mexico Real Estate Appraisers Act and board rules and regulations known as the state board jurisprudence examination which will require a score of seventy percent or more for a passing grade. This jurisprudence examination shall be taken during initial application for no charge, ~~[if this exam is failed then the exam can be taken a second time for a fee of \$95. If the second exam is failed then the application will be deemed incomplete and then referred to the board, at their next meeting, for decision]~~ the exam may be taken until a passing grade is achieved in order to proceed with the application process.

F. The applicant must take the examination prescribed by the board.

[1/14/00; 16.62.6.8 NMAC - Rn & A, 16 NMAC 62.61.8, 09/13/2004; A, 06/13/2008; A, 08/21/2010; A, 01/15/2017; A, 02/03/2019; A, 09/26/2023; A, 03/12/2024]

HISTORY OF 16.62.6 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives under:
REAB Rule 6, Examinations, filed 11/29/90.
Rule 7, Examinations, filed 4/6/93.
Rule 7, Examinations, filed 1/28/94.

History of Repealed Material:
[RESERVED]

Other History:
Rule 7, Examinations (filed 1/28/94) was renumbered, reformatted and replaced by 16 NMAC 62.6, Examinations, effective 1/14/2000.
16 NMAC 62.6, Examinations (filed 12/29/99) was renumbered, reformatted, amended, and replaced by 16.62.6 NMAC, Examinations, effective 09/13/2004.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 62 REAL ESTATE APPRAISERS
PART 7 ISSUANCE/ RENEWAL OF TRAINEE REGISTRATION/LICENSES/ CERTIFICATES

16.62.7.1 ISSUING AGENCY: Regulation and Licensing Department - NM Real Estate Appraisers Board.
[10/1/97; 16.62.7.1 NMAC - Rn, 16 NMAC 62.7.1, 09/13/2004; A, 01/01/2015; A, 01/01/2017]

16.62.7.2 SCOPE: All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.
[10/1/97; 16.62.7.2 NMAC - Rn & A, 16 NMAC 62.7.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

16.62.7.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Real Estate Appraisers Act, Section 61-30-1 to -24, NMSA 1978.
[10/1/97; 16.62.7.3 NMAC - Rn, 16 NMAC 62.7.3, 09/13/2004; A, 09/26/2023]

16.62.7.4 DURATION:
Permanent.
[10/1/97; 16.62.7.4 NMAC - Rn, 16 NMAC 62.7.4, 09/13/2004]

16.62.7.5 EFFECTIVE DATE: October 1, 1997, unless a later date is cited at the end of a section.
[10/1/97; 16.62.7.5 NMAC - Rn & A, 16 NMAC 62.7.5, 09/13/2004]

16.62.7.6 OBJECTIVE:
This part establishes guidelines for the issuance of initial licenses, provides requirements for license renewal and license expiration, licensee requirements and responsibilities, establishes continuing education requirements and guidelines for

reinstatement of an expired license.
[10/1/97; 16.62.7.6 NMAC - Rn, 16 NMAC 62.7.6, 09/13/2004]

16.62.7.7 DEFINITIONS:
[RESERVED]

[10/1/97; 16.62.7.7 NMAC - Rn & A, 16 NMAC 62.7.7, 09/13/2004; A, 11/25/06]

16.62.7.8 INITIAL

LICENSE ISSUANCE: Initial licenses expire on April 30 in the second year of licensure. No license will be issued for longer than 24 months. Applications for licensure are valid for one year from the date of receipt.

[10/1/97; 16.62.7.8 NMAC - Rn & A, 16 NMAC 62.7.8, 09/13/2004; A, 01/15/2017; A, 02/03/2019]

16.62.7.9 RENEWAL

PERIOD AND EXPIRATION: All licenses will expire every two years on April 30.

[10/1/97; 16.62.7.9 NMAC - Rn & A, 16 NMAC 62.7.9, 09/13/2004; A, 02/03/2019]

16.62.7.10 RENEWAL PROCESS:

A. A completed renewal application, accompanied by the required fee as defined in 16.62.12.8 NMAC and completion of 28 hours of continuing education, is required. Renewal applications may be submitted online or by mail, and must be completed, post-marked or delivered to the board office on or before April 30 of the renewal year.

B. Deferrals may not be granted to credential holders, except in the case of individuals returning from active military duty. Licensees returning from active military duty may be placed in active status for a period of up to 90 days pending completion of all continuing education requirements.

C. The board shall audit a percentage of renewal applications each renewal period to verify the continuing education requirement has been met. The licensee must maintain proof in the form of certificates issued by the

education providers (transcripts not acceptable) of continuing education courses taken for the past four years. The board reserves the right to audit a licensee's continuing education records as it deems necessary.

D. As part of the renewal process, applicants are required to attest that they have reviewed and are familiar with Real Estate Appraisers rules 16.62.1 NMAC through 16.62.18 NMAC.
[10/1/97; 16.62.7.10 NMAC - Rn & A, 16 NMAC 62.7.10, 09/13/2004; A, 11/25/2006; A, 06/13/2008; A, 01/16/2011; A, 01/15/2017; A, 02/03/2019]

16.62.7.11 LICENSEE RESPONSIBILITY:

A. The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make a timely request for the renewal form if one has not been received thirty days prior to license expiration.

B. It is the sole responsibility of the licensee to maintain records of the qualifying education they have completed.
[10/1/97; 16.62.7.11 NMAC - Rn & A, 16 NMAC 62.7.11, 09/13/2004; A, 11/25/06]

16.62.7.12 REQUIRED CONTINUING EDUCATION:

A. Twenty-eight hours as defined in 16.62.8.7 NMAC of continuing education in courses approved by the board, which must include the appraisal qualification board (AQB) approved seven-hour national uniform standards of professional appraisal practice (USPAP) update course, are required in each two-year renewal period.

B. For continuing education cycle periods of 185 days to 365 days, 14 hours of continuing education is required. For continuing education cycle periods of less than 185 days, no hours of continuing education are required.

C. Effective with the first biennial renewal period and each subsequent renewal, a seven hour

class in the national uniform standards of professional appraisal practice update course is required as part of the continuing education requirement. Successful completion includes passing an exam, if required, by the appraiser qualifications board (AQB).

~~[D.] Successful completion jurisprudence examination will be required of every trainee, licensee and certificate holder as a condition of renewal in each biennial renewal.~~

~~[E.]~~ **D.** Educational offerings taken by an individual in order to fulfill the class hour requirement for a different classification than his/her current classification may be simultaneously counted towards the continuing education requirement of his/her current classification.

~~[F.]~~ **E.** Credit towards the continuing education hour requirements for each appraiser classification may be granted only where the length of the educational offering is at least two hours.
[10/1/97; 16.62.7.12 NMAC - Rn & A, 16 NMAC 62.7.12, 09/13/2004; A, 11/25/2006; A, 08/21/2010; A, 01/16/2011; A, 01/15/2017; A, 02/03/2019; A, 09/26/2023; A, 03/12/2024]

16.62.7.13 RENEWAL AFTER DEADLINE: A license not renewed on the renewal date is expired.
[10/1/97; 16.62.7.13 NMAC - Rn, 16 NMAC 62.7.13, 09/13/2004; A, 01/16/2011]

16.62.7.14 REINSTATEMENT OF EXPIRED LICENSE: An expired license may be reinstated within 30 days after expiration upon:

A. submission of an application,
B. payment of the required biennial renewal fee,
C. proof of completion of all required continuing education hours that would have been required if the credential holder were in an active status. The required hours must also include the most recent edition of the seven-hour national USPAP update course (or its AQB-approved equivalent),

D. payment of the administrative reinstatement fee,
E. Criminal history background check: All applicants for initial issuance or reinstatement of a certificate and license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) The applicant will register online, through the approved Department of Public Safety website, with the board’s Originating Agency Identification (ORI) number and make payment with registration. After the process is complete, the applicant will receive a registration confirmation.

(2) Results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant’s background check has been successfully completed.

(3) Out-of-State applicants, who are unable to visit an approved live scan fingerprinting facility, may follow the same registration process and submit a hardcopy fingerprint card to the approved live scan fingerprinting facility. The results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant’s background check has been successfully completed.

F. The board may, in its discretion, treat the former trainee, license or certificate holder as a new applicant and further require that the applicant be reexamined as a condition to reissue a license or certificate.
 [10/1/97; 16.62.7.14 NMAC - Rn & A, 16 NMAC 62.7.14, 09/13/2004; A, 01/01/2015; A, 01/15/2017; A, 09/26/2023]

16.62.7.15 CHANGE OF MAILING ADDRESS, PHYSICAL BUSINESS ADDRESS AND E-MAIL ADDRESS: A trainee, license or certificate holder shall report to the board in writing any change of mailing, physical business, and e-mail address. Failure to do so within 30 days is grounds for trainee,

license or certificate suspension.
 [10/1/97; 16.62.7.15 NMAC - Rn & A, 16 NMAC 62.7.15, 09/13/2004; A, 06/13/08; A, 01/01/2015; A, 01/15/2017]

16.62.7.16 EXEMPTION FROM ISSUANCE LICENSE OR CERTIFICATE;

A. The process of analyzing, without altering, an appraisal report, except appraisal reviews as defined in the Definitions under Paragraph (5) of Subsection A of 16.62.1.7 NMAC of General Provisions AND The Uniform Standards of Professional Appraisal Practice, that is part of a request for mortgage credit, is a specialized service as defined in Subsection Q of Section 61-30-3 NMSA 1978 and is exempt from the requirements of licensing or certification.

B. The process of completing an appraisal review, as defined in the Definitions under Paragraph (5) of Subsection A of 16.62.1.7 NMAC of General Provisions AND as defined by the Uniform Standards of Professional Appraisal Practice, completed by a review appraiser holding a valid license or certification and completing the appraisal review from a location outside of New Mexico, is exempt from the requirements of licensing or certification, provided the appraisal reviewer has a valid license or certification that corresponds with or is higher than the level of licensure or certification required to perform the appraisal under review.
 [16.62.7.16 NMAC – N, 02/03/2019]

HISTORY OF 16.62.7 NMAC: Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: REAB Rule 7, Issuance/Renewal of License/Certification, filed 11/29/90. REAB Rule 7, Amendment 1, filed 10/3/91. Rule 8, Issuance/Renewal of Registrations/Licenses/Certificates, filed 4/6/93. Rule 8, Issuance/Renewal of Registrations/Licenses/Certificates,

filed 1/28/94. Rule 8, Issuance/Renewal of Registrations/Licenses/Certificates, filed 12/19/94.

History of Repealed Material:
 [RESERVED]

Other History:
 Rule 8, Issuance/Renewal of Registrations/Licenses/Certificates (filed 12/19/94) was renumbered, reformatted and replaced by 16 NMAC 62.7, Issuance/Renewal of Registrations/Licenses/Certificates, effective 10/01/1997. 16 NMAC 62.7, Issuance/Renewal of Registrations/Licenses/Certificates (filed 08/29/1997) was renumbered, reformatted, amended, and replaced by 16.62.7 NMAC, Issuance/Renewal of Registrations/Licenses/Certificates, effective 09/13/2004.

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
 CHAPTER 62 REAL ESTATE APPRAISERS
 PART 8 EDUCATIONAL PROGRAMS/CONTINUING EDUCATION**

16.62.8.1 ISSUING AGENCY: Regulation and Licensing Department - NM Real Estate Appraisers Board.
 [3/14/00; 16.62.8.1 NMAC - Rn, 16 NMAC 62.8.1, 09/13/2004; A, 01/01/2015]

16.62.8.2 SCOPE: All trainees, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.
 [3/14/00; 16.62.8.2 NMAC - Rn & A, 16 NMAC 62.8.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

16.62.8.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Real Estate Appraisers Act, Section 61-30-1 to -24, NMSA 1978.
 [3/14/00; 16.62.8.3 NMAC - Rn,

16 NMAC 62.8.3, 09/13/2004; A, 09/26/2023]

16.62.8.4 DURATION:

Permanent.

[3/14/00; 16.62.8.4 NMAC - Rn, 16 NMAC 62.8.4, 09/13/2004]

16.62.8.5 EFFECTIVE

DATE: March 14, 2000, unless a later date is cited at the end of a section.

[3/14/00; 16.62.8.5 NMAC - Rn & A, 16 NMAC 62.8.5, 09/13/2004]

16.62.8.6 OBJECTIVE:

This part provides requirements for approval of educational courses for pre-trainee, pre-licensing, and pre-certification and continuing education credit. It establishes requirements for continuing education courses and sponsors. It establishes an education advisory committee to approve courses and sponsors.

[3/14/00; 16.62.8.6 NMAC - Rn, 16 NMAC 62.8.6, 09/13/2004; A, 11/25/06; A, 01/01/2015]

16.62.8.7 DEFINITIONS:

“Class Hours” for the purpose of fulfilling continuing education requirements includes approved courses offered over the internet or other distance learning modalities.

[3/14/00; 16.62.8.7 NMAC - Rn, 16 NMAC 62.8.7, 09/13/2004; A, 02/03/2019]

16.62.8.8 ACCEPTABLE COURSEWORK:

A. All coursework for original trainee registration, licensing and certification shall be given in 15-hour segments and have an examination administered at the end of the course.

B. Successful completion of the examination is a requirement to submit the course for original trainee registration, licensure or certification credit.

C. Courses taken in satisfying the qualifying education requirements shall not be repetitive in nature. Each course credited toward the required number of qualifying education hours shall represent a

progression in which the appraiser’s knowledge is increased.

[3/14/00; 16.62.8.8 NMAC - Rn, 16 NMAC 62.8.8, 09/13/2004; A, 11/25/06; A, 01/01/2015; A, 09/26/2023]

16.62.8.9 RELEVANCE

OF COURSEWORK: All coursework for original trainee, licensing or certification shall be in courses closely related to real estate appraisal. The board will not accept an applicant’s completion of a course of a kind, which is designed to prepare students for examination, commonly known as a “cram course”. All real estate appraisal coursework credited toward original trainee, shall have been completed no more than five years prior to the date of the application filed with the board.

[3/14/00; 16.62.8.9 NMAC - Rn & A, 16 NMAC 62.8.9, 09/13/2004; A, 11/25/06; A, 01/01/2015; A, 01/15/2017; A, 09/26/2023]

16.62.8.10 DISTANCE

EDUCATION: Is defined as any education process based on the geographical separation of student and instructor. A distance education course offered over the internet or other distance learning modality is acceptable to meet class hour requirements if:

A. the course provides interaction; interaction is a reciprocal environment where the student has verbal or written communication with the instructor;

B. content approval is obtained from the appraiser qualifications board, or an accredited college, community college, or university that offers distance education programs and is approved or accredited by the commission on colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. secretary of education; non-academic credit college courses provide by a college shall be approved by the appraiser qualifications board and state licensing jurisdiction; and

C. course delivery mechanism approval is obtained from one of the following sources:

(1) appraiser qualifications board approved organizations providing approval of course design and delivery;

(2) a college that qualifies for content approval in Subsection B above that awards academic credit for the distance education course; or

(3) a qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporate interactivity.

[3/14/00; 16.62.8.10 NMAC - Rn & Repealed, 16 NMAC 62.8.10, 09/13/2004; 16.62.8.10 NMAC - N, 06/13/08]

16.62.8.11 ACCEPTABLE CONTINUING EDUCATION:

Courses approved for continuing education credit shall have significant intellectual or practical content and shall deal primarily with matters directly related to appraisal practice or to the ethical obligations of trainees, licensees and certificate holders. The primary objective of such courses shall be consistent with the board’s charge to protect the public and to increase the professional competence of trainees, licensees and certificate holders. [3/14/00; 16.62.8.11 NMAC - Rn & A, 16 NMAC 62.8.11, 09/13/2004; A, 11/25/06; A, 08/21/2010; A, 01/01/2015; A, 02/03/2019]

16.62.8.12 CONTINUING EDUCATION REQUIREMENTS:

Twenty-eight hours of continuing education are required each biennial renewal period. Continuing education requirements for initial trainees, licenses and certificates issued for less than two full years are pro-rated as defined in 16.62.7.12 NMAC.

A. Individuals must successfully complete the seven hour national uniform standards of professional appraisal practice (USPAP) update course, or its equivalent as approved by the appraiser qualifications board (AQB). Successful completion includes passing an exam if required by the appraiser qualifications board (AQB).

B. Successful completion of the AQB approved seven hour national USPAP update course [and the jurisprudence-examination] will be required of every trainee, licensee and certificate holder as a condition of renewal in each biennial renewal.
[3/14/00; 16.62.8.12 NMAC - Rn & A, 16 NMAC 62.8.12, 09/13/2004; A, 11/25/2006; A, 08/21/2010; A, 1/16/2011; A, 01/01/2015; A, 01/15/2017; A, 03/12/2024]

16.62.8.13 EDUCATION ADVISORY COMMITTEE: The board will appoint an education advisory committee for the purpose of reviewing courses and sponsors of education.

A. A committee approval shall go into effect immediately upon the committee's decision.

B. The board maintains the ability to review all approvals or disapprovals made by the committee.
[3/14/00; 16.62.8.13 NMAC - Rn, 16 NMAC 62.8.13, 09/13/2004; A, 08/21/2010; A, 01/01/2015]

16.62.8.14 APPROVAL OF SPONSORS: The board may approve individuals or organizations as course sponsors. Colleges and universities offering credit courses in real estate appraisal are also considered approved sponsors.

A. Requests for approval must be made on board approved forms and include an outline and a code of conduct for instructors.

B. The instructor selection and retention policy will include, at a minimum, the following requirements:

(1) instructors of qualifying education courses must be licensed by exam or certified at the same or a higher category than the level of classes they are engaged to teach.

(2) instructors engaged to teach the national uniform standards of professional appraisal practice (USPAP) course must qualify under the instructor evaluation policy for instructor selection for the national

USPAP course developed by the appraisal foundation;
(3) instructors must teach only the appraisal foundation-approved national uniform standards of professional appraisal practice (USPAP) course;
(4) student critiques must be requested and maintained for each class given;
(5) a summary of the critiques and the pass rate of the class must be submitted to the board within 30 days after the course is completed;

(6) the sponsor shall provide a procedure for periodic monitoring of instructors in the classroom setting along with the sponsor application.

C. Approved sponsors shall comply with the following requirements to maintain approved status; the school must be conducted in accordance with these rules:

(1) to permit the board or its representative access to the school or classes being conducted and to make available to the board, upon request, all information pertaining to the activities of the school required for the administration of the rules and regulations, including its financial condition;

(2) to advertise the school at all times in a form and manner free from misrepresentation, deception or fraud;

(3) assure that all representations made by anyone authorized by the school to act as its agent or solicitor for prospective students are free from misrepresentation, deception or fraud;

(4) to maintain current, complete, and accurate student records and instructor critiques or summaries which shall be accessible at all times to the board or its authorized representative; these records shall include, in addition to other information, a record of payments made, a record of attendance, and a record of units of work completed;

(5) to conduct all courses in accordance with

outlines submitted to and approved by the board;

(6) to only certify course completion for students who have successfully taken and passed the course; credit cannot be given for students who pass a course by challenging the course;

(7) sponsors will be subject to renewal of approval every three (3) years or on a renewal period as determined by the AQB expiration date; the board assumes no responsibility for renewal courses not received from the sponsor for any reason; it is the sponsor's responsibility to make timely request(s) for the renewal of course(s) for board approval;

(8) sponsors must assure that all instructors:
(a) conduct all classes in accordance with board rules;

(b) ensure that all instruction is free from misrepresentation;

(c) instruct only from board-approved outlines;

(d) allow access to any class being instructed to any duly appointed representative of the board; and

(e) certify to his/her sponsor a true and correct record of students' attendance in his/her classes;

(9) failure to comply with this rule may result in the loss of approval of the sponsor; and

(10) the board reserves the right to disapprove an instructor.

D. Sponsors may also be approved for seminars, conferences and one-time courses. Approval is limited to the dates of the course and may not be renewed.

[3/14/00; 16.62.8.14 NMAC - Rn, 16 NMAC 62.8.14, 09/13/2004; A, 11/25/2006; A, 01/16/2011; A, 01/01/2015; A, 02/03/2019; A, 09/26/2023]

16.62.8.15 APPROVAL OF COURSES:

A. All real estate appraisal courses except the appraisal qualifications board (AQB) approved 15-hour and seven-hour national USPAP courses, must have prior approval by the board if they are to be approved for credit towards continuing education or qualifying education. Beginning January 1, 2008, all qualifying education courses for pre-trainee, pre-licensing and pre-certification must have been approved through the AQB course approval program. The AQB approved 15-hour national USPAP course and the seven hour national USPAP update course do not require prior approval by the board with proof that the course was taught by an AQB certified national USPAP instructor who is also a residential or general certified appraiser. The course sponsor may certify in the form of a certificate provided to the student that the instructor meets the above board criteria.

B. All board approved real estate courses except the AQB approved 15-hour national USPAP course and the seven-hour national USPAP update course, as defined in Subsection A of this section, accepted for pre-trainee, pre-licensing and pre-certification credit must: be a minimum length of at least 15 hours and include successful completion of an approved closed-book examination pertinent to that educational offering.

C. Application for course approval must be made to the board. No classes for credit may commence prior to board approval. The education advisory committee will review the application in accordance with 16.62.8.13 NMAC.

D. All course outlines approved by the board for pre-trainee, pre-licensing, pre-certification and continuing education credit shall become the property of the board and the outlines shall be available to all those board approved sponsors wishing to teach said courses.

E. All existing courses are subject to periodic review by the board. The board may at any time change the approval status of any course.

[3/14/00; 16.62.8.15 NMAC - Rn & A, 16 NMAC 62.8.15, 09/13/2004; A, 11/25/2006; A, 01/16/2011; A, 7/10/2011; A, 01/01/2015]

16.62.8.16 ONE-ON-ONE APPROVAL: The education advisory committee may approve continuing education credit on a one-on-one basis for courses that do not conform fully with 16.62.8.14 NMAC or 16.62.8.15 NMAC.

[3/14/00; 16.62.8.16 NMAC - Rn, 16 NMAC 62.8.16, 09/13/2004 A, 01/01/2015]

16.62.8.17 [RESERVED]

[3/14/00; 16.62.8.17 NMAC - Rn & A, 16 NMAC 62.8.17, 09/13/2004; A, 11/25/06]

16.62.8.18 EDUCATION CREDIT FOR TEACHING:

Instructors who are also certified and licensed may receive up to one-half of their continuing education requirement from instruction of appraisal courses or seminars. Credit for instructing any given course or seminar can only be awarded once during a continuing education cycle. [3/14/00; 16.62.8.18 NMAC - Rn & A, 16 NMAC 62.8.185, 09/13/2004]

HISTORY OF 16.62.8 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: REAB Rule 8, Educational Programs/ Continuing Education, filed 11/29/90. REAB Rule 8, Amendment 1, Educational Programs/Continuing Education, filed 10/3/91. REAB Rule 9, Educational Programs/ Continuing Education, filed 4/6/93. Rule 9, Educational Programs/ Continuing Education, filed 1/28/94. Rule 9, Educational Programs/ Continuing Education, filed 8/2/95.

History of Repealed Material: [RESERVED]

Other History:

Rule 9, Educational Programs/ Continuing Education (filed 8/2/95) was renumbered, reformatted

and replaced by 16 NMAC 62.8, Educational Programs/Continuing Education, effective 03/14/2000. 16 NMAC 62.8, Educational Programs/Continuing Education (filed 02/14/2000) was renumbered, reformatted, amended, and replaced by 16.62.8 NMAC, Educational Programs/Continuing Education, effective 09/13/2004.

TRANSPORTATION, DEPARTMENT OF

NOTICE OF PROPOSED RULEMAKING

The New Mexico Department of Transportation (NMDOT) is purposing to repeal rule, 17.4.2 NMAC, Requirements for Occupancy of State Highway System Right-of-Way by Utility Facilities.

Purpose: Pursuant to New Mexico State Transportation Commission Policy 4, dated August 18, 2022, NMDOT rules shall be reviewed by the appropriate Department division or other organizational unit every five years. The review found that 17.4.2 NMAC should be repealed, and approval of the initial rulemaking action for this repeal was granted to NMDOT by the New Mexico State Transportation Commission on May 19, 2022, pursuant to Section 67-3-11, Subsection C of Section 67-3-12 and Section 67-8-13 NMSA 1978.

Summary of Repeal: NMDOT proposes to repeal the following rule: 17.4.2 NMAC – *Requirements for Occupancy of State Highway System Right-of-Way by Utility Facilities* Repeal of entire part 17.4.2.1 through 17.4.2.28 NMAC.

Rulemaking Hearing: NMDOT will hold a public hearing for the purpose of receiving oral and written public comments from interested parties on the repeal of rule, 17.4.2 NMAC. The hearing is scheduled on February 29, 2024, from 9:00 a.m. to 10:30 a.m. at the NMDOT, General Office, Training Rooms 1 and 2, 1120 Cerrillos Road,

Santa Fe, NM 87504-1149. Any further information regarding the public hearing may be provided on the NMDOT website under the following tabs:

Legal Notices tab: <https://www.dot.nm.gov/public-legal-notice>, and *Public Involvement* tab: <https://www.dot.nm.gov/public-involvement>.

Written Comments: To submit written comments on or before February 29, 2024, 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 2024 New Mexico Register, January 16, 2024, and until the close of the hearing scheduled in this rulemaking, February 29, 2024. If you plan to submit written comments, please make sure any documentation contains your name, phone number and email address, and if you plan to submit written comments at the hearing, please bring three copies of any documents to the hearing. If submitting written comments by email, please indicate the rule number (17.4.2 NMAC) 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 NMDOT'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 may contact: Lauren Vigil at Telephone: (505) 487-0626 or at Email: lauren.vigil@dot.nm.gov at least ten days before the hearing.

TRANSPORTATION, DEPARTMENT OF

NOTICE OF PROPOSED RULEMAKING

The New Mexico Department of Transportation (NMDOT) is proposing new rule, 18.1.3 NMAC, Requirement for Use and Occupancy of Property and Right of Way.

Purpose: Pursuant to New Mexico State Transportation Commission Policy 4, dated August 18, 2022, NMDOT rules shall be reviewed by the appropriate Department division or other organization unit every five years. The review found that 18.1.3 NMAC should be purposed as a new rule, and approval of the initial rulemaking action for the new rule was granted to NMDOT by the New Mexico State Transportation Commission on May 19, 2022, pursuant to Section 67-3-11, Subsection C of Section 67-3-12 and Section 67-8-13 NMSA 1978.

Summary of Full Text: The proposed rule addresses NMDOT's obligation to prescribe by rule the conditions under which third-party access to NMDOT rights of way may be used under the authority given to the NMDOT to require permits that specify the reasonable conditions and requirements for third-party access to NMDOT rights of way.

Full Text of the Proposed Rule: A copy of the full text of the proposed rule may be found on the NMDOT website for 30 days prior to the public hearing scheduled in this rulemaking, February 29, 2024, under the following tabs: *Legal Notices* tab: <https://www.dot.nm.gov/public-legal-notice>, and *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 for the purpose of receiving oral and written public comments from interested parties on the proposed new rule, 18.1.3 NMAC. The hearing is scheduled on February 29, 2024, from 10:30 a.m. to 12:00 p.m. at the NMDOT, General Office, Training Rooms 1 and 2, 1120 Cerrillos Road, Santa Fe, NM 87504-1149. Any further information regarding the public hearing may be provided on the NMDOT website under the following tabs:

Legal Notices tab: <https://www.dot.nm.gov/public-legal-notice>, and *Public Involvement* tab: <https://www.dot.nm.gov/public-involvement>.

Written Comments: To submit written comments on or before February 29, 2024, 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 2024 New Mexico Register, January 16, 2024, and until the close of the hearing scheduled in this rulemaking, February 29, 2024. If you plan to submit written comments, please make sure any documentation contains your name, phone number and email address, and if you plan to submit written comments at the hearing, please bring three copies of any documents to the hearing. If submitting written comments by email, please indicate the rule number (18.1.3 NMAC) 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 NMDOT'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 may contact: Lauren Vigil at Telephone: (505) 487-

0626 or at Email: lauren.vigil@dot.nm.gov at least ten days before the hearing.

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

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.

**ALBUQUERQUE -
BERNALILLO COUNTY
AIR QUALITY CONTROL
BOARD**

**TITLE 20 ENVIRONMENTAL
PROTECTION
CHAPTER 11 ALBUQUERQUE
- BERNALILLO COUNTY AIR
QUALITY CONTROL BOARD
PART 72 HEALTH,
ENVIRONMENT AND EQUITY
IMPACTS**

20.11.72.1 ISSUING
AGENCY: Albuquerque-Bernalillo
County Air Quality Control Board,
P.O. Box 1293, Albuquerque, NM
87103. Telephone: (505) 768-1972.
[20.11.72.1 NMAC – N, 1/1/2025]

20.11.72.2 SCOPE:
A. Applicability:
Any person who intends to construct
a new stationary source or modify
an existing stationary source that is
subject to permitting under 20.11.41
NMAC, 20.11.60 NMAC or 20.11.61
NMAC.

B. Exemptions:
20.11.72 NMAC does not apply to:
(1) technical
permit revisions under Subsection B
of 20.11.41.28 NMAC;
(2)
administrative permit revisions under
Subsection A of 20.11.41.28 NMAC;
(3) emergency
permits applications under Subsection
A of 20.11.41.24NMAC;
(4) relocations
for portable sources under Paragraph
(2) of Subsection F of 20.11.41
NMAC;
(5) any source
exempt from 20.11.41 NMAC,
20.11.60 NMAC, 20.11.61 NMAC;
and

(6) sources
within Bernalillo county that are
located on Indian lands over which
the Albuquerque-Bernalillo county
air quality control board lacks
jurisdiction.
[20.11.72.2 NMAC – N, 1/1/2025]

**20.11.72.3 STATUTORY
AUTHORITY:** 20.11.72 NMAC
is adopted pursuant to the authority
provided in Title VI, Sections 74-2-4
and 74-2-5, NMSA 1978 ; Bern. Co.
Ord. Ch. 30, Art. II, Sec. 32.
[20.11.72.3 NMAC – N, 1/1/2025]

20.11.72.4 DURATION:
Permanent.
[20.11.72.4 NMAC – N, 1/1/2025]

**20.11.72.5 EFFECTIVE
DATE:** January 1, 2025, except
where a later date is cited at the end of
a section.
[20.11.72.5 NMAC – N, 1/1/2025]

20.11.72.6 OBJECTIVE:
To establish additional permitting
requirements for new or modified
stationary sources of air pollution
that are located, or proposed to be
located, in or within a one-mile radius
of an overburdened area in order
to prevent disproportionate health
impacts or environmental effects from
air emissions on the overburdened
area, to protect all residents from
certain hazardous air pollutants,
and to encourage meaningful public
participation in the permitting
process.
[20.11.72.6 NMAC – N, 1/1/2025]

20.11.72.7 DEFINITIONS:
In addition to the definitions in
20.11.72 NMAC, the definitions in
20.11.1 NMAC apply unless there is a
conflict between definitions, in which
case the definition in 20.11.72 NMAC
shall govern.

**A. “Best available
control technology” or “BACT”**
means the same in 20.11.72 NMAC
as it is defined in Subsection M of
20.11.61.7 NMAC.

**B. “Environmental
factors”** shall include particulate
matter 2.5 microns or less (annual
average PM 2.5 levels in air),
ozone (average of the annual top
ten daily maximum 8-hour ozone
concentrations in air), diesel
particulate matter (diesel particulate
matter level in air), annual toxic
releases (in pounds), and traffic
proximity and volume (count of
vehicles (average annual daily traffic)
at major roads within 500 meters,
divided by the distance in meters).

**C. “Health
indicators”** shall include asthma
prevalence among adults 18 years
of age and older, asthma prevalence
among children 17 years of age
and younger, chronic obstructive
pulmonary disease (COPD)
prevalence among adults 18 years of
age and older, cardiovascular disease
prevalence among adults 18 years of
age and older, age-adjusted cancer
incidence per 100,000 population,
persons with disabilities, and life
expectancy.

**D. “Overburdened
area”** means the twenty percent of
census block groups in Bernalillo
County that experience the highest
cumulative environmental and public
health stressors (using the most
recent version of the Environmental
Protection Agency’s Environmental
Justice (EJ) Screen and New Mexico
Department of Health’s New Mexico
Indicator Based Information System
(NMIBIS) as on-line resources),
considering at least the following:
environmental factors, health
indicators, and social determinants
of health indicators as defined in this
regulation.

E. “Social determinants of health indicators” shall include percent of population age 25 years and older who do not have a high school diploma or equivalent, percent of households with a total household income below two hundred percent of the federal poverty level, percent of population over the age of five that speak a language other than English at home and who speak English less than “very well”, and percent of population that is non-white, and also those who list their ethnicity as Hispanic or Latino.
[20.11.72.7 NMAC – N, 1/1/2025]

20.11.72.8 OVERBURDENED AREA REQUIREMENTS:

A. The city of Albuquerque environmental health department (department) shall, in consultation with the public and using the latest and best available science and data on health and the environment, develop a GIS map, along with map layers displaying environmental factors, health indicators, and social determinants of health indicators, representing overburdened areas in Bernalillo county.

B. The department shall publish and provide public notice of the overburdened areas map developed per Subsection A of 20.11.72.8 NMAC by January 1, 2025 and, for purposes of 20.11.72 NMAC, the map shall go into effect on July 1, 2025. The department may make minor adjustments to correct errors and for other significant concerns based on public input per Subsections A & B of 20.11.72.9 NMAC in the six months before the overburdened area map goes into effect.

C. The department shall require every new or modified stationary source subject to permitting under 20.11.41 NMAC, 20.11.60 NMAC, or 20.11.61 NMAC that is located, or proposed to be located, in or within a one-mile radius of an overburdened area, as indicated by the overburdened areas map in effect as of the permit application date, to apply BACT even if the new or

modified stationary source is not a major stationary source.

D. The department shall require BACT for new or modified stationary sources throughout Bernalillo County that emit any one, or combination of, the following 15 hazardous air pollutants (HAPs): acetaldehyde, acrolein, benzene, 1,3-butadiene, carbon tetrachloride, ethyl benzene, ethylene oxide, formaldehyde, hydrochloric acid, methyl bromide, methylene chloride, naphthalene, toluene, vinyl chloride, and xylenes.

E. The department shall, in consultation with the public and using the latest and best available science on health and the environment, update its overburdened areas map when a change in circumstances warrant or at a minimum of every five years using data from the following on-line sources: U.S. Census bureau’s American community survey (ACS) 5-Year Data, U.S. Environmental protection agency’s environmental justice (EJ) screen, and New Mexico department of health’s New Mexico indicator based information system (NMIBIS), and provide notice to potentially regulated entities at least six months before an updated overburdened areas map goes into effect.
[20.11.72.8 NMAC – N, 1/1/2025]

20.11.72.9 PUBLIC NOTICE BY DEPARTMENT – PUBLIC PARTICIPATION: In addition to the requirements for public notice by department – public participation set forth under 20.11.72.9 NMAC, the public notice by department – public participation requirements in 20.11.41.14 NMAC apply unless there is a conflict between requirements, in which case the more expansive notice requirements shall govern.

A. The department shall provide notice by regular mail or electronic mail to all individuals, neighborhood associations, and other organizations, and to those persons having stated a desire to receive notices of all applications filed pursuant to 20.11.41 NMAC, 20.11.60

NMAC or 20.11.61 NMAC as identified on a list maintained by the department, who reside in or represent persons residing in an overburdened area that is within a one-mile radius of a located, or proposed to be located, new or modified stationary source.

B. Public participation shall be encouraged and at least include opportunities for written, live, and on-line public comment and engagement.
[20.11.72.9 NMAC – N, 1/1/2025]

HISTORY OF 20.11.72 NMAC: [RESERVED]

FINANCE, DEPARTMENT OF

The New Mexico Department of Finance and Administration approved the repeal of 2.42.2 NMAC - Regulations Governing the Per Diem and Mileage Act filed 6/16/2003 and replaced it with 2.42.2 NMAC - Regulations Governing the Per Diem and Mileage Act adopted on 01/03/2024 and effective 01/16/2024.

FINANCE, DEPARTMENT OF

TITLE 2 PUBLIC FINANCE
CHAPTER 42 TRAVEL AND PER DIEM
PART 2 REGULATIONS GOVERNING THE PER DIEM AND MILEAGE ACT

2.42.2.1 ISSUING AGENCY: Department of Finance and Administration.
[2.42.2.1 NMAC - Rp, 2.42.2.1 NMAC, 01/16/2024]

2.42.2.2 SCOPE: In accordance with Section 10-8-1 to 10-8-8 NMSA 1978, 2.42.2 NMAC governs the payment of per diem rates and mileage and the reimbursement of expenses for all salaried and non-salaried public officers and employees of all state agencies and local public bodies, except:

A. state legislators; and
B. public officials and employees of state educational institutions specified in Article 12, Section 11 of the New Mexico Constitution and institutions defined in Chapter 21, Articles 13, 14, 16 and 17 NMSA 1978 (hereinafter “public postsecondary educational institutions”). If an official or employee of a public postsecondary educational institution is also a salaried or non-salaried public officer or employee of any other state agency or local public body, these regulations shall apply when the person seeks payment of per diem rates and mileage or reimbursement of expenses in the capacity of a salaried or non-salaried public officer or employee of a governmental entity other than a public postsecondary educational institution.
 [2.42.2.2 NMAC - Rp, 2.42.2.2 NMAC, 01/16/2024]

2.42.2.3 STATUTORY AUTHORITY: These regulations are promulgated pursuant to authority granted in Subsection A of Section 10-8-5 and Subsection E of Section 9-6-5 NMSA 1978.
 [2.42.2.3 NMAC - Rp, 2.42.2.3 NMAC, 01/16/2024]

2.42.2.4 DURATION: Permanent.
 [2.42.2.4 NMAC - Rp, 2.42.2.4 NMAC, 01/16/2024]

2.42.2.5 EFFECTIVE DATE: January 16, 2024, unless a later date is cited at the end of a section.
 [2.42.2.5 NMAC - Rp, 2.42.2.5 NMAC, 01/16/2024]

2.42.2.6 OBJECTIVE: To govern the payment of per diem rates and mileage and the reimbursement of expenses for all salaried and non-salaried public officers and employees of all state agencies and local public bodies except those set forth in Subsections A and B of 2.42.2.2 NMAC.
 [2.42.2.6 NMAC - Rp, 2.42.2.6 NMAC, 01/16/2024]

2.42.2.7 DEFINITIONS:

As used in this rule:

- A. “Agency head”** means:
 - (1) the cabinet secretary of departments and their administratively attached boards and commissions;
 - (2) the director for other agencies and institutions and their administratively attached boards and commissions;
 - (3) the superintendent of regulation and licensing for boards and commissions attached to the regulation and licensing department;
 - (4) the chairperson, president or executive secretary for remaining boards and commissions; and
 - (5) the chief executive, chief administrative officer, or governing body for local public bodies.
- B. “Attend”** has the same meaning as ascribed to it in Section 10-8-3 NMSA 1978.
- C. “Board or committee meeting”** means the formal convening of public officers who comprise a board, advisory board, commission or committee even if no further business can take place because of the lack of a quorum.
- D. “Designated post of duty”** means the address of a public officer’s or employee’s assignment as determined by the agency.
- E. “Employee”** means any person who is in the employ of any New Mexico state agency or local public body within New Mexico whose salary is paid either completely or partially from public money but does not include jurors or jury commissioners.
- F. “Governmental entity”** means a New Mexico state agency or local public body within New Mexico.
- G. “Home”** means:
 - (1) for per diem purposes, the area within a 50-mile radius of the place of legal residence as defined in Section 1-1-7 NMSA 1978;

(2) for mileage purposes, the place of legal residence as defined in Section 1-1-7 NMSA 1978.

H. “Local public body” means every political subdivision of the state, whether created under general or special act including, but not limited, to counties, municipalities, drainage, conservancy, irrigation, school or other districts, that receives or expends public money from whatever source derived.

I. “Non-salaried public officer” means a public officer serving as a member of a board, advisory board, committee or commission who is not entitled to compensation, but is entitled to payment of per diem rates and mileage.

J. “Normal work day” means eight hours within a nine-hour period for all public officers and employees both salaried and non-salaried, regardless of the officers’ or employees’ regular work schedule.

K. “Occasionally and irregularly” means not on a regular basis and infrequently as determined by the agency. For example, an employee is not entitled to per diem rates under 2.42.2.8 NMAC if the employee either travels once a week or travels every fourth Thursday of the month. However, the employee is entitled to per diem rates under 2.42.2.8 NMAC if the employee either travels once a month with irregular destinations and at irregular times or travels four times in one month and then does not travel again in the next two months, so long as this is not a regular pattern.

L. “Out of state” means beyond the exterior boundaries of the state of New Mexico.

M. “Public officer” means every elected or appointed officer of a governmental entity, including but not limited to:

- (1) officers of the judicial branch of state government, including judges;
- (2) officers of the legislative branch of state government, except legislators; and,
- (3) all board, advisory board, committee and

commission members elected or appointed to a board, advisory board, committee or commission specifically authorized by law or validly existing as an advisory committee pursuant to Section 9-1-9 NMSA 1978.

N. “Secretary”

means the secretary of finance and administration.

O. “Travel” means:

for per diem purposes, being on official business away from home as defined in Subsection F above and at least 50 miles from the designated post of duty of the public officer or employee. However, non-salaried public officers are eligible for per diem for attending meetings in accordance with Subsection C of 2.42.2.8 NMAC.

P. “Travel

voucher” means a payment voucher submitted for the purpose of claiming reimbursement for travel expenditures.

[2.42.2.7 NMAC - Rp, 2.42.2.7 NMAC, 01/16/2024]

2.42.2.8 PER DIEM RATES AND PRORATION:

A. Applicability: Per

diem rates shall be paid to public officers and employees only in accordance with the provisions of this section. Per diem rates shall be paid without regard to whether expenses are actually incurred. Where lodging or meals are provided or paid for by the agency, the governing body, or another entity, the public officer or employee is entitled to reimbursement only for actual expenses under 2.42.2.9 NMAC.

B. Per diem rate

computation: Except as provided in Subsections C through I of this section, per diem rates for travel by public officers and employees shall be computed as follows:

(1) Partial

day per diem rate: Public officers or employees who occasionally and irregularly travel shall be reimbursed for travel which does not require overnight lodging, but extends beyond a normal work day as published on the department of finance and administration website on May 1 for the preceding fiscal year.

(2)

Overnight travel: Regardless of the number of hours traveled, travel for public officers and employees where overnight lodging is required shall be reimbursed as published on the department of finance and administration website on May 1 for the preceding fiscal year or actual lodging and meal expenses under 2.42.2.9 NMAC.

(3) Return

from overnight travel: On the last day of travel when overnight lodging is no longer required, partial day reimbursement shall be made. To calculate the number of hours in the partial day, begin with the time the traveler initially departed. Divide the number of hours traveled by 24. The hours remaining constitute the partial day which shall be reimbursed as published on the department of finance and administration website on May 1 for the preceding fiscal year.

(4) Special

area designations: For all officers and employees, the in state special area shall be Santa Fe county.

C. Board, commission

and committee members: Non-salaried public officers may receive per diem as follows:

(1) Official

board, commission and committee meetings:

(a)

State non-salaried public officers:

Non-salaried public officers of the state may elect to receive:

(i)

\$95.00 if the officer physically attends the meeting for four hours or more during a single calendar day; or

(ii)

\$45.00 if the officer physically attends the meeting for less than four hours or the officer attends a virtual meeting of any duration during a single calendar day; or

(iii)

per diem rates in accordance with Subsection B of this section.

(b)

Local non-salaried public officers:

Non-salaried public officers of local public bodies may elect to receive:

(i)

\$95.00 if the officer physically attends the meeting for four hours or more during a single calendar day; or

(ii)

\$45.00 if the officer physically attends the meeting for less than four hours or the officer attends a virtual meeting of any duration during a single calendar day; or

(iii)

per diem rates in accordance with Subsection B of this section provided that the local governing body has not established a lesser rate.

(c)

Municipal non-salaried public officers: Non-salaried public officers of municipalities may elect to receive either:

(i)

\$95.00 if the officer physically attends the meeting for four hours or more during a single calendar day; or

(ii)

\$45.00 if the officer physically attends the meeting for less than four hours or the officer attends a virtual meeting of any duration during a single calendar day; or

(iii)

per diem rates in accordance with Subsection B of this section, provided that the board or commission meeting is held outside of the municipal boundaries.

(2) Other

official meetings: Non-salaried public officers may receive per diem rates for travel on official business that does not constitute a board, advisory board, committee or commission meeting only in accordance with Subsection B of this section.

(3) Members

servicing in dual capacities: Non-salaried public officers who also serve as public officers or employees of state agencies or local public bodies may receive mileage or per diem rates from only one public entity for any travel or meeting attended. Furthermore, non-salaried public officers who are also public officers or employees may not receive per diem rates for attending meetings held in the place of their home or at their

designated posts of duty unless they are on leave from their positions as public officers or employees. Local public bodies may adopt regulations with respect to the receipt of per diem rates by employees or officers of local public bodies who also serve on boards or commissions subject to this rule.

D. Temporary assignment: Public officers and employees may be reassigned temporarily to another duty station.

(1) Routine reassignment: Public officers and employees subject to periodic reassignment of duty stations or districts as a normal requirement of their employment will not be eligible for per diem rates after the time of arrival at the new duty station or district.

(2) Non-routine reassignment: Public officers or employees not normally subject to periodic reassignments who are temporarily assigned to another office of a state agency away from home will receive per diem for the first 30 calendar days of their assignment only, unless approval of the secretary is given to extend per diem payments upon showing that the assignment is necessary and temporary. Except in such extraordinary circumstances, after 30 calendar days, the place where the employee or officer is assigned will be regarded as the designated post of duty.

E. New Mexico department of transportation: The New Mexico department of transportation may adopt special policies pertaining to payment of per diem rates for temporary assignments. Such policies shall be subject to the annual approval of the secretary.

F. Department of public safety: The department of public safety may adopt special policies pertaining to payment of per diem rates, mileage and subsistence allowances authorized by law for commissioned officers. Such policies shall be subject to the annual approval of the secretary.

G. Travel for educational purposes: A public officer or employee shall not be reimbursed for more than 30 calendar days of per diem in any fiscal year for attending educational or training programs unless approval has been obtained from the secretary.

H. Per diem in conjunction with other leave: While traveling, if a public officer or employee takes sick, annual or authorized leave without pay for more than four hours of the normal work day, per diem shall not be allowed for that day unless authorized in writing by the agency head.

I. Illness or emergency: Agency heads may grant permission, in writing, to pay per diem rates and travel reimbursement to an employee or public officer who becomes ill or is notified of a family emergency while traveling on official business and must either remain away from home or discontinue the official business to return home.

[2.42.2.8 NMAC - Rp, 2.42.2.8 NMAC, 01/16/2024]

2.42.2.9 REIMBURSEMENT OF ACTUAL EXPENSES IN LIEU OF PER DIEM RATES:

A. Applicability: Upon written request of a public officer or an employee, agency heads may grant written approval for a public officer or employee of that agency or local public body to be reimbursed actual expenses in lieu of the per diem rate where overnight travel is required.

B. Overnight travel: For overnight travel for state officers and employees where overnight lodging is required, the public officer or employee will be reimbursed as follows:

(1) Actual reimbursement for lodging: A public officer or an employee may elect to be reimbursed actual expenses for lodging not exceeding the single occupancy room charge (including tax) in lieu of the per diem rate set forth in 2.42.2.8 NMAC. Whenever possible, public officers and employees should stay in hotels which

offer government rates. Agencies, public officers or employees who incur lodging expenses in excess of \$215.00 per night must obtain the signature of the agency head or chairperson of the governing board on the travel voucher prior to requesting reimbursement and on the encumbering document at the time of encumbering the expenditure.

(2) Actual reimbursement for meals: Actual expenses for meals are limited by Paragraph (2) of Subsection K of Section 10-8-4 NMSA 1978 to the rates published on the department of finance and administration website on May for the preceding fiscal year.

(3) Receipts required: The public officer or employee must submit receipts for the actual meal and lodging expenses incurred. Under circumstances where the loss of receipts would create a hardship, an affidavit from the officer or employee attesting to the expenses may be substituted for actual receipts. The affidavit must accompany the travel voucher and include the signature of the agency head or governing board.

C. Return from overnight travel: On the last day of travel when overnight lodging is no longer required, partial day reimbursement shall be made. To calculate the number of hours in the partial day, begin with the time the traveler initially departed on the travel. Divide the total number of hours traveled by 24. The hours remaining constitute the partial day which shall be reimbursed as published on the department of finance and administration website on May 1 for the preceding fiscal year. No reimbursement for actual expenses will be granted in lieu of partial day per diem rates.

[2.42.2.9 NMAC - Rp, 2.42.2.9 NMAC, 01/16/2024]

2.42.2.10 TRAVEL ADVANCES:

A. Authorizations: Upon written request accompanied by a travel voucher, agency heads and governing boards of local public

bodies or their authorized designees may approve a public officer's or employee's request to be advanced up to eighty percent of per diem rates and mileage cost or for the actual cost of lodging and meals pursuant to 2.42.2.8 NMAC and 2.42.2.9 NMAC and for other travel expenses that may be reimbursed under 2.42.2.12 NMAC. Requests for travel advances shall not be submitted to the financial control division of the department of finance and administration more than two weeks prior to travel unless, by processing the request earlier, significant savings can be realized for travel by common carrier or for registration fees for seminars and conferences.

B. Travel period: A travel advance may be authorized either for a single trip or on a monthly basis for public officers and employees who travel continually throughout the month. Payment shall be made only upon vouchers submitted with attached authorization for each travel period.

(1) Single trip advances: Where a travel advance is made for a single trip, the officer or employee shall remit, within 5 working days of the return from the trip, a refund of any excess advance payment to the agency. The agency or local public body shall deposit the refund and reduce the disbursement recorded when the money was advanced.

(2) Monthly advances: Where monthly advances are made, employees shall remit to the agency, at the end of each month, any excess advance payments together with a thorough accounting of all travel advances and expenditures as required by the secretary. Where a travel advance is approved for the next month, the agency head may authorize the use of excess advance payments from the previous month as part of the advance for the next month in lieu of having the employee remit the excess funds.

C. Agency records: Each agency is responsible for maintaining records of travel advances authorized by the agency

head or the agency head's authorized designee.

(1) Employee ledgers: Each state agency shall keep individual employee ledgers for travel advances. The ledger shall include the following information to provide an adequate audit trail:

- (a) employee;
- (b) no;
- (c) division;
- (d) fiscal year;
- (e) date of travel advance;
- (f) date of destination;
- (g) per diem advance;
- (h) earned;
- (i) additional per diem or refund due.

(2) Year-end closing: Each state agency shall review all travel advances prior to the end of the fiscal year and collect or pay all outstanding amounts if possible. Any receivables or payables outstanding at year-end must be recorded on the books and records of the agency.

D. Local public bodies: Local public bodies may grant prior written approval for travel advances as authorized by regulation of the governing body of the local public body.

[2.42.2.10 NMAC - Rp, 2.42.2.10 NMAC, 01/16/2024]

2.42.2.11 MILEAGE-PRIVATE CONVEYANCE:

A. Applicability: Mileage accrued in the use of a private conveyance shall be paid only in accordance with the provisions of this section.

B. Rate: Public officers and employees of state agencies shall be reimbursed for mileage accrued in the use of a private automobile or aircraft in the discharge of official duties as follows:

(1) unless the secretary has reduced the rates set for mileage for any class of public officials and for employees of state agencies pursuant to Subsection D of Section 10-8-5 NMSA 1978, one hundred percent of the internal revenue service standard mileage rate set January 1 of the previous year for each mile traveled in a privately owned vehicle;

(2) privately owned airplane, eighty-eight cents (\$0.88) per nautical mile.

C. Local public bodies: Public officers and employees of local public bodies may be reimbursed for mileage accrued in the use of a private conveyance in the discharge of official duties, at the statutory rates unless such rates have been reduced by the governing bodies of the local public body pursuant to Subsection D of Section 10-8-5 NMSA 1978.

D. Privately owned automobile: For conveyance in the discharge of official duties by privately owned automobile, mileage accrued shall be reimbursed at the rate set forth in this section as follows:

(1) pursuant to the mileage chart of the official state map published by the state highway and transportation department for distances in New Mexico and the electronic mileage calculator as approved by the department of finance and administration for distances outside of New Mexico; or

(2) pursuant to actual mileage if the beginning and ending odometer reading is certified as true and correct by the traveler; and

(a) the destination is not included on the official state map or on the approved electronic mileage calculator; or,

(b) at the destination(s) of the public officer or employee, the public officer or employee was required to use the private conveyance in performance of official duties.

E. Privately owned airplane: Mileage accrued in the use of a privately owned airplane shall be reimbursed at the rate set forth in this section as follows:

(1) pursuant to the New Mexico aeronautical chart published by the state highway and transportation department, aviation division, for distances in New Mexico and other states' air maps for distances outside of New Mexico; or
 (2) pursuant to actual air mileage if certification is provided by the pilot, or a beginning and ending reading of actual mileage if the reading is certified as true and correct by the traveler, and the destination is not included on an air map.

F. Reimbursement limit for out of state travel: Total mileage reimbursement for out of state travel by privately owned automobile or privately owned airplane shall not exceed the total coach class commercial airfare that would have been reimbursed those traveling had they traveled by common carrier. This subsection shall not apply to a public school when transporting students.

G. Additional mileage provision: Mileage accrued while on official business shall be reimbursed for travel on official business. An agency head or designee may authorize by memorandum reimbursement for mileage from a point of origin farther from the destination than the designated post of duty in appropriate circumstances. The memorandum must accompany the payment voucher. If official business is transacted while commuting from home to post of duty or from post of duty to home, mileage shall not be paid for the number of miles between post of duty and home. Odometer readings showing additional miles accrued for official business must be provided to the agency for payment.

[2.42.2.11 NMAC - Rp, 2.42.2.11 NMAC, 01/16/2024]

2.42.2.12 REIMBURSEMENT FOR OTHER EXPENSES: Public officers and employees may be reimbursed for certain actual expenses in addition to per diem rates.

A. Public officers and employees may be reimbursed

for the following expenses provided that receipts for all such expenses are attached to the reimbursement voucher:

(1) taxi or other transportation fares at the destination of the traveler;

(2) gratuities as allowed by the agency head or designee, not to exceed twenty percent per transaction;

(3) parking fees;

(4) actual costs for travel by common carrier, provided such travel is accomplished in the most economical manner practical;

(5) rental cars or charter aircraft, provided less expensive public transportation is not available or appropriate;

(6) registration fees for educational programs or conferences, provided, if the fee includes lodging or meals, then no per diem rates shall be paid and only actual expenses paid by the officer or employee and not included in the fee shall be reimbursed within the limits of 2.42.2.9 NMAC; and

(7) professional fees or dues that are beneficial to the agency's operations or mission.

(8) Under circumstances where the loss of receipts would deny reimbursement and create a hardship, an affidavit from the officer or employee attesting to the expenses may be substituted for actual receipts. The affidavit must accompany the travel voucher and include the signature of the agency head or governing board.

B. Local public bodies: Local public bodies may adopt regulations governing the reimbursement of actual expenses incurred in addition to per diem rates and mileage.

[2.42.2.12 NMAC - Rp, 2.42.2.12 NMAC 01/16/2024]

2.42.2.13 TRAVEL VOUCHERS: Travel vouchers and supporting schedules and documents shall conform to the policies and

procedures manuals issued by the financial control division of the department of finance and administration.

[2.42.2.13 NMAC - Rp, 2.42.2.13 NMAC 01/16/2024]

2.42.2.14 EFFECT OF PUBLICATION: All sections shall be effective upon publication in the *New Mexico Register*.

[2.42.2.14 NMAC - Rp, 2.42.2.14 NMAC 01/16/2024]

HISTORY OF 2.42.2 NMAC: Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

DFA 71-4 (Directive DFA 71-1) State Transportation Pool Rules and Regulations, filed 6/23/1971.

DFA 72-5 Directive DFA 61-1, Transportation Pool Rules and Regulations, filed 6/30/1972.

DFA 75-4 (Directive-DFA 63-4) State Transportation Pool Rules and Regulations, filed 3/3/1975.

DFA 71-9 (Directive DFA 60-5C) Chapter 116, Laws of 1971, filed 6/30/1971.

DFA 74-2 Per Diem and Mileage Act (Sections 5-10-1 through 5-10-4 NMSA 1953 as Amended) being Chapter 26, Laws of 1974, filed 5/6/1974.

DFA 75-6 (Directive LGD 63-49) Out-of-State Travel, filed 5/6/1975.

DFA 74-4 (Directive-DFA 62-3B) Procedures for In-State and Out-of-State Travel, Laws of 1974, Chapter 26, filed 5/7/1974.

DFA 75-8* (Directive-DFA 63-6) Procedures for In-State and Out-of-State Travel, filed 6/10/1975.

DFA 75-9* (Directive LGD 64-5) Per Diem and Mileage Act as amended, filed 8/7/1975.

DFA 75-17* (Directive DFA 64-16) Expenses of Advisory Committees, Task Forces and other Bodies Appointed by State Agencies, filed 10/9/1975.

DFA 78-3.1* (Rules 78-3) Relating to Reimbursement of Public Officers and Employees for Travel Expenses & Attending Meetings, filed 6/30/1978.

DFA 81-3 (Rule 78-3) Related to the

Reimbursement of Public Officers and Employees for Travel and Attending Meetings, filed 6/26/1981.

DFA 82-2 (Rule 78-3) Related to the Reimbursement of Public Officers and Employees for Travel Expenses and Attending Meetings, filed 10/20/1982. DFA Rule No. 87-2 Related to the Reimbursement of Public Officers and Employees for Travel Expenses and for Attending Meetings; filed 9/30/1987.

DFA Rule No. 90-2 Department of Finance and Administration, DFA 90-2, Governing Per Diem, Mileage and Other Reimbursements to Public Officers and Employees; filed 3/30/1990.

DFA Rule No. 92-1 Regulations Governing the Per Diem and Mileage Act; filed 10/7/1992.

DFA Rule 95-1 Regulations Governing the Per Diem and Mileage Act; filed 11/17/1995.

History of Repealed Material:

2.42.2 NMAC, Regulations Governing the Mileage and Per Diem Act filed 6/16/2003 - Repealed, effective 01/16/2024.

Other History: 2.42.2 NMAC, Regulations Governing the Mileage and Per Diem Act filed 6/16/2003 Replaced by 2.42.2 NMAC, Regulations Governing the Mileage and Per Diem Act effective 01/16/2024.

PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.41.4 NMAC, Sections 2, 7, 9, and 11 effective January 16, 2024.

6.41.4.2 SCOPE:

Provisions of Chapter 41, Part 4 apply to local education agencies (LEA). This regulation governs LEAs. If an LEA chooses to provide transportation services by contracting with a transportation service provider instead of through LEA employed personnel, it may do so. The LEA, however, is responsible for ensuring that the provisions of transportation

services ~~[complies]~~ comply with all pertinent state and federal regulations including 49 Code of Federal Regulations Part 382 and statutes and department regulations.

[6.41.4.2 NMAC - Rp, 6.41.4.2 NMAC, 3/27/2018; A, 1/16/2024]

6.41.4.7 DEFINITIONS:

A. "Activity driver" means an individual who is employed by an LEA or a transportation service provider and has completed all federal, state, and department certifications, licensing requirements, and LEA criteria to drive students on school-sponsored activities.

B. "Child welfare agency" means the children youth and families department.

C. "Children in foster care" means 24-hour substitute care for children and youth who are placed away from their parents or guardians and who are in custody of state or tribal welfare agencies.

D. "Conviction" means an adjudication of guilt, and includes a guilty plea, judgment, or verdict, no contest, nolo contendere, conditional plea of guilty, or any other plea that would result in an adjudication of guilt in any court of competent jurisdiction. A conviction includes a deferred sentence and a conditional discharge prior to satisfaction of the conditions and after satisfaction of conditions where required by the act.

E. "Driver" means school bus driver, substitute school bus driver, activity bus driver, school-owned activity vehicle driver, and sport utility vehicle (SUV) driver.

F. "Eligible student" means:

(1) Students eligible for transportation services under federal and state statute or under the department's standard for determining hazardous walking conditions pursuant to 6.41.3 NMAC. Students are eligible for transportation services in accordance with Section 22-16-4 NMSA 1978 if school bus routes are:

(a) one mile one way for students in grades kindergarten through six;

(b) one and one-half miles one way for students in grades seven through nine, and;

(c) two miles one way for students in grades 10 through 12.

(2) Students with an IEP are entitled to transportation pursuant to Subparagraphs A through C of Paragraph (1) of Subsection F of 6.41.4.7 NMAC, or transportation as a related service pursuant to Subsection EE of 6.41.4.7 NMAC.

G. "Employer" means an LEA or transportation service provider.

H. "Homeless children and youth" as defined by section 725(2) of the McKinney-Vento Act means individuals who lack a fixed, regular, and adequate nighttime residence. The term includes:

(1) children and youth who are:

(a) sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;

(b) living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations;

(c) living in emergency or transitional shelters;

(d) abandoned in hospitals;

(2) children and youth who have a primary nighttime address that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;

(3) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or
(4) migratory children under Title I Part C migrant education program.

I. "Individualized education program (IEP)" means a written statement for a child with a disability that is developed, reviewed,

and revised in accordance with Sections 300.320 through 300.324 of 34 CFR.

J. “IEP team”

means individuals who are involved in writing a student’s IEP. In accordance with Section 300.321 of 34 CFR, Individuals with Disabilities Education Act, this team may include:

- (1) the student’s parents or legal guardian;
- (2) at least one of the student’s general education teachers;
- (3) the student’s special education teacher;
- (4) an individual who can interpret the instructional implications of a student’s evaluation;
- (5) an individual representing the school system;
- (6) individuals with knowledge or special expertise about the student;
- (7) representatives from transition service agencies, if applicable; or
- (8) the student, if appropriate.

K. “Local education agency” or “LEA” means a local public school district [~~a locally chartered charter school~~] or a state-chartered charter school.

L. “On-duty time”

means time related to the driving, servicing, or operation of the vehicle, or those duties assigned or necessary that are related to a specific LEA-sponsored activity trip such as staying with the vehicle for security purposes or assisting with supervision of students. On-duty time also includes performing any compensated work for an entity that is not a motor carrier.

M. “Planned school-sponsored activity trip” means transportation of school groups when the activity is approved according to the LEA’s policy. Activity trips do not include recurring transportation that is part of the school day.

N. “Roadway” means that portion of a highway improved, designed, or ordinarily used for vehicular traffic, exclusive of berm or shoulder.

O. “School bus”

means a commercial motor vehicle used to transport preprimary, primary or secondary school students from home to school, from school to home, or to and from school-sponsored events, but not including a vehicle:

- (1) operated by a common carrier, subject to and meeting all requirements of the public regulation commission but not used exclusively for the transportation of students;
- (2) operated solely by a government-owned transit authority, if the transit authority meets all safety requirements of the public regulation commission but is not used exclusively for the transportation of students;
- (3) operated as a per capita feeder as provided in Section 22-16-6 NMSA 1978; or
- (4) that is a minimum six-passenger, full-size, extended-length, sport utility vehicle operated by a school district employee pursuant to Subsection D of Section 22-16-4 NMSA 1978.

P. “School bus assistant”

means an individual employed by an LEA or a transportation service provider to help the school bus driver and students. A school bus assistant shall be provided on school buses when necessary, when required by law or regulation, or when required by a student’s IEP.

Q. “School bus driver”

means an individual employed by an LEA or a transportation service provider that has completed all federal, state, and department certification and licensing requirements and LEA criteria and is assigned to drive a school bus on an LEA-approved school bus route or on a planned LEA-sponsored activity trip in a school bus that meets requirements pursuant to 6.40.2 NMAC.

R. “School bus driver instructor (SBDI)” means a person certified by the department to provide mandatory pre-service training to applicants who want to drive a school bus in New Mexico.

S. “School bus route”

means a designated course regularly traveled by a school bus for to-and-from transportation to pick up students and take them to school or to deliver students from school to their homes or to designated school bus stops that are approved by the LEA. Should the typical number of students on a school bus route drop below the number of 10, it shall be the responsibility of the LEA to notify the department transportation director by phone or email immediately.

T. “School of origin”

means the school in which the child or youth is enrolled at the time of placement in foster care or prior to becoming homeless.

U. “School-owned activity vehicle” means a vehicle other than a school bus that is used to transport students to and from planned LEA-sponsored activity trips.

V. “School-owned activity vehicle driver”

means an individual who meets all qualifications, licensing requirements and LEA criteria to drive students on LEA-sponsored activities in school-owned vehicles other than school buses.

W. “School-owned activity vehicle instructor” or

“AVI” means a person certified by the department to provide mandatory pre-service training to driver applicants for school-owned activity vehicles.

X. “Serious traffic offense”

means any of the following offenses contained in Sections 66-1-1 through 66-8-141 NMSA 1978:

- (1) speeding in excess of 15 miles above any posted speed limit;
- (2) reckless driving;
- (3) careless driving;
- (4) passing a school bus;
- (5) following too closely;
- (6) operating a commercial motor vehicle without holding a valid commercial driver’s license (CDL) along with any endorsements;

(7) racing on a highway;

(8) homicide or great bodily harm by vehicle;

(9) injury to a pregnant woman;

(10) failing to stop after an accident involving death or personal injury; or

(11) operating a vehicle after suspension or revocation of a driver’s license.

Y. “Sponsor” means an individual, such as a coach, teacher, or parent who accompanies students on a planned LEA-sponsored activity trip.

Z. “Substitute school bus assistant” means an individual employed by an LEA or transportation service provider to help the school bus driver and students when the assigned school bus assistant is absent.

AA. “Substitute school bus driver” means an individual employed by an LEA or transportation service provider to operate a school bus on a school bus route when the assigned school bus driver is absent. The substitute school bus driver shall meet all certification and licensing requirements of a school bus driver.

BB. “Sport utility vehicle (SUV)” means a sport utility vehicle or a crew cab pickup truck. This type of vehicle differs from a typical four-door sedan due to being constructed on a light or medium truck chassis, making it more rugged and giving it higher ground clearance. It must have four full-size doors and seat six to nine passengers. Vans and mini-vans are excluded from this definition.

CC. “To-and-from route serviced by an SUV” means a designated course regularly traveled to pick up designated students at their designated pick-up location to take them to school or to deliver designated students from school to a designated drop-off location.

DD. “Transportation administrator” means an individual employed by the LEA or transportation service provider who has responsibility to monitor and

guide the transportation program, drivers, and assistants and who is required to make daily observations to detect reasonable suspicion for alcohol or substance use or both.

EE. “Transportation as a related service” means specific modifications or support services or both that are required for transportation of a student with an IEP.

FF. “Transportation service provider” means an individual or business that has entered into a binding agreement with the LEA to provide school transportation services.

[6.41.4.7 NMAC - Rp, 6.41.4.7 NMAC, 3/27/2018; A, 1/16/2024]

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.

(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] 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 fingerprint-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. Online 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 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. Online 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]~~ Sections 30-6-1 through 30-6-4, 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. Online 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 employee 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, 8/4/2023; A, 1/16/2024]

6.41.4.11 RESPONSIBILITIES OF DRIVERS, SCHOOL BUS ASSISTANTS, AND SUBSTITUTE SCHOOL BUS ASSISTANTS: All drivers and, where applicable, all school bus assistants and substitute school bus assistants shall:

A. Comply with the following.

(1) Operate the vehicle in a safe and efficient manner in accordance with federal, state, local statutes and regulations, department regulations, and LEA policies.

(2) Cooperate with the transportation administrator's compliance with 49 CFR Part 382 as conducted by the LEA and transportation service provider.

B. Perform a pre-trip inspection.

(1) All school bus drivers shall perform and document a daily thorough pre-trip inspection of the school bus and special equipment, unless completed and documented by other qualified personnel. The inspection shall include, at minimum, inspection of the:

(a) outside of the vehicle:

(i) any fluid leaks, including oil, water, [and any other fluid leaks] power steering, power brakes, transmission, or differential;

(ii) wheels, tires, lug bolts and nuts for serviceability;

(iii) all exterior lights for serviceability and operation;

(iv) all glass, mirrors, and windshields to be clean and unbroken and mirrors adjusted for the driver;

(v) exhaust system for leaks, looseness, and secure clamps, except for electric buses;

(vi) engine compartment for serviceability, hoses, belts, wiring, and proper fluid levels;

(vii) battery for secure connections and no corrosion;

(viii) fuel filler cap, except for electric buses;

(ix) lift system for those vehicles equipped;

(x) service door, emergency exits, and buzzers; and

(xi) stop arm and signs;

(b) inside of the vehicle:

(i) all seats and interior lights;

(ii) horn, windshield wipers, all gauges, and indicators;

(iii) emergency equipment including a first aid kit, fire extinguisher, reflectors, body fluid clean-up kit, and seat belt cutter;

(iv) parking brake and service brake;

(v) interior mirror;

(vi) cleanliness of vehicle;

(vii) heaters and defrosters;

(viii) air or hydraulic brake check; and

(ix) emergency exits and buzzers.

(2) All school-owned activity vehicle drivers shall perform, at a minimum, a thorough pre-trip inspection for operational check of the vehicle and equipment unless completed by other personnel who have completed department-approved pre-service training. The inspection shall, at minimum, include inspection outside of the vehicle pursuant to the requirements listed in items (i) through (viii) of Subparagraph (a) of Paragraph (1) of Subsection B of 6.41.4.11 NMAC and inside of the vehicle pursuant to the requirements listed in items (i) through (viii) of Subparagraph (b) of Paragraph (1) of Subsection B of 6.41.4.11 NMAC. All school-owned activity vehicle drivers shall inspect all gauges, seats, and interior lights of the school-owned activity vehicle.

(3) The driver shall not operate any school bus, activity school bus, or school-owned activity vehicle that does not meet the pre-trip inspection requirements. The driver shall immediately notify the transportation administrator or

designee upon failure of the pre-trip inspection and document the reason for the failure.

C. Use the following basic driving, loading, and unloading procedures for school bus routes.

(1) Drivers shall obey all traffic laws, ordinances, and rules of the road and not drive the school bus faster than the posted speed limit.

(2) Loading and unloading shall occur, whenever possible, off of the traveled portion of the roadway and so that students do not have to cross the roadway.

(3) Drivers shall load or unload students only at established school bus stops unless an emergency dictates otherwise. School bus stops shall not be changed or the time schedules altered by the school bus driver or transportation service provider without the approval of the transportation administrator or designee. Drivers shall not grant permission for a student to load or unload except at the student's designated school bus stop without written approval from the transportation administrator or designee.

(4) Drivers shall use rear view mirrors to check traffic before arriving at the school bus stop.

(5) Drivers shall reduce the speed of the school bus when approaching the school bus stop.

(6) On morning school bus routes, drivers shall:

(a) bring the school bus to a complete stop eight to 10 feet before the school bus stop, set the parking brake and shift the transmission in neutral or, if equipped, park;

(b) make a complete stop at all established school bus stops whether students are present or not, unless a parent or guardian or the transportation administrator has notified the driver that the student will be absent;

(c) not wait for students unless they are observed making an effort to reach the school bus stop or unless otherwise specified in a student's IEP; and

(d) use rear view mirrors to check traffic.

(7) When loading, the driver shall check that all students are seated in the school bus before the school bus is put in motion.

(8) When unloading, the driver shall count the students that have exited the school bus. When students exit the school bus, drivers shall ensure the following.

(a) If students are required to cross the roadway, they shall walk eight to 10 feet in front of the school bus and be positioned perpendicular to the right front portion of the school bus where the driver can see them.

(b) The driver shall check rear view mirrors and all traffic lanes to ensure all required traffic is stopped before signaling students to cross the roadway to the left front portion of the school bus.

(c) Before signaling students to proceed the rest of the way, the driver shall check rearview mirrors and all traffic lanes again to ensure all required traffic is stopped.

(d) The driver shall check to be sure that all students have crossed the roadway safely by using the crossover mirrors and perform a final student count.

(e) The driver shall verify that all doors are free of obstructions then close all doors before the school bus is put in motion.

(f) The driver shall use rear view mirrors to check traffic before departing from the school bus stop.

(9) The driver shall not operate the school bus in such a manner as to cause on-board accidents by jerking, stopping suddenly or swerving unnecessarily.

(10) The driver shall not leave the driver's

seat without setting the park brake, putting the transmission in neutral or, if equipped, park, stopping the engine, and removing the keys. Exceptions include the following:

(a) school buses with a wheelchair lift that meets 6.40.2 NMAC requiring a vehicle interlock system for school buses built after July 1, 2003, and to deactivate the child check safety system. The driver may leave the key in the ignition with the engine off when deactivating the child check safety system but the service door shall be closed;

(b) school buses equipped with a diesel engine and automatic transmission where the driver shall follow the manufacturer's recommendation for parking in gear.

(11) The driver shall keep the school bus clean, well ventilated, and, when necessary, properly heated.

(12) The driver, if traveling in a convoy, shall follow the lead school bus and shall maintain proper distance between vehicles.

(13) The driver shall report all hazards on the school bus route, whether potential or existing, and all causes for failure to operate on schedule to the transportation administrator or designee.

(14) The driver shall not use the school bus outside regular to-and-from transportation or a planned LEA-sponsored activity trip without the approval of the transportation administrator.

D. In addition to requirements pursuant to Subsection C of 6.41.4.11 NMAC use the following if the school bus must be loaded or unloaded on the roadway.

(1) If the school bus must be loaded or unloaded on the traveled portion of the roadway:

(a) The driver shall activate the alternating amber flasher lights not less than 100 feet nor more than 300 feet from a stop in urban areas or not

less than 300 feet nor more than 1,000 feet from a stop in rural areas to warn motorists that the school bus is about to stop on the roadway.

(b) The alternating red flasher lights and stop arm shall be activated after the school bus is completely stopped and the service door is opened.

(i) If a school bus is approaching another school bus that has stopped to load or unload students with its alternating amber or red flasher lights activated, the approaching school bus shall mimic the other bus by activating its alternating amber or red flasher lights and shall not load or unload students.

(ii) Once the school bus loading or unloading students has deactivated its alternating amber or red flasher lights, the approaching school bus shall resume operations.

(2) If the school bus must be loaded or unloaded on the traveled portion of the roadway with multiple traffic lanes in each direction, highway, or a divided roadway:

(a) the school bus shall stop in the right-hand or outside traffic lane;

(b) students shall not be loaded or unloaded in a designated right-turn lane or in a lane immediately adjacent to a designated right-turn lane;

(c) loading and unloading shall occur only on the side of the roadway on which the student lives.

(3) The alternating red flasher lights shall be deactivated before the school bus is put in motion.

(4) The driver shall use good judgment when activating and deactivating the alternating flasher lights so as not to impede traffic unnecessarily.

E. Load and unload students at schools using the following procedures.

(1) If loading or unloading must occur on the street, alternating flasher lights shall not be activated unless the school bus is

stopped on the traveled portion of the roadway.

(2) When loading or unloading, the school bus parking brake shall be activated, transmission shall be in neutral or, if equipped, in park, and the engine shall be 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:

(a) school buses built after July 1, 2003, that are equipped with an interlock for wheel chair lifts; or

(b) school buses equipped with a child check safety system. In buses equipped with this system, the service door shall be closed before the driver leaves the driver's seat.

(3) When loading, school buses may be parked in a single file as close as possible to avoid students or other people from going between the school buses.

(4) When loading, school buses shall be parked prior to dismissal time, if possible. School buses shall be parked in the order that they arrive at the school.

(5) The driver shall not back up a school bus on school grounds unless absolutely necessary and then only with assistance from an adult of the driver's choosing.

F. Operate a school bus on an interstate highway using the following procedures.

(1) All loading or unloading shall be done at points off the interstate highway either at an interchange, service, or frontage road.

(2) The school bus shall not cross over to the opposite roadway or make any other similar maneuver except at interchanges and then only in a manner consistent with the proper procedures at any given interchange unless directed otherwise by a law enforcement officer.

(3) School buses using portions of the interstate highway shall not stop on or adjacent to the roadway unless there is an

emergency or as directed by a law enforcement officer.

(4) The school bus shall not stop on the interstate highway nor shall any students or other passengers load or unload on the interstate highway except in an emergency.

G. Follow the procedures for school buses crossing railroad tracks: The driver is always responsible for the safe movement of the school bus and in no instance shall a railroad signal, active or non-active, abrogate this precaution. The following procedures shall apply to school buses or activity school buses at railroad crossings.

(1) Before crossing any track or tracks of a railroad, the school bus driver shall activate the hazard warning lights and shall bring the school bus to a full and complete stop not less than 15 feet or more than 50 feet from the rail nearest the front of the school bus.

(2) On multiple lane roadways, the school bus shall be in the extreme right traffic lane whenever possible.

(3) If a stop-and-go traffic light controls the movement of traffic at the railroad crossing, the driver need not stop unless the traffic light indicates to stop.

(4) When approaching a railroad crossing, the driver shall carefully observe traffic and reduce the speed of the school bus in advance of stopping.

(5) While completely stopped prior to crossing and until completely across the railroad crossing, the driver shall:

(a) fully open the service door;
(b) fully open the window to the driver's immediate left;

(c) turn off all noisy equipment, radio, and fans;

(d) direct passengers to be silent if passengers are making noise;

(e) listen and look in both directions

along the track or tracks for approaching trains or other vehicles; and

(f) keep the transmission of the school bus in first gear by maintaining a speed which does not cause the transmission to shift.

(6) The school bus driver shall not proceed through the railroad crossing or around crossing gates unless directed by law enforcement officer or railroad personnel if:

(a) there are operating flashing red lights;

(b) there is an operating bell;

(c) a crossing gate is closed or in the process of being opened or closed;

(d) the rear portion of the school bus cannot be positioned more than 15 feet from the rail nearest the rear of the school bus; or

(e) the view in either direction is unclear or is obstructed in any way until the driver has secured the school bus and performed a visual inspection to verify that no trains or other vehicles are approaching.

(7) After safely and completely crossing the railroad tracks, the driver shall:

(a) fully close the service door;

(b) turn off hazard warning lights;

(c) adjust the window to the driver's immediate left;

(d) resume use of any noisy equipment, radio, and fans; and

(e) continue traveling safely.

(8) When traveling near railroad tracks, even if not crossing, the school bus driver shall be aware of hazardous circumstances on the railroad tracks that could present a danger to the school bus. In such situations, the driver shall remain aware and instruct the students to remain silent until there is no longer a danger.

H. Address student safety.

(1) The driver shall be responsible for the safety and orderly conduct of school bus passengers.

(2) The driver, school bus assistants and substitute school bus assistants shall meet all requirements of student IEPs when transportation is a related service.

(3) The driver shall report all serious discipline cases to the transportation administrator or designee in accordance with the department and the LEA's policies.

(4) The driver shall have the authority to assign any passenger to a seat.

(5) The driver shall not carry on any unnecessary conversations with passengers while driving.

(6) The driver shall not permit the transportation of firearms, knives, explosives, breakable glass, or other dangerous objects, reptiles, or animals, except a service animal authorized by an IEP.

(7) In transporting musical instruments, shop projects, or other school projects, items shall be transported pursuant to the requirements listed in Subparagraph (e) of Paragraph (1) of Subsection T of 6.41.4.9 NMAC.

(8) On the school bus, the driver shall not permit items to block the aisle or exits.

(9) While a school bus is in motion, the driver shall not permit any passengers to occupy any area in front of the passenger seating area. All passengers shall be properly seated.

I. Perform a post-trip inspection.

(1) The driver shall, as part of each post-trip inspection, ensure that no passengers remain on board.

(2) The driver shall submit a signed, LEA-approved form reporting all faulty or improperly functioning equipment to the transportation administrator or designee, or the transportation service provider.

J. Participate in emergency evacuation drills for school buses. All school bus drivers, substitute school bus drivers, activity bus drivers, school bus assistants, and substitute school bus assistants shall participate in the emergency evacuation drills or adequate alternate instruction scheduled by the transportation administrator.

K. Be familiar with the location and use of the following emergency equipment:

- (1) hazard warning lights;
- (2) fire extinguisher;
- (3) first aid kit;
- (4) body fluid cleanup kit;
- (5) triangular warning reflectors; and
- (6) seat belt cutter.

L. Address emergency evacuations and accidents.

(1) Emergency evacuations shall take place if there is a fire or danger of fire involving the vehicle. The vehicle shall be stopped and evacuated immediately. Passengers shall move a safe distance away from the vehicle and remain there until given further direction.

(2) Emergency evacuations may take place if the vehicle is stopped in an unsafe position. The driver shall immediately determine whether it is safer for passengers to remain in the vehicle or to evacuate the vehicle. The driver shall direct the passengers to evacuate the vehicle if:

- (a) the vehicle has stopped in the path of a train;
- (b) the position of the stopped vehicle may change, thus increasing the danger to passengers; or
- (c) the position of the stopped vehicle is such that there is danger of another vehicle colliding into it.

(3) In the case of any accident, the driver's first responsibility is for the safety of the passengers. The driver shall:

- (a) stop immediately;
- (b) notify police and the LEA administrator and, if appropriate, the transportation service provider;
- (c) remain calm and reassure passengers;
- (d) if necessary to evacuate the vehicle, direct passengers to a safe place away from traffic and not permit passengers to leave the scene of the accident;
- (e) render reasonable assistance to persons injured in the accident;
- (f) remain at the scene of the accident and not move the vehicle unless required by local ordinance or a law enforcement officer;
- (g) if possible, place reflectors appropriately to warn traffic;
- (h) obtain information such as names, license numbers, registration numbers, location, time, road and weather conditions, and a listing of all passengers including their seating locations;
- (i) make no admission as to liability nor assume responsibility for the accident;
- (j) comply with federal, state, department regulation and LEA policy and procedures in reporting the accident; and
- (k) adhere to any vital emergency medical information provided.

M. Alternating flasher lights shall not be used when the school bus is:

- (1) on school grounds to load or unload students;
 - (2) completely off the traveled portion of the roadway;
 - (3) at a railroad crossing; or
 - (4) stopped, except when loading or unloading students on the roadway.
- [6.41.4.11 NMAC - Rp, 6.41.4.11 NMAC, 3/27/2018; A, 1/16/2024]

SUPERINTENDENT OF INSURANCE, OFFICE OF

This is an amendment to 13.10.34 NMAC, adding new Section 23, effective 1/1/2025 and new Section 24, effective April 1, 2026

13.10.34.23 PLANS SOLD TO INDIVIDUALS COVERED UNDER MAJOR MEDICAL INSURANCE:

Accident-only, specified disease or illness, hospital indemnity, and other fixed indemnity plans issued to individuals, employer groups, labor unions or group plans issued through bona fide associations, covered under a major medical plan shall comply with the provisions of this section.

A. Proof of coverage required. Carriers must obtain proof of major medical coverage prior to the issuance of a plan subject to this section. Proof shall be demonstrated through:

(1) **Individual plans:**
 (a) a copy of the current insurance card; or
 (b) the insurer name, group, and policy number.

(2) **Employer-group, labor unions and group plans issued through a bona fide association:**

(a) A copy of the current insurance card of each subject employee or group member;
 (b) the insurer name, group, and policy number of each subject employee or group member; or

(c) the insurer name(s) and the group number(s) of the major medical plan(s) purchased by the group.

B. Disclosure required.

(1) **Initial disclosure.** Plans issued in accordance with this section must include the following prominently displayed disclosure statement on the application, and enrollment form, as well as on the policy or certificate

of coverage issued to each covered person.

COMPANY NAME

[SPECIFIC EXCEPTED BENEFIT PLAN TYPE] INSURANCE

REQUIRED DISCLOSURE STATEMENT

This [policy] [certificate of coverage] provides [Specific Excepted Benefit Plan Type] ONLY. This [policy] [certificate of coverage] does NOT provide major medical insurance, as defined under New Mexico Law.

[Accurately list benefits, exclusions, reductions and limitations of the policy in a manner that does not encourage misrepresentation of the actual coverage provided.] OR provide a copy of the approved outline of coverage containing this information]

This disclosure statement is a very brief summary of your [policy] [certificate of coverage]. The [policy] [certificate of coverage] itself sets forth the rights and obligations of both you and the insurance company. It is therefore imperative that you READ YOUR [POLICY][CERTIFICATE OF COVERAGE] carefully.

The expected loss ratio for this policy is []%. This ratio is the portion of future premiums that the company expects to pay as benefits under this policy, when averaged over all individuals with this policy or certificate of coverage.

(2) Annual disclosure. Upon renewal, or if coverage is not renewed yearly then not less than annually, the insurer must provide each insured and policyholder the statement listed below. For insurance issued on a group basis, the statement may be provided to the policyholder for distribution to each person insured under the policy.

NOTICE TO BUYER: PLEASE

REVIEW THIS PLAN CAREFULLY. IT ONLY PROVIDES LIMITED BENEFITS, AND IT DOES NOT ON ITS OWN OR IN COMBINATION WITH OTHER LIMITED BENEFITS POLICIES CONSTITUTE MAJOR MEDICAL INSURANCE. BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL MEDICAL EXPENSES.

TO LEARN IF YOU ARE ELIGIBLE FOR A MAJOR MEDICAL PLAN, PREMIUM DISCOUNTS, OR FINANCIAL ASSISTANCE, PLEASE VISIT [WWW.BEWELLM.COM] OR CALL [1-833-862-3935].

C. Ancillary plans.

Plans issued in accordance with this section shall be considered ancillary to the underlying major medical or comprehensive health plan.

(1)

Exemptions. Ancillary plans shall not be required to comply with the following provisions of the rule:

(a)

13.10.34 10- ADDITIONAL REQUIREMENTS FOR ACCIDENT ONLY PLANS

(b)

13.10.34.11- ADDITIONAL REQUIREMENTS FOR HOSPITAL INDEMNITY PLANS

(c)

13.10.34.12- OTHER FIXED INDEMNITY BENEFITS

(d)

13.10.34.13- ADDITIONAL REQUIREMENTS FOR SPECIFIED DISEASE PLANS

(e)

13.10.34.14- ADDITIONAL REQUIREMENTS FOR HOSPICE CARE BENEFITS

(f)

13.10.34.18- REQUIRED DISCLOSURE AND NOTICES

(2)

Requirements. Ancillary plans offered in accordance with this section are subject to these additional requirements:

(a)

Treatment trigger. Benefits offered pursuant to this section may be conditioned upon a covered person receiving medical care given in a medically appropriate location. A carrier shall not condition payment for any such benefit on prior approval of treatment or on medical necessity.

(b)

Basis of compensation. Plans offered pursuant to this section shall provide benefits only on a fixed indemnity basis.

(c)

Benefit maximum. Other fixed indemnity benefits shall be limited to hospitalization, outpatient services, ambulance and other transportation services, behavioral health services, laboratory and imaging services, in-home care, durable medical equipment, home, work or vehicle modifications to accommodate disability, therapy services, treatment-related lost wages, health care related lodging, pet care and daycare services, or cosmetic services relating to a covered accident or illness. Other fixed indemnity benefits offered pursuant to this section shall not be in excess of \$500,000.

D. MEWAs.

MEWAs and non-employer groups subject to the provisions of 13.19.4 NMAC may not offer ancillary plans in accordance with this section, unless the coverage is offered through a bona fide association.

[13.10.34.23 NMAC - N, 1/1/2025]

13.10.34.24 CONTINUING EDUCATION:

A. License required.

All producers selling excepted benefits plans under this rule must maintain current licensure with the state in accordance with the New Mexico Insurance Code.

B. Continuing

education. Producers transacting in excepted benefits must complete at least two hours in specialized training in excepted benefits in order to meet continuing education requirements found in 13.4.7 NMAC.

C. Course offering.

Carriers offering excepted benefits for

sale in New Mexico must offer two-hour specialized training courses for producers. Courses shall comply with all provisions of 13.4.7 NMAC.

D. Effective date. The requirements of this section shall go into effect on April 1, 2026 or upon the final adoption of the amended rule at 13.4.7 NMAC, whichever is later. Licensees, defined under 13.4.7.7 NMAC and subject to this rule, must comply with its requirements prior to the next compliance period.

[13.10.34.24 NMAC - N, 4/1/2026]

End of Adopted Rules

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Submittal Deadlines and Publication Dates

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Issue 2	January 18	January 30
Issue 3	February 1	February 13
Issue 4	February 15	February 27
Issue 5	February 29	March 12
Issue 6	March 14	March 26
Issue 7	March 28	April 9
Issue 8	April 11	April 23
Issue 9	April 25	May 7
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Issue 23	November 26	December 10
Issue 24	December 12	December 23

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