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New Mexico Register

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

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New Mexico Register

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January 14, 2025

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Notices of Rulemaking and Proposed Rules

**REGULATION
AND LICENSING
DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

NOTICE OF PUBLIC HEARING

The Construction Industries Division will convene a public hearing for the adoption of rules for adding a new chapter to Title 14 of the Housing and Construction of the New Mexico Administrative Code titled Chapter 15 Elevator Safety Code with Parts 14.15.1 NMAC - General Provisions; 14.15.2 - Permitting; 14.15.3 - Inspections; 14.15.4 - Fees; 14.15.5 - Contractor’s License Requirements; 14.15.6 -Journeyman Certification; 14.15.7 - Inspectors - 14.15.8 - 2019 NM Safety Code for Elevator and Escalators. The hearing will be held before a hearing officer at which time any interested person is invited to submit data, views or arguments on the proposed rules, either orally or in writing, and to examine witnesses testifying at the hearing. The hearing is scheduled for February 17, 2025.

The purpose of this public rule hearing is to receive public comments regarding the adoption of new rules for the Elevator Safety Act signed into law on April 6, 2023. New rules adopted pursuant to the Elevator Safety Act, NMSA 1978, Sections 60-13B-1 through 15 shall be published under 14.15.1 through 14.15.8 NMAC - Elevator Safety Codes.

The statutory authority for this rulemaking is found in the Elevator Safety Act, Subsection B of Section 60-13B-4 NMSA 1978.

The hearing is scheduled as follows:

An in-person hearing shall be held on February 17, 2025, at the Regulation and Licensing Department located at 5500 San Antonio Drive NE, Albuquerque, NM, starting at 9:30 a.m. The hearing will remain open until 12:00 p.m. or until participants

have an opportunity to make public comment, whichever is longer, but no later than 4:30 pm.

Interested persons may obtain copies of the proposed new rules by logging onto the Construction Industries Division website (<https://www.rld.nm.gov/construction-industries>) to download the proposed rules or by written request to the Albuquerque CID Office – Regulation and Licensing Department, 5500 San Antonio Drive NE, Albuquerque, NM 87109, attention: Felicia Garcia.

You may send written comments to: Construction Industries Division, – Regulation and Licensing Department, 5500 San Antonio Drive NE, Albuquerque, NM 87109, Attention: Public Comments. Written comments may also be faxed to (505) 765-5670 or submitted to Felicia Garcia at her email address: felicia.garcia@rld.nm.gov. All written comments must be received no later than 5:00 p.m., on Friday, February 14, 2025. You may also review submitted comments by requesting copies from Felicia at her email address above. Public comments will be posted on the division’s website (<https://www.rld.nm.gov/construction-industries>). Written comments may also be received at the in-person hearing until the hearing is closed. All public comments received shall be admitted into the record during the public hearing.

If you require special accommodations to attend the hearing, please notify CID by phone, email, or fax, of such needs as soon as possible to ensure adequate accommodations. Telephone: (505) 487-3563. Email: Felicia.garcia@rld.nm.gov; Fax No. (505) 765-5670.

Summary of the Proposed Changes to the Administrative Codes:

14.15.1 NMAC adopt general provisions for the administration of the Elevator Safety Act

14.15.2 NMAC adopt rules for permitting the erecting, constructing, installing, altering, servicing, testing, repairing, maintaining, removing or dismantling conveyances contained within a building or structure

14.15.3 NMAC adopt rules of inspecting the erecting, constructing, installing, altering, servicing, testing, repairing, maintaining, removing or dismantling conveyances contained within a building or structure

14.15.4 NMAC adopt rules for fees charged for the administering of the Elevator Safety Act.

14.15.5 NMAC adopt contractor’s license requirements

14.15.6 NMAC adopt journeyman certification requirements

14.15.7 NMAC adopt inspector requirements

14.15.8 NMAC adopt 2019 NM Elevator Safety Code Requirements for elevator and escalators

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Office of Superintendent of Insurance (OSI or Superintendent) will hold a public hearing in person, via video conference and telephone conference regarding proposed amendments to 13.18.2 NMAC, Credit Life and Credit Health Insurance. **This hearing will commence on Wednesday, February 19, 2025, at 10:00 a.m., MDT.**

PURPOSE OF THE PROPOSED

RULE: The purpose of this rulemaking is to: **1)** conduct a general cleanup of the format of, and citations in the rule, where necessary; **2)** update the definitions section

13.18.2.7 NMAC; 3) update the rule from its 2007 version by repealing and replacing the entire rule; and, 4) remove all references to rates set in the rule so that any future necessary updates of rates will be communicated through a bulletin.

STATUTORY AUTHORITY:

Sections 14-4-1 *et seq.*, NMSA 1978, State Rules Act and Sections 59A-2-9 NMSA 1978, and the Law for Regulation of Credit Life Insurance and Credit Health Insurance, Chapter 59A, Article 25 NMSA 1978.

TO ATTEND THE HEARING IN PERSON:

Office of Superintendent of Insurance - 1120 Paseo de Peralta, (PERA Building), 4th Floor Hearing Room, Santa Fe, NM 87501

PLEASE NOTE: The entrance to the PERA Building is on the ground floor. All guests must sign in with the ground floor receptionist and then will be escorted to the 4th Floor Hearing Room. Please give yourself extra time to check in before 10:00 a.m.

TO ATTEND THE HEARING BY ELECTRONIC VIDEO CONFERENCE VIA MS TEAMS MEETING:

Please copy the link below into your browser to get to the video conference meeting:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZmViYjIzMzUtNjVhNkNS00NDNLWJhYmItOTg3YmM0ZDQ4ODRm%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%2292f8d9f0-87c0-44c3-9357-ba0eb6121f10%22%7d

Meeting ID: 246 421 189 153
Passcode: X2Xa7DJ7

TO ATTEND VIA TELEPHONE:

+1 505-312-4308 Phone Conference ID: 997 300 310#

PUBLIC COMMENT: The Superintendent designates Brittany O’Dell as the hearing officer for this

hearing. Oral comments will be accepted at the public hearing from members of the public and other interested parties in-person or via electronic video conference. Copies of the Notice of Proposed Rulemaking and proposed rule are available by electronic download from the OSI eDocket (<https://edocket.osi.state.nm.us/case-view/6026>). You may also request copies if the Notice of Proposed Rulemaking and proposed rule by emailing Brittany O’Dell at: brittany.odell@osi.nm.gov or by phone at: 505-309-2827, email communication is preferred. Any copies of the Notice of Proposed Rulemaking, proposed rules, and any updates concerning the hearing date, time, or location will be available by visiting the OSI website at: <https://www.osi.state.nm.us/pages/bureaus/legal/resources/laws-rules> or on the Sunshine Portal at: https://statenm.my.salesforce-sites.com/public/SSP_RuleHearingSearchPublic (from the “Agency” drop down menu, select “Office of Superintendent of Insurance”)

Written comments will be accepted through 4:00 p.m. on Thursday, February 13, 2025. Responses to written comments or to oral comments delivered at the hearing will be accepted through 4:00 p.m. on Thursday, February 20, 2025. All comments shall be filed electronically through the OSI eDocket. Please copy the following link into your browser to get to the eDocket: <https://edocket.osi.state.nm.us/case-view/6026>

Written comments may be sent via U. S. mail to:
**OSI Records and Docketing
NM Office of Superintendent of Insurance
P.O. Box 1689, Santa Fe, NM
87504-1689**

Written comments must be received by OSI and stamped as accepted between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. The Superintendent will consider all

oral comments and will review and consider all timely submitted written comments and written responses. For help submitting a filing, please contact osi-docketfiling@state.nm.us. **The below docket number and title must be indicated on all written comments submitted to the OSI:**

Docket No. 2024-0112– Please copy the following link into your browser to get to the eDocket: <https://edocket.osi.state.nm.us/case-view/6026> IN THE MATTER OF THE REPEAL AND REPLACEMENT OF 13.18.2 NMAC, CREDIT LIFE AND CREDIT HEALTH INSURANCE

SPECIAL NEEDS: Any person with a disability requiring special assistance to participate in the hearing should contact Andrea Padilla, at 505-531-7171 no later than ten (10) business days prior to 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

This is an amendment to 20.11.63 NMAC Sections 2 and 11, effective 1/14/2025.

20.11.63.2 SCOPE: 20.11.63 NMAC is applicable to all stationary sources of air pollutants located within Bernalillo county, which are subject to the requirements of 40 CFR Part 60, as amended in the *Federal Register* through [January 23, 2017] November 15, 2024.

A. Exempt: 20.11.63 NMAC does not apply to sources within Bernalillo county that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

B. Exclusions:
(1) 40 CFR 60, Subpart AAA, *Standards of Performance for New Residential Wood Heaters.*

(2) 40 CFR 60, Subpart QQQQ, *Standards of Performance for New Residential Hydronic Heaters and Forced Air Furnaces.*

C. Variances: The variance provisions of 20.11.7 NMAC, *Variance Procedure*, Revised Ordinances of Albuquerque 1994 Section 9-5-1-8, Bernalillo County Ordinances Section 30-37, and Section 74-2-8 NMSA 1978 shall not apply to 20.11.63 NMAC or the incorporated federal standards. [1/1/2000; 20.11.63.2 NMAC - Rn, 20 NMAC 11.63.2, 10/1/2002; A, 1/1/2005; A, 1/1/2006; A, 1/15/2007; A, 2/16/2009; A, 12/12/2011; A, 2/10/2014; A, 5/13/2017; A, 1/14/2025]

20.11.63.11 INCORPORATION OF FEDERAL STANDARDS: Except as otherwise provided in 20.11.63 NMAC, the New Source Performance Standards promulgated by the United States environmental protection agency, and codified at 40 CFR Part 60, including Subpart A, *General Provisions* thereto, as amended in the *Federal Register* through [January 23, 2017] November 15, 2024, are hereby incorporated into 20.11.63 NMAC. [1/1/2000; 20.11.63.11 NMAC - Rn, 20 NMAC 11.63.11, 10/1/2002; A, 1/1/2005; A, 1/15/2007; A, 2/16/2009; A, 12/12/2011; A, 2/10/2014; A, 5/13/2017; A, 1/14/2025]

ALBUQUERQUE - BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.64 NMAC Sections 2, 11 and 12, effective 1/14/2025.

20.11.64.2 SCOPE: 20.11.64 NMAC is applicable to all stationary sources of air pollutants located within Bernalillo county, which are subject to any requirements of 40 CFR Part 61 or Part 63, as amended in the *Federal Register* through [January 23, 2017] November 15, 2024.

A. Exempt: 20.11.64 NMAC does not apply to sources within Bernalillo county, that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

B. Exclusions:
(1) 40 CFR 61, Subpart B, *National Emission Standards for Radon Emissions From Underground Uranium Mines;*

(2) 40

CFR 61, Subpart H, *National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities;*

(3) 40 CFR 61, Subpart I, *National Emission Standards for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H;*

(4) 40 CFR 61, Subpart K, *National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants;*

(5) 40 CFR 61, Subpart Q, *National Emission Standards for Radon Emissions From Department of Energy Facilities;*

(6) 40 CFR 61, Subpart R, *National Emission Standards for Radon Emissions From Phosphogypsum Stacks;*

(7) 40 CFR 61, Subpart T, *National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings;* and

(8) 40 CFR 61, Subpart W, *National Emission Standards for Radon Emissions From Operating Mill Tailings.*

C. Variances: The variance provisions of 20.11.7 NMAC, *Variance Procedure*, Revised Ordinances of Albuquerque 1994 Section 9-5-1-8, Bernalillo County Ordinances Section 30-37 and Section 74-2-8 NMSA 1978 shall not apply to 20.11.64 NMAC or the incorporated federal standards. [1/1/2000; 20.11.64.2 NMAC - Rn, 20 NMAC 11.64.2, 10/1/2002; A, 1/1/2005; A, 1/15/2007; A, 2/16/2009; A, 12/12/2011; A, 2/10/2014; A, 5/13/2017; A, 1/14/2025]

20.11.64.11 INCORPORATION OF FEDERAL

STANDARDS CODIFIED AT

40 CFR PART 61: Except as otherwise provided, the National Emission Standards for Hazardous Air Pollutants, promulgated by the United States environmental protection agency, and codified at 40 CFR Part 61, including Subpart A, *General Provisions* thereto, as amended in the *Federal Register* through [January 23, 2017] November 15, 2024, are hereby incorporated into 20.11.64 NMAC. [1/1/2000; 20.11.64.11 NMAC - Rn, 20 NMAC 11.64.11, 10/1/2002; A, 1/1/2005; A, 1/15/2007; A, 2/16/2009; A, 12/12/2011; A, 2/10/2014; A, 5/13/2017; A, 1/14/2025]

20.11.64.12**INCORPORATION OF FEDERAL STANDARDS CODIFIED AT**

40 CFR PART 63: Except as otherwise provided, the National Emissions Standards for Hazardous Air Pollutants for Source Categories, promulgated by the United States environmental protection agency, and codified at 40 CFR Part 63, including Subpart A, *General Provisions* thereto, as amended in the *Federal Register* through [January 23, 2017] November 15, 2024, are hereby incorporated into 20.11.64 NMAC. [1/1/2000; 20.11.64.12 NMAC - Rn, 20 NMAC 11.64.12, 10/1/2002; A, 1/1/2005; A, 1/15/2007; A, 2/16/2009; A, 12/12/2011; A, 2/10/2014; A, 5/13/2017; A, 1/14/2025]

PUBLIC SCHOOL FACILITIES AUTHORITY

NM Public School Facilities Authority approved at its 12/19/2024 hearing, to repeal its rule 6.27.30 NMAC, Statewide Adequacy Standards, filed 9/1/2002, and replace it with 6.27.30 NMAC, Statewide Adequacy Standards, adopted on 12/19/2024 and effective 1/14/2025.

PUBLIC SCHOOL FACILITIES AUTHORITY**TITLE 6 PRIMARY AND SECONDARY EDUCATION****CHAPTER 27 PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL****PART 30 STATEWIDE ADEQUACY STANDARDS****6.27.30.1 ISSUING**

AGENCY: Public School Capital Outlay Council.
[6.27.30.1 NMAC - Rp, 6.27.30.1 NMAC, 1/14/2025]

6.27.30.2 SCOPE: The purpose of this rule is to provide statewide adequacy standards for public school buildings and grounds. The application of these standards shall be limited to space and attributes needed to support educational programs and curricula, defined and justified as required by public education department standards and benchmarks, and that is sustainable within the operational budget for staffing, maintenance, and full utilizations of the facilities. The New Mexico public school statewide adequacy standards are dynamic and the council plans to review them periodically, and amend them as time and circumstances require. These standards are intended for use in the evaluation of baseline requirements for existing public school facilities and are not intended to limit the flexibility of design solutions for new construction and renovation projects. The New Mexico public school adequacy planning guide is a companion document provided by the state for use in the programming and design of school projects. The New Mexico public school adequacy planning guide is incorporated by reference into these standards, and may be amended by the council with adequate notice and input from the public.

[6.27.30.2 NMAC - Rp, 6.27.30.2 NMAC, 1/14/2025]

6.27.30.3 STATUTORY

AUTHORITY: The Public School Capital Outlay Act, Section 22-24-5 NMSA 1978.
[6.27.30.3 NMAC - Rp, 6.27.30.3 NMAC, 1/14/2025]

6.27.30.4 DURATION:

Permanent.
[6.27.30.4 NMAC - Rp, 6.27.30.4 NMAC, 1/14/2025]

6.27.30.5 EFFECTIVE

DATE: January 14, 2025, unless a later date is cited at the end of a section.
[6.27.30.5 NMAC - Rp, 6.27.30.5 NMAC, 1/14/2025]

6.27.30.6 OBJECTIVES:

The New Mexico public school statewide adequacy standards establish the acceptable levels for the physical condition and capacity of school buildings, the educational suitability of those facilities and the need for technological infrastructure at those facilities. The standards are not intended to restrict a facility's maximum size.
[6.27.30.6 NMAC - Rp, 6.27.30.6 NMAC, 1/14/2025]

6.27.30.7 DEFINITIONS:

Unless otherwise specified, the following definitions apply:

- A. "ancillary space"** means any subordinate space necessary to support an activity or function of main programmatic space(s);
- B. "current enrollment"** means the current number of students enrolled at an existing school;
- C. "combination school"** means a school that contains the elementary school, middle school/junior high school and high school, or any combination thereof.
- D. "council"** means the public-school capital outlay council;
- E. "equipment"** means a specified item not affixed to the real property of a school facility;
- F. "exterior envelope"** means the exterior walls, roof, doors, windows, and structural system of a building;
- G. "fixture"** means a specified item that is affixed to the real property of a school facility;
- H. "general use classroom"** means a classroom

space that is or can be appropriately configured for instruction in at least the areas of language arts (including bi-lingual), mathematics and social studies;

I. “kitchenette” means a small food storage and warming area, which usually has a refrigerator, sink, and a microwave, but may have other appliances;

J. “net sf” means the net square footage area of an interior room or space, calculated using the interior measurements from the interior face of wall to interior face of wall;

K. “network distribution space” means space dedicated to securely house all devices and cabling necessary to cross-connect any outside line(s) with the school internal distribution frame up to, but not including, end-user devices;

L. “occupiable space” means enclosed space within the school facility and serving a classroom, administrative, or support purpose and is occupied by staff, students, or public on a regular or flexibly assigned basis; this shall not include space exclusively used for storage or to house mechanical, electrical, or other equipment;

M. “planned school program capacity” means the planned number of students for a new or replacement facility, or in an existing school facility to be modified in capacity, and shall be accommodated in the entire facility when all phases of construction are fully completed; these shall include students in regular education classes, in combination with special education students requiring special education classrooms in compliance with public education department requirements;

N. “play field” means an outdoor grass or synthetic turf area to support site recreation and outdoor physical education;

O. “school facility” means a building or group of buildings and outdoor area that are administered together to comprise a school;

P. “school site” means

one or more parcels of land where a school facility is located; more than one school facility may be located on a school site;

Q. “specialty classroom” means a non-general use classroom space that is or can be appropriately configured for instruction in a specific subject such as science, physical education, special education, career technical education, or art;

R. “student” means “qualified student or MEM” as defined in Section 22-8-2 NMSA 1978;

S. “teacher housing” means a residence that houses a teacher or administrator on site; and

T. “technology infrastructure” means facilities including network, hardware, software, maintenance and other activities required to support information technology services. [6.27.30.7 NMAC - Rp, 6.27.30.7 NMAC, 1/14/2025]

6.27.30.8 GENERAL REQUIREMENTS: These standards are not intended to supersede or omit, compliance with applicable building and fire code or any other code, regulation, law or standard that has been adopted by state agencies.

A. Building condition. A school facility must be safe and capable of being maintained.

(1) Structural. A school facility must be structurally sound. A school facility shall be considered structurally sound and safe if the building presents no imminent danger or major visible signs of decay or distress.

(2) Exterior envelope. An exterior envelope is safe and capable of being maintained if:

(a) walls and roof are weather tight under normal conditions with routine upkeep; and

(b) doors and windows are weather tight under normal conditions with routine upkeep; and

(c) the building structural systems support the loads imposed on them.

(3) Interior surfaces. An interior surface is safe and capable of being maintained if it is:

(a) structurally sound;

(b) capable of supporting a finish; and

(c) capable of continuing in its intended use, with normal maintenance and repair.

(4) Interior finishes. An interior finish is safe and capable of being maintained if it is:

(a) free of exposed lead paint;

(b) free of friable asbestos; and

(c) capable of continuing in its intended use, with normal maintenance and repair.

B. Building systems. Building systems in a school facility must be in working order and capable of being properly maintained. Building systems include roof, plumbing, telephone, electrical, heating and cooling, fire alarm, 2-way internal communication, external communication, appropriate technological infrastructure, and security systems.

(1) General. A building system shall be considered to be in working order and capable of being maintained if all of the following apply:

(a) The system is capable of being operated as intended and maintained.

(b) Newly manufactured or refurbished replacement parts are available.

(c) The system is capable of supporting the adequacy standards established in this rule.

(d) Components of the system present no imminent danger of personal injury.

(2) Plumbing fixtures. A school facility shall be equipped with sanitary facilities in

accordance with the New Mexico building code. Fixtures shall include, but are not limited to, water closets, urinals, lavatories and drinking fountains. Restrooms shall be reasonably available so students will not have to exit the building.

(3) Fire alarm and emergency notification system. A school facility shall have a fire alarm and emergency notification system as required by applicable state fire codes and emergency procedures.

(4) Two-way communication and exterior site communication systems. A school facility shall have a two-way building interior communication system between a central location and each classroom, isolated office space, library, physical education space, cafeteria, and other regularly-used spaces. An exterior communication system allowing emergency instructions to be clearly broadcast from a central location to all outdoor site areas adjacent to the school building(s) shall be provided. Exterior communications systems shall be capable of remote administrator control.

(5) Technological infrastructure. A school facility shall have built-in technology infrastructure as appropriate to support all aspects of the educational, operational and administrative processes, with functional access to wired and wireless connectivity throughout all occupiable spaces. Wireless coverage and density shall be appropriate to serve all users' devices at all locations within the facility and at exterior seating areas adjacent to the building(s).

[6.27.30.8 NMAC - Rp, 6.27.30.8 NMAC, 1/14/2025]

6.27.30.9 CLASSIFICATION OF PUBLIC SCHOOLS: The classifications for public schools, including charter schools, under these standards are:

- A. Early childhood: A school with only pre-kindergarten.
B. Elementary school: A school with a combination of

grades pre-kindergarten through 6th.

C. Middle school/ junior high school: A school with a combination of grades 6th through 8th.

D. High school: A school with grades 9th through 12th.

E. Combination school: A school that contains any combination of the elementary school, middle school/junior high school and high school.

[6.27.30.9 NMAC - Rp, 6.27.30.9 NMAC, 1/14/2025]

6.27.30.10 SCHOOL SITE:

A school site shall be of sufficient size to accommodate safe access, parking, drainage and security. Additionally, the site shall be provided with an adequate source of potable water and appropriate means of effluent disposal.

A. Safe access and circulation. A school site shall be configured for safe, controlled access and on-site circulation. It shall have clearly identified and visually-observable pedestrian and vehicular pathways extending from the site perimeter to the main building entrance. Pedestrian and vehicular traffic, including service vehicle traffic shall be safely separated on site. If buses are used to transport students then separate bus loading/unloading areas shall be provided wherever possible. Dedicated student drop-off and pickup areas shall be provided for safe use by student passengers arriving or departing by automobile.

B. Staff, student and visitor parking. A school site shall include a maintainable surfaced area that is stable, firm and slip resistant and is large enough to accommodate 1.5 parking spaces /staff FTE and 1 student space /4 high school students. If this standard is not met, alternative parking may be approved after the sufficiency of parking at the site is reviewed by the council using the following criteria:

- (1) availability of street parking around the school;
(2) availability of any nearby parking lots;
(3) availability of public transit;

(4) number of staff who drive to work on a daily basis; and

(5) average number of visitors on a daily basis.

C. Drainage. A school site shall be configured such that runoff does not undermine the structural integrity of the school buildings located on the site or create flooding, ponding or erosion resulting in a threat to health, safety or welfare. [6.27.30.10 NMAC - Rp, 6.27.30.10 NMAC, 1/14/2025]

6.27.30.11 SITE RECREATION AND OUTDOOR PHYSICAL EDUCATION:

A school facility shall have area, space and fixtures, in accordance with the standard equipment necessary to meet the educational requirements of the public education department, for physical education activity. Play area(s), play field(s) and equipment for physical education and school recreational purposes shall be age appropriate and be provided based on the planned school program capacity or current enrollment.

A. Early childhood. Play areas for pre-kindergarten shall be fenced or walled, with age-appropriate playground equipment and convenient to the pre-kindergarten classroom(s).

B. Elementary school. Safe play area(s) and playground(s), including paved multipurpose play surface(s) or unpaved recreation area(s), shall be conveniently accessible to the students. Play areas for kindergarten shall be fenced or walled, with age-appropriate playground equipment and convenient to the kindergarten classroom(s).

C. Middle school/ junior high school. A paved multipurpose play surface and play field(s) for physical education activities shall be provided.

D. High school. A paved multipurpose play surface and a play field for physical education activities shall be provided.

E. Combination school. A combination school shall provide the elements of the grades

served by Subsections A, B, C and D above without duplication, but shall meet the highest standard.
[6.27.30.11 NMAC – Rp, 6.27.30.11 NMAC, 1/14/2025]

6.27.30.12 OCCUPIABLE SPACE: All occupiable space within the building(s) shall meet or exceed the general requirements listed below:

- A. Fixtures and equipment.**
 - (1) Each general and specialty classroom shall contain a work surface and seat for each student in the classroom. The work surface and seat shall be appropriate for the normal activity of the class conducted in the room.
 - (2) Each general and specialty classroom shall have an erasable surface and a surface suitable for projection purposes, appropriate for group classroom instruction, and a display surface. A single surface may meet one or more of these purposes.
 - (3) Each general and specialty classroom shall have storage for classroom materials or access to conveniently located storage.
 - (4) Each general and specialty classroom shall have a work surface and seat for the teacher and for the aide assigned to the classroom, and it shall have secure storage for student records that is located in the classroom or is convenient to access from the classroom.
 - (5) Occupiable administrative and facility support spaces shall have the fixtures and equipment necessary for functions performed within.

B. Lighting.
(1) All occupiable space within the building(s) shall have a light system capable of maintaining at least 50 foot-candles of well-distributed light. Provide appropriate task lighting in specialty classrooms and other occupiable spaces where enhanced visibility is required.

(2) The light level shall be measured at a work

surface located in the approximate center of the classroom, between clean light fixtures.

C. Temperature.
(1) Each general and specialty classroom shall have a heating, ventilation and air conditioning (HVAC) system capable of maintaining a temperature between sixty-eight and seventy-five degrees fahrenheit with full occupancy.

(2) The temperature shall be measured at a work surface in the approximate center of the classroom.

D. Acoustics.
(1) All occupiable space within the building(s) shall be maintainable at a sustained background sound level of less than 55 decibels.

(2) The sound level shall be measured at a work surface in the approximate center of the classroom.

(3) All occupiable space within the building(s) shall be acoustically-separated from adjoining spaces when necessary to meet privacy or confidentiality requirements.

E. Air quality.
(1) All occupiable space within the building(s) shall have an HVAC system that continually moves air and is capable of maintaining a CO₂ level of not more than 1,000 parts per million.

(2) The air quality shall be measured at a work surface in the approximate center of the classroom.

F. Technology.
All occupiable spaces within the building(s) shall have technology and connectivity that will appropriately support educational activities conducted in the room. Safe and adequate access to power to recharge and operate technology devices by all students and staff simultaneously shall be provided.

[6.27.30.12 NMAC - Rp, 6.27.30.12 NMAC, 1/14/2025]

6.27.30.13 SCHOOL SECURITY: School security features

shall be integrated at all layers of the school.

A. Site security.
(1) All functional areas of a school site shall have safe and secure site fencing or other barriers with accommodations for safe passage through openings to protect students from the hazards of traffic, railroad tracks, steep slopes, animal nuisance, and to discourage unauthorized access to the school site. Alternative security may be approved after the sufficiency of security at the site is reviewed by the council using the following criteria:

- (a) amount of vehicular traffic near the school site;
- (b) existence of hazardous or natural barriers on or near the school site;
- (c) amount of animal nuisance or unique conditions near the school site;
- (d) visibility of the play/physical education area; and
- (e) site lighting, as required to meet safe, normal access conditions.

B. Building security.
All occupiable spaces within the building(s) shall have the ability to control access to the extent required for confidentiality and security. Building attributes supporting controlled access to the building(s) and interior spaces, shall be integrated with all layers of school security.

(1) Security systems. Built-in security systems, which support building access control and emergency operations, shall be in working order.

(2) Classroom doors. All interior and exterior classroom doors, accessible from indoor and outdoor traffic areas, shall have hardware that is lockable from the inside of the classroom.

[6.27.30.13 NMAC - N, 1/14/2025]

6.27.30.14 GENERAL USE CLASSROOMS (LANGUAGE ARTS, MATHEMATICS AND SOCIAL STUDIES):

A. Cumulative

classroom net sf requirements, excluding in-classroom storage space, shall be at least:

- (1) Pre-Kindergarten - Kindergarten 1000 net sf minimum
- (2) Grades 1 - 5 800 net sf minimum
- (3) Grades 6 - 8 800 net sf minimum
- (4) Grades 9 - 12 800 net sf minimum

B. In addition, at least 2 net sf/student shall be available for dedicated classroom storage.

C. All pre-kindergarten classrooms shall have a sink.

D. A sufficient number of classrooms shall be provided to meet statutory student/staff ratio requirements.

[6.27.30.14 NMAC - Rp, 6.27.30.13 NMAC, 1/14/2025]

6.27.30.15 SPECIAL EDUCATION SECTION

A. Special education:

- (1) Special education classrooms shall not be smaller than 800 net sf.
- (2) Special education classrooms serving students requiring a high degree of personal care and assistance shall include an accessible unisex restroom, a kitchenette, and at least 15 net sf of storage.

B. A school shall provide ancillary space for therapy programs, such as occupational, physical, speech and language, no smaller than 650 net sf each. These functions may be combined into one space if scheduling permits shared use and sufficient physical and acoustic separation is provided to ensure privacy.

[6.27.30.15 NMAC - N, 1/14/2025]

6.27.30.16 SPECIALTY CLASSROOMS:

A. Science education:

- (1) For grades pre-kindergarten through 6, provide storage space for science equipment

and materials. No additional classroom space is required.

(2) For grades 7 through 12, 4 net sf/student of the planned school program capacity or current enrollment for science is required. The space shall not be smaller than 800 net sf. The space shall have science fixtures and equipment, in accordance with the standard equipment and technology necessary to meet the educational requirements of the public education department. If an alternate science learning method is used by a school district, the district shall verify the appropriate alternate fixtures and equipment to the council. Provide at least 96 net sf for securable, well-ventilated storage/prep space for each science room having science fixtures and equipment. Storage/prep room(s) may be combined and shared between more than one classroom.

B. Art education. A school facility shall have classroom space to deliver art education programs, including dance, music, theatre/drama, and visual arts programs, or have access to an alternate learning method. Art education classroom space(s) may be used for other instruction.

(1) Early education. If applicable, art education programs may be accommodated within a general use classroom.

(2) Elementary school. Art education programs may be accommodated within a general use or dedicated art classroom. Classroom space(s) for art education shall not be smaller than 800 nsf. Provide additional dedicated art program storage of at least 60 net sf per facility. Dedicated art classrooms, excluding performing arts, shall have a sink.

(3) Middle school/junior high school. Classroom space(s) for art education programs shall have no less than 4 net sf/student and shall not be smaller than 800 nsf. Provide additional ancillary space for group music practice, individual music practice room(s), specialized storage/library rooms, and office(s). Dedicated art classrooms, excluding performing arts, shall have a sink.

(4) High school. Classroom space(s) for art education programs shall have no less than 5 net sf/student and shall not be smaller than 800 nsf. Provide additional ancillary space for group music practice, individual music practice room(s), specialized storage/library rooms, and office(s). Dedicated art classrooms, excluding performing arts, shall have a sink.

(5) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication.

C. Career technical education.

(1) Early education and elementary school. No requirement.

(2) Middle school/junior high school. Career technical education programs shall have no less than 3 net sf/student. Additional space for specialized curriculum, equipment and technology requirements, and safety zones shall be included. Each program lab or classroom space shall not be smaller than 800 net sf.

(3) High school. Career technical education programs shall have no less than 4 net sf/student. Additional adequate space for specialized curriculum, equipment and technology requirements, and safety zones shall be included. Each program lab or classroom space shall not be smaller than 800 net sf.

(4) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards.

D. Technology education. A school facility shall have space (computer labs) to deliver educational programs in technology or have access to an alternate delivery method (one-to-one devices). This requirement may be distributed throughout other program spaces.

(1) Early education. No requirement.

(2) Elementary school. Provide space that meets 3 net sf/student of the planned school program capacity or current enrollment, with no less than 700 net sf.

(3) Middle school/junior high school. Provide space that meets at least 3 net sf/student of the planned school program capacity or current enrollment, with no less than 800 net sf.

(4) High school. Provide space that meets 3 net sf/student of the planned school program capacity or current enrollment, with no less than 900 net sf.

(5) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards.

E. Alternate delivery method. If an alternate delivery method is used by a school for instruction, the space used for the alternate method may be approved following review by the council. [6.27.30.16 NMAC - Rp, 6.27.30.14 NMAC, 1/14/2025]

6.27.30.17 PHYSICAL EDUCATION:

A. General requirements. A school facility shall have an area, space and fixtures for indoor physical education activity. This space may have more than one function and may fulfill more than one standard requirement.

(1) Early education. No requirement.

(2) Elementary school. Provide an indoor physical education teaching facility with at least 2,400 net sf. This space may have multi-purpose use in accommodating other educational program activities such as art program performances.

(3) Middle school/junior high school. For a middle school/junior high school facility, an indoor physical education teaching facility that shall have

a minimum of 5,200 net sf, plus bleachers for 1.5 design capacity.

(4) High school. A physical education complex shall have a minimum of 6,500 net sf, plus bleachers for 1.5 design capacity.

(5) Combination school. Provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher net sf standards with bleacher capacity for at least 2.0-planned school program capacity or current enrollment. A single high school gymnasium shall fulfill the minimum requirements of both high school and middle school/junior high school classes. If the combination school includes an elementary, then it shall include the separate space required for an elementary school. This space may have more than one function and may fulfill more than one standard requirement.

(6) Physical education space and seating shall support access to and use of appropriate technology devices and have access to power and functional wireless connectivity.

B. Additional physical education requirements:

(1) Early education. No requirement.

(2) Elementary school. One office shall be provided, with separate physical education equipment storage with a minimum of 200 net sf each.

(3) Middle school/junior high school. Two dressing rooms shall be provided, with lockers, restroom fixtures, and at least one shower per dressing room. Two offices shall be provided with a minimum of 150 net sf each, along with separate physical education equipment storage space, with a minimum of 300 net sf.

(4) High school. Two dressing rooms shall be provided, with lockers, restroom fixtures, and at least one shower per dressing room. Two offices shall be provided with a minimum of 150 net sf each, along with separate physical education equipment storage space, with a minimum of 300 net sf.

(5) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards. [6.27.30.17 NMAC - Rp, 6.27.30.15 NMAC, 1/14/2025]

6.27.30.18 LIBRARIES, MEDIA, AND RESEARCH CENTERS:

A school facility shall have flexible space for students to access research materials, books, digital devices, and computers, with wired and wireless connectivity. The facility shall have fixtures, equipment, technology, and resources in accordance with the standard equipment necessary to meet the educational requirements of the public education department. The area be at least 2.5 net sf/student of the planned school program capacity or current enrollment, but no less than 1,000 net sf. In addition, office/workroom space and secure storage shall be provided, with a cumulative minimum of 200 net sf. [6.27.30.18 NMAC - Rp, 6.27.30.16 NMAC, 1/14/2025]

6.27.30.19 FOOD SERVICE STANDARDS:

A. Cafeterias. A school facility shall have adequate space and equipment necessary to provide regular meals to students during the school day.

(1) Dining. A school facility shall have a covered area or space, or combination, to permit students to eat within the school site, outside of general classrooms. This space may be multi-purpose and may fulfill more than one adequacy standards requirement not in conflict with the regular serving and dining function. Dining area shall be sized for the planned school program capacity or current enrollment to allow for a meal period requiring no more than three serving periods. The dining area shall have no less than 15 net sf/seated student.

(2) Serving. Serving area(s) accommodating efficient flow of traffic shall be

provided in addition to net sf areas assigned to dining and food preparation area. The space, fixtures and equipment shall be appropriate for the food service program of the school facility and shall be provided in consideration of the size and location of the facility. Food service facilities and equipment shall comply with the food service and food processing regulations of the New Mexico department of environment.

B. Kitchen. Kitchen space and equipment shall comply with either the food preparation kitchen or the serving kitchen standards defined as follows:

(1) Food preparation kitchen - 2 net sf/meal served minimum, based upon the single largest serving period:

(a) Early childhood and elementary school: 1,000 net sf minimum.

(b) Middle school/junior high school: 1,600 net sf minimum.

(c) High school: 1,700 net sf minimum.

(d) Combination school: shall provide the elements of the grades served by Subparagraphs (a), (b) and (c) above without duplication, but meeting the higher standards.

(2) Serving kitchen. Where food is not prepared on the school site, but is delivered prepared, there shall be a minimum of 200 net sf.

(3) Additional kitchen space requirements. The kitchen shall include an office with a minimum of 150 net sf, restroom, lockers, and a custodial space with a mop sink.

(4) Fixtures, equipment, and storage. A school facility shall have space, fixtures and equipment accessible to the kitchen and serving area, in accordance with the standard equipment required, for the preparation, receipt, storage or service of food to students.

(a) The space, fixtures and equipment shall be appropriate for the food service program of the school facility

and shall be provided in consideration of the size and location of the facility and frequency of food service supply deliveries. Food service facilities and equipment shall comply with the food service and food processing regulations of the New Mexico department of environment.

(b) Fixtures and equipment should include: food prep area items, including hand wash sink, serving area equipment (or buffet equipment), dishwasher, cold storage, dry other appropriate fixtures and equipment items to perform necessary cooking or warming functions.

[6.27.30.19 NMAC - Rp, 6.27.30.17 NMAC, 1/14/2025]

6.27.30.20 OTHER FACILITY AREAS:

A. Administrative space. A school facility shall have administrative space, to include offices for school administrators, councilors, ancillary staff, and records. The space shall consist of a minimum of 150 net sf, plus 1.5 net sf/student of the planned school program capacity or current enrollment.

B. Student health. A school facility shall have spaces for the delivery of student health. The student health or nurse's suite shall have space to isolate any sick student(s) from the other students and perform necessary testing. It shall have a sink, refrigerator, and secure storage for records, medications, supplies. This space shall be a designated space consisting of at least 1 net sf/student of the planned school program capacity or current enrollment with a minimum of 200 net sf. The student health or nurse's suite shall have a connected accessible restroom, not included in the minimum.

C. Faculty workspace and break room. A school facility shall have workspace available to the faculty. This space is in addition to any workspace available in or near a classroom. The space shall consist of at least 1 net sf/student of the planned school program capacity or current

enrollment with no less than 150 net sf. The space may consist of more than one room and may have more than one function. The break room shall include a kitchenette.

D. Network distribution space. A school shall have at least 120 net sf of appropriately distributed, securable, well-ventilated, temperature controlled space to accommodate routers, switches, servers and other devices to support school technology operational needs.

[6.27.30.20 NMAC - Rp, 6.27.30.18 NMAC, 1/14/2025]

6.27.30.21 GENERAL STORAGE (EXCLUDES LOCKERS, JANITORIAL, KITCHEN, GENERAL CLASSROOM, SPECIALTY CLASSROOMS, AND ADMINISTRATIVE STORAGE):

For storage, at least 1.5 net sf/student of the planned school program capacity or current enrollment may be distributed in or throughout any type of room or space, but may not count toward required room square footages. General storage must be securable and include textbook storage.

[6.27.30.21 NMAC - Rp, 6.27.30.19 NMAC, 1/14/2025]

6.27.30.22 MAINTENANCE OR JANITORIAL SPACE: Each school shall designate 1 net sf/student of the planned school program capacity or current enrollment for maintenance or janitorial space. Janitorial space shall include a janitorial sink.

[6.27.30.22 NMAC - Rp, 6.27.30.20 NMAC, 1/14/2025]

6.27.30.23 TEACHER HOUSING: Teacher housing units shall meet standards required by the United States department of housing and urban development.

[6.27.30.23 NMAC - Rp, 6.27.30.21 NMAC, 1/14/2025]

6.27.30.24 STANDARDS VARIANCE:

A. The council may

grant a variance from any of the adequacy standards. The council shall grant a variance if it determines that the intent of the standard can be met by the school in an alternate manner, or if a variance is required for appropriate programmatic needs as demonstrated by the district. If the council grants the variance, the school shall be deemed to have met the standard.

B. The council may, with adequate justification, also grant a variance from any of the provisions of the New Mexico public school adequacy planning guide provided by the state for use in the programming and design of school projects. Such variance shall be considered through an appeal to the council by the school district following a final administrative interpretation of the planning guide. Procedures for achieving final administrative interpretation and filing an appeal to the council for a variance are as provided for in the planning guide document.

[6.27.30.24 NMAC - Rp, 6.27.30.20 NMAC, 1/14/2025]

HISTORY OF 6.27.30 NMAC:
6.27.30 NMAC – Statewide Adequacy Standards, filed 9/1/2002, was repealed and replaced by 6.27.30 NMAC - Statewide Adequacy Standards, effective 1/14/2025.

STATE PERSONNEL OFFICE

On December 6, 2024, the State Personnel Board repealed the following rules, in accordance with 1.24.11.9 NMAC:

- 1.7.5 NMAC, Recruitment, Assessment, Selection, filed 6/14/2001;
- 1.7.8 NMAC, Drug and Alcohol Abuse, filed 6/14/2001;
- 1.7.9 NMAC, Performance Appraisals, filed 6/14/2001; and,
- 1.7.11 NMAC, Discipline, filed 6/14/2001;

And replaced the above repealed rules with:

- 1.7.5 NMAC, Recruitment, Assessment, Selection, effective 1/14/2025;
- 1.7.8 NMAC, Drug and Alcohol Abuse, effective 1/14/2025;
- 1.7.9 NMAC, Performance Appraisals, effective 1/14/2025; and,
- 1.7.11 NMAC, Discipline, effective 1/14/2025.

STATE PERSONNEL OFFICE

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 7 STATE PERSONNEL ADMINISTRATION
PART 5 RECRUITMENT, ASSESSMENT, SELECTION**

1.7.5.1 ISSUING AGENCY: State Personnel Board.
[1.7.5.1 NMAC - Rp, 1.7.5.1 NMAC, 1/14/2025]

1.7.5.2 SCOPE: All state agencies in the classified service.
[1.7.5.2 NMAC - Rp, 1.7.5.2 NMAC, 1/14/2025]

1.7.5.3 STATUTORY AUTHORITY: Subsection A of Section 10-9-10, Subsection A of Section 10-9-12, Subsection C of Section 10-9-13, Subsection F of Section 10-9-13, Subsection I of Section 10-9-13, Section 10-9-13.2, Subsection B of Section 10-9-18, Section 10-9-22, Section 10-9-23; Section 20-4-9, NMSA 1978; Sections 24-2B-1 to 24-2B-8, NMSA 1978; and Sections 28-2-1 to 28-2-6, Section 28-10-12, NMSA 1978.
[1.7.5.3 NMAC - Rp, 1.7.5.3 NMAC, 1/14/2025]

1.7.5.4 DURATION: Permanent.
[1.7.5.4 NMAC - Rp, 1.7.5.4 NMAC, 1/14/2025]

1.7.5.5 EFFECTIVE DATE: January 14, 2025 unless

a later date is cited at the end of a section.
[1.7.5.5 NMAC - Rp, 1.7.5.5 NMAC, 1/14/2025]

1.7.5.6 OBJECTIVE: The objective of Part 5 of Chapter 7 is: to provide a system for the recruitment, examination and selection of applicants for employment in the classified service.
[1.7.5.6 NMAC - Rp, 1.7.5.6 NMAC, 1/14/2025]

1.7.5.7 DEFINITIONS:
A. “Doublefill” is when two employees are paid to work in the same position.
B. “Open for recruitment” means soliciting applications from the general public and state employees for vacant positions.

C. “Overfill” is when an employee is assigned to a position with a higher pay band than the position’s budgeted pay band.

D. “Recruitment Waiver” means a candidate for hire is identified through a non-competitive process in lieu of the position being posted and advertised.

E. “Underfill” is when a candidate is hired for a position that they are not fully qualified for, but who can gain the necessary skills and experience through on the job training. Once the candidate has met the minimum experience requirements, they will be promoted to the position’s actual pay band.
[1.7.5.7 NMAC - Rp, 1.7.5.7 NMAC, 1/14/2025]

1.7.5.8 VACANT POSITIONS:
A. All budgeted vacant positions to be filled shall be open for recruitment unless a recruitment waiver is authorized by the state personnel office (SPO) director.

B. Positions in the classified service shall be filled at the assigned classification. An underfill may be approved by the SPO director. An authorized underfill may not exceed one year unless extended by the SPO director.

C. The SPO Director may approve a position to be doublefilled for up to one year.

D. Agencies may allow part-time employees to share the same position.
[1.7.5.8 NMAC - Rp, 1.7.5.8 NMAC, 1/14/2025]

1.7.5.9 RECRUITMENT:

A. The recruitment process shall be established by the state personnel office in accordance with established professional techniques and relevant federal and state laws, regulations, and guidelines.

B. The SPO director shall establish a means to effectively advertise and recruit for vacant positions within the classified service.

C. Any qualified applicant shall have the opportunity to compete for vacant positions open for recruitment without regard to race, color, religion, national origin, ancestry, sex, sexual orientation, age, or mental or physical disability unless based on a bona fide occupational requirement.

D. Agencies shall be sensitive to creating diversity in the workplace.

E. Applications shall be submitted in accordance with the SPO director-established recruitment criteria, received within the prescribed time limits and be for positions open for recruitment.
[1.7.5.9 NMAC - Rp, 1.7.5.9 NMAC, 1/14/2025]

1.7.5.10 APPLICATIONS:

A. The SPO director shall establish application procedures which include, among other things, criteria that will ensure compliance with federal and/or state law. Information on gender, ethnicity, and age of applicants shall be utilized only for affirmative action and other non-discriminatory purposes.

B. The agency shall reject an application and not accept any application from the applicant if the applicant:

(1) has made any false statement or produced any false document in support of the application; or

(2) has directly or indirectly given, paid, offered, solicited, or accepted any money or other valuable consideration or secured or furnished any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the classified service.

[1.7.5.10 NMAC - Rp, 1.7.5.10 NMAC, 1/14/2025]

1.7.5.11 ASSESSMENT OF QUALIFICATIONS:

A. Assessments shall measure critical or important knowledge, skills, and abilities necessary for successful job performance.

B. Except as provided in Subsection C of 1.7.5.11 NMAC no agency shall administer any test to an applicant or employee without the test and the test administration having been approved by the SPO Director unless otherwise authorized by statute.

C. An agency may request a description or demonstration of the skill or ability needed to perform an essential job function in accordance with the *Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 Note 29C.F.R. Part 1630.14(a) Pre-employment inquiry)*.

D. Preference Points:

(1) In accordance with the provisions of Section 10-9-13.2 NMSA 1978 and Section 20-4-9 NMSA 1978, veterans honorably discharged from the United States armed forces and applicants currently serving in the national guard shall have five points added to their final passing numerical scores on applications. Veterans honorably discharged from the United States armed forces with a service-connected disability shall have 10 points added to their final passing numerical scores on applications. A veteran with or without a service-connected disability has his/her name placed on the employment list in accordance with numerical rating of other veterans and non-veterans.

(2) In accordance with the provisions

of Section 10-9-13, NMSA 1978, applicants who meet minimum qualifications shall have two preference points added for each year of residency in New Mexico, not to exceed 10 points.

[1.7.5.11 NMAC - Rp, 1.7.5.11 NMAC, 1/14/2025]

1.7.5.12 SELECTION:

A. In accordance with the purpose of the *Personnel Act NMSA, Section 10-9-2*, selection shall be based solely on qualification and ability. Selection for any positions in the classified service shall be justified in writing and made from employment lists.

B. All employers subject to the Criminal Offender Employment Act. Sections 28-2-1 to 28-2-6 NMSA 1978, may take into consideration a conviction, but the conviction will not operate as an automatic bar to obtain public employment. Employer may only take into consideration a conviction after the applicant has been selected as a finalist for the position.

C. Agencies shall follow all established procedures approved by the SPO Director unless otherwise provided by law.

D. Agencies shall be sensitive to creating diversity in the workplace.

E. Employment lists shall include names of ranked candidates who have made application and met the established requirements plus any candidates certified by the New Mexico department of education, division of vocational rehabilitation, the commission for the deaf and hard of hearing, or the commission for the blind, in accordance with the provisions of Section 28-10-12, NMSA 1978.

(1) Agencies shall certify the names of former employees who are currently receiving temporary total or permanent partial workers' compensation benefits, resultant from an injury sustained while employed in the classified service and who apply for a position in accordance with the provisions of 1.7.10.12 NMAC.

(2) Agencies shall certify only the name(s) of former employees who are currently eligible for reemployment from a reduction in force per 1.7.10.10 NMAC.

F. Temporary promotions: Employees may be temporarily promoted for a period not to exceed 12 months to a temporary or effectively vacant position for which the agency certifies that the employee holds the qualifications and abilities necessary for successful job performance. At the end of the temporary promotion period, employees shall return to their former position without right of appeal.

G. Intra-agency transfers: An agency may transfer an employee without the employee's consent to a position in the same classification within the same geographic location as the employing agency, which is 35 miles from the boundaries of the community where the employee is employed if the established requirements state that willingness to accept a change of geographic location is a condition of employment.

H. Exempt to career service: Employment in the exempt service shall not count towards the probationary period required by Subsection A of 1.7.2.8 NMAC.

I. Emergency appointments/Hires: Emergency appointments/hires shall be made in accordance with 1.7.2.12 NMAC.

J. Reduction: Employees may request a classification reduction to a position for which the agency certifies that the employee holds the qualifications and abilities necessary for successful job performance.

K. Physical examinations: Agencies may require physical examinations of candidates who have been selected for a position contingent upon their meeting the prescribed physical health standards. The costs of such physical examinations shall be borne by the agency.
[1.7.5.12 NMAC - Rp, 1.7.5.12 NMAC, 1/14/2025]

HISTORY OF 1.7.5 NMAC:
Pre-NMAC History:
Material in this part was derived from that previously filed with the commission of public records - state records center and archives as:
SPB Rule 4, Applications and Tests, filed 5/22/1980;
SPB Rule 4, Applications and Tests, filed 6/3/1981;
SPB Rule 4, Applications and Tests, filed 10/21/1982;
SPB Rule 4, Applications and Tests, filed 6/28/1983;
SPB Rule 4, Applications and Tests, filed 10/17/1986;
SPB-4, Tests, filed 4/4/1990;
SPB-4, Tests, filed 10/19/1990;
SPB 7, Recruitment, Applications, Tests, filed 12/15/1992;
SPB 7, Recruitment, Applications, Tests, filed 3/18/1994.

History of Repealed Material:
1 NMAC 7.5, Pay, filed 6/13/1997.

Other History:
1 NMAC 7.6, Recruitment, Applications, Tests, filed 1/12/1996 replaced SPB 7, filed 3/18/1994;
1 NMAC 7.6, Recruitment, Applications, Tests, filed 5/2/1996;
1 NMAC 7.5, Recruitment, Applications, Selection, filed 6/13/1997 replaced 1 NMAC 7.6, filed 5/2/1996;
1 NMAC 7.5, Recruitment, Assessment, Selection, filed 6/13/1997 replaced by 1.7.5 NMAC, Recruitment, Assessment, Selection, effective 7/7/2001.
1.7.5 NMAC, Recruitment, Assessment, Selection, filed 6/14/2001, replaced by 1.7.5 NMAC, Recruitment, Assessment, Selection, effective 1/14/2025.

STATE PERSONNEL OFFICE

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 7 STATE PERSONNEL ADMINISTRATION PART 8 DRUG AND ALCOHOL ABUSE

1.7.8.1 ISSUING AGENCY: State Personnel Board.
[1.7.8.1 NMAC - Rp, 1.7.8.1 NMAC, 1/14/2025]

1.7.8.2 SCOPE: All state agencies in the classified service.
[1.7.8.2 NMAC - Rp, 1.7.8.2 NMAC, 1/14/2025]

1.7.8.3 STATUTORY AUTHORITY: Subsection A of Section 10-9-10 NMSA 1978.
[1.7.8.3 NMAC - Rp, 1.7.8.3 NMAC, 1/14/2025]

1.7.8.4 DURATION: Permanent.
[1.7.8.4 NMAC - Rp, 1.7.8.4 NMAC, 1/14/2025]

1.7.8.5 EFFECTIVE DATE: January 14, 2025, unless a later date is cited at the end of a section.
[1.7.8.5 NMAC - Rp, 1.7.8.5 NMAC, 1/14/2025]

1.7.8.6 OBJECTIVE: The objective of Part 8 of Chapter 7 is: to require every state agency to provide its employees with information on the effects of drug and alcohol abuse; to require drug, alcohol testing or both; and to establish required collection, screening, rehabilitative and sanction parameters.
[1.7.8.6 NMAC - Rp, 1.7.8.6 NMAC, 1/14/2025]

1.7.8.7 DEFINITIONS:
A. "Alcohol" means all consumable non-prescription substances which contain alcohol, specifically including, without limitation, spirits, wine, malt beverages, and intoxicating liquors.

B. "Aliquot" means a portion of a urine specimen used for testing.

C. "Chain of custody" refers to procedures to account for the integrity of each specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. In any dispute regarding chain of custody, the identity and integrity of the

sample at issue may be established by a preponderance of the evidence.

D. “Confirmatory test” means a second analytical procedure to identify the presence of a specific drug or metabolite in a urine specimen by gas chromatography/mass spectrometry (GC/MS).

E. “Drug” means marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines; a metabolite of those drugs; or any non-prescription substance containing those drugs.

F. “Initial test” means an immunoassay screen which meets the requirements of the food and drug administration to eliminate negative specimens from further consideration.

G. “Medical review officer” means a New Mexico based and licensed physician knowledgeable in the medical use of prescription drugs and alcohol and the pharmacology and toxicology of illicit drugs and alcohol.

H. “Non-prescription” refers to all substances other than a substance prescribed by a doctor or licensed health professional to the employee or particular candidate.

I. “On duty” means any time during an employee’s regular workday or other period during which the employee is required or permitted to work by the employer, including overtime, lunch and other breaks, and anytime while operating or riding in a state vehicle.

J. “Possession” means to knowingly have, own, or have on oneself the drug, the alcohol or both.

K. “Random selection basis” means a system for selecting employees or groups of employees for drug testing in a statistically random system based on a neutral criterion, such as employment or position numbers, without individualized suspicion that a particular employee is using drugs.

L. “Reasonable suspicion” means a belief drawn from specific objective and articulable facts and the reasonable inferences drawn from those facts.

M. “Safety-sensitive position” is a position in which performance by a person under the influence of drugs or alcohol would constitute an immediate or direct threat of injury or death to that person or another, or as otherwise provided by state or federal law. [1.7.8.7 NMAC - Rp, 1.7.8.7 NMAC, 1/14/2025]

1.7.8.8 OMNIBUS TRANSPORTATION EMPLOYEE TESTING ACT OF 1991:

A. Employees in safety-sensitive positions within the meaning of the *Omnibus Transportation Employee Testing Act of 1991 (“Omnibus Act”* (49 U.S.C. Subtitle VI Part B § 31306) are exempt from and are not covered by the provisions of 1.7.8.7 NMAC and 1.7.8.9 NMAC through 1.7.8.20 NMAC.

B. Agencies with employees covered by the Omnibus Act shall develop and submit to the State Personnel Office (SPO) Director a policy for implementing drug and alcohol tests.

C. The policy shall contain at the least the:

- (1) covered positions;
- (2) testing requirements for drugs and alcohol;
- (3) collection of specimen;
- (4) reporting and explanation of test results;
- (5) confidentiality;
- (6) training;
- (7) rehabilitation and sanctions;
- (8) record retention;
- (9) rehabilitative and sanction parameters of drug and alcohol abuse; and
- (10) reasonable suspicion.

D. Agencies shall advise the board annually of those positions covered by the Omnibus Act. [1.7.8.8 NMAC - Rp, 1.7.8.8 NMAC, 1/14/2025]

1.7.8.9 SUBSTANCE ABUSE COORDINATOR:

A. Each agency shall appoint a substance abuse coordinator who shall be responsible for the agency’s drug and alcohol abuse program.

B. The substance abuse coordinator shall provide drug and alcohol abuse awareness information to employees including but not limited to the:

- (1) dangers of drug and alcohol abuse;
- (2) availability of counseling, rehabilitation, and employee assistance programs; and
- (3) sanctions that may be imposed upon employees as provided in 1.7.8.19 NMAC.

C. The drug abuse coordinator shall ensure that the agency has contracted or made arrangements with a medical review officer to perform the duties required by 1.7.8 NMAC.

[1.7.8.9 NMAC – Rp & Rn., 1.7.8.10 NMAC, 1/14/2025]

1.7.8.10 AUTHORIZED DRUG AND ALCOHOL TESTING:

A. The SPO director shall maintain a list of positions designated by the agencies as being safety-sensitive.

B. All candidates for safety-sensitive positions are required to submit to drug testing after an offer of employment is made and prior to final selection.

C. Agencies that require employees in safety-sensitive positions to undergo regular physical examinations shall require such employees to undergo drug testing as part of those physical examinations.

D. Agencies shall require employees to undergo drug, alcohol testing or both if the agency has a reasonable suspicion that the employee has committed drug or alcohol abuse based on, but not limited to:

- (1) direct observation of the physical symptoms or manifestations of being under the influence of a drug or alcohol while

on duty; such symptoms may include, but are not limited to liquor on breath, slurred speech, unsteady walk, or impaired coordination; or

(2) direct observation of the use or possession of drugs or drug paraphernalia, or the use of alcohol while on duty.

E. An employee shall submit to a reasonable suspicion drug or alcohol test provided the requesting supervisor has secured the next level supervisor's approval, unless the requesting supervisor is the agency head. The requesting supervisor shall prepare a contemporaneous memorandum outlining the details leading up to the reasonable suspicion drug or alcohol test. The memorandum shall be submitted to the substance abuse coordinator within 24 hours of the request for testing.

F At least ten percent of employees in safety-sensitive positions in each agency shall be required to undergo drug testing on a yearly basis.

(1) The SPO director shall identify the safety-sensitive positions on a random selection basis.

(2) At the discretion of the agency head or substance abuse coordinator, employees may be excused from random drug testing if:

(a) they have previously requested referral in accordance with the provisions of Subsection B of 1.7.8.19 NMAC;

(b) the selection for random drug testing is made during the first 30 calendar days following the request for referral; or

(c) they are on an authorized absence for 30 calendar days or more.

(3) The agency head or substance abuse coordinator shall inform the SPO director of any employee excused from random drug testing within 10 working days of receipt of the notice of safety sensitive testing.

G. The SPO director

may authorize an agency to conduct more than ten percent random drug testing on employees in safety sensitive positions upon receipt of an agency's written request that would include justification of how the additional testing is related to the conditions of employment and the use of equipment that could pose a risk to public health or safety.

[1.7.8.10 NMAC – Rp & Rn., 1.7.8.11 NMAC, 1/14/2025]

1.7.8.11 COLLECTION OF SPECIMENS:

A. Unless otherwise specified in 1.7.8 NMAC, urine specimens for drug testing shall be collected by a laboratory meeting state licensure requirements and certified by the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing.

B. Breath specimens may be collected by a certified person, a medical or a laboratory facility. Should the medical or laboratory facility not be available or should the equipment fail, the substance abuse coordinator or designee shall designate another testing facility and report this referral to the SPO director within 10 working days of taking the breath specimen.

[1.7.8.11 NMAC – Rp & Rn., 1.7.8.12 NMAC, 1/14/2025]

1.7.8.12 DRUG TESTS:

A. The initial and confirmatory drug tests shall be performed by a state licensed laboratory in accordance with the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing. The laboratory shall have the capability of performing initial and confirmatory tests for each drug or metabolite for which service is offered.

B. The cutoff concentrations set forth in Section 40.85 of Part 40 of 49 C.F.R. shall be used when screening specimens on the initial and confirmatory urine drug tests.

C. The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens reported as positive on the confirmatory test shall be reported positive for a specific drug.

D. The laboratory shall retain and place those specimens confirmed positive in properly secured long-term frozen storage for at least 365 calendar days. An agency may request the laboratory to retain the specimen for an additional period of time. If the laboratory does not receive a request to retain the specimen during the initial 365 calendar day period, the specimen may be discarded.

[1.7.8.12 NMAC – Rp & Rn., 1.7.8.13 NMAC, 1/14/2025]

1.7.8.13 ALCOHOL TESTS:

A. A test for alcohol shall be administered by a legally recognized and approved method.

B. A test by a legally recognized or approved method with results of blood alcohol content (BAC) level of .04 or more shall be deemed positive for alcohol.

C. For employees who have undergone alcohol rehabilitation, pursuant to Paragraph (1) of Subsection D of 1.7.8.19 NMAC, a positive test result during the 30 to 180 calendar days following the first positive test shall subject an employee to disciplinary action. Such a test may be performed by urinalysis.

[1.7.8.13 NMAC - Rp, 1.7.8.14 NMAC, 1/14/2025]

1.7.8.14 REPORTING OF TEST RESULTS:

A. Drug and alcohol test results shall be reported only to the substance abuse coordinator or designee.

B. The test report shall contain the specimen number assigned by the agency, the laboratory accession number and results of the tests. All specimens negative on the initial test or negative on the confirmatory test shall be reported as negative. Only specimens confirmed

positive shall be reported positive. Results may be transmitted to the substance abuse coordinator by various means including certified mail with return receipt requested, courier service, or electronic mail in a secure area (e.g., facsimile or computer). Certified copies of all analytical results and chain-of-custody forms shall be available from the laboratory when requested by the SPO director, the agency head, or substance abuse coordinator or designee.

C. The substance abuse coordinator or designee shall advise candidates and employees in writing of positive test results.

D. All records pertaining to a given urine specimen shall be retained by the laboratory for a minimum of two years.

E. Only those members of management who need to know shall be made aware of the test results. Breach of confidentiality may be grounds for disciplinary action. [1.7.8.14 NMAC – Rp & Rn., 1.7.8.15 NMAC, 1/14/2025]

1.7.8.15 EXPLANATION OF POSITIVE TEST RESULTS:

A. Candidates for a safety sensitive position who test positive for drugs, alcohol or both may, within two workdays of being advised of the test results, submit a written request to the agency's substance abuse coordinator for a review of the test results by the medical review officer. The test results of all employees who test positive for drugs, alcohol or both shall be referred by the agency's substance abuse coordinator or designee to the medical review officer.

(1) If the candidate does not request a review of the test results within two workdays, the candidate waives review by the medical review officer and any retesting of the sample and consents to rejection for selection.

(2) The medical review officer shall examine any proffered or possible explanations concerning the validity of the confirmed positive test results. This action may include conducting

a medical interview, review of the medical history, review of the chain of custody, and discussions with the collection or laboratory personnel.

The medical review officer shall review all medical records made available by the individual when a positive test could have resulted from legally prescribed medications for medical or dental treatment. The medical review officer shall also review the results of any retest done according to the provisions of 1.7.8.17 NMAC.

(a) Should any questions arise as to the accuracy or validity of a confirmed positive test result, only the medical review officer is authorized on behalf of the state to order a reanalysis of the original sample and such retests are authorized to be performed only at a laboratory that meets applicable provisions of any state licensure requirements and is certified by the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing.

(b) Prior to making a final decision to verify a positive test result, the medical review officer shall give the candidate or employee an opportunity to discuss the test results. The discussion between the medical review officer and the candidate or employee may be in person or by telephone.

(c) The medical review officer shall advise the appropriate substance abuse coordinator of his or her medical conclusions from the review of the test results. If there are conflicting factual statements, the medical review officer shall not attempt to resolve that factual conflict, but shall report it along with his or her medical conclusions to the agency substance abuse coordinator. Similarly, the medical review officer shall not attempt to ascertain the factual correctness of any claim by the candidate or employee of involuntary ingestion of drugs or alcohol or both, but shall simply report such claims to the agency substance abuse

coordinator with his or her medical opinion as to the possibility that such occurrence could have affected the test results.

B. Based upon the medical review officer's report and such other inquiries or facts as the agency may consider, the agency shall determine whether the explanations or challenges of the confirmed positive test results are satisfactory.

(1) If the explanations or challenges of the positive test results are unsatisfactory the agency:

(a) shall provide a written explanation to the candidate or employee as to why the explanation is unsatisfactory, along with the test results, within 11 calendar days of the agency's determination; and

(b) shall retain such records as confidential for one year.

(2) If the explanations or challenges of the positive test results are satisfactory the agency:

(a) shall notify the candidate or employee in writing within 11 calendar days of the agency's determination; and

(b) shall retain such records as confidential for one year. [1.7.8.15 NMAC – Rp & Rn., 1.7.8.16 NMAC, 1/14/2025]

1.7.8.16 RETESTING:

Candidates who have sought review of their positive drug or alcohol urine tests by the medical review officer and all employees who tested positive for drugs or alcohol urine tests may elect to have, at their expense, an aliquot of the original urine specimen retested by another laboratory that meets applicable provisions of any state licensure requirements and is certified in forensic urine drug testing by either the substance abuse and mental health services administration or the college of American pathologists. The drug testing laboratory shall arrange for the shipment of the aliquot to the laboratory of the candidates' or employees' choosing. The agency

shall pay for the retest if the retest is negative.
 [1.7.8.16 NMAC – Rp & Rn.,
 1.7.8.17 NMAC, 1/14/2025]

1.7.8.17 CONFIDENTIALITY:

No laboratory reports or test results shall appear in the employee’s personnel file unless he or she is subject of a disciplinary action taken in accordance with the provisions of 1.7.8 NMAC. Laboratory reports or test results shall be placed in a special locked file maintained by the substance abuse coordinator. Files relating to laboratory reports or test results maintained by the substance abuse coordinator are confidential within the meaning of 1.7.1.12 NMAC.

[1.7.8.17 NMAC – Rp & Rn.,
 1.7.8.18 NMAC, 1/14/2025]

1.7.8.18 REHABILITATION AND SANCTIONS:

A. Candidates for employment:

(1) A candidate for employment in a safety-sensitive position shall be rejected for selection when he tests positive for drugs and does not seek review by the medical review officer or cannot satisfactorily explain the positive test results.

(2) An employee for transfer or promotion to a safety-sensitive position who tests positive for drugs and is unable to satisfactorily explain the positive test results shall be subject to disciplinary action including dismissal if the employee occupies a safety-sensitive position. If the employee is not in a safety-sensitive position, the employee shall be treated in accordance with the provisions of Subsection D of 1.7.8.19 NMAC.

B. Voluntary self-identification by employees:

(1) Any employee who requests referral to an EAP, counseling or a drug or alcohol rehabilitation program, prior to selection for drug and alcohol testing shall be referred by the substance abuse counselor. Any costs for counseling or rehabilitation shall be borne by the employee.

(2) The agency may grant administrative leave to an employee to participate in an employee assistance program, counseling, or a drug or alcohol rehabilitation program for up to 240 hours for the initial voluntary self-identification only.

(3) Employees in safety-sensitive positions, who have requested referral shall be assigned to non safety-sensitive duties until successful completion of the approved substance abuse program or treatment plan and release by the substance abuse program provider.

(4) Employees are subject to drug, alcohol testing or both at the discretion of the substance abuse coordinator at any time between 30 and 180 calendar days of requesting referral.

(a) Employees in safety-sensitive positions who test positive during this time period or fail to successfully complete such program are subject to disciplinary action including dismissal.

(b) Employees in non safety-sensitive positions who test positive during this time period or fail to successfully complete such program may be subject to disciplinary action including dismissal. The agency may allow the employee to use annual leave, sick leave, or leave without pay for additional counseling or rehabilitation by the agency after considering all factors relevant to the employee’s condition and job performance history.

(5) For employees who have been required to undergo an alcohol rehabilitation program, any indication of alcohol at any level during the 30 to 180 calendar day period following the referral shall be considered a positive test result.

C. Safety-sensitive positions: Employees in safety-sensitive positions who have not requested referral to an employee assistance program, counseling, or a drug or alcohol rehabilitation program and test positive on a required drug,

alcohol test or both shall be subject to disciplinary action including dismissal if they do not have a satisfactory explanation for the positive test results.

D. Non safety-sensitive positions:

(1) Employees in non safety-sensitive positions who test positive on a reasonable suspicion drug or alcohol test or both required by Subsection D of 1.7.8.11 NMAC and do not have a satisfactory explanation for the positive test results shall be referred to an employee assistance program, counseling, or a drug or alcohol rehabilitation program. Employees are subject to drug or alcohol testing at the discretion of the substance abuse coordinator at any time between 30 and 180 calendar days of the first positive test. Any such employee who tests positive for drugs, alcohol or both between 30 and 180 calendar days of the first positive test without a satisfactory explanation or who fails to enter and successfully complete a program shall be subject to disciplinary action including dismissal.

(2) The agency may grant an employee administrative leave to participate in an employee assistance program, counseling, or a drug or alcohol rehabilitation program for up to 240 hours for the initial reasonable suspicion referral only.

E. Refusal to cooperate in testing procedure:

Any employee who refuses or fails without good cause to cooperate in the drug or alcohol testing or both procedure by refusing or failing to complete the specified forms, by refusing or failing to submit a urine or breath specimen, or otherwise refuses or fails to cooperate shall be subject to disciplinary action including dismissal.

F. Possession of drugs or alcohol:

(1) Employees who illegally sell, purchase, or convey from one person or one place to another drugs or any substance in *Schedules I and II of the Controlled Substances Act, Sections 30-31-1 to*

30-31-41 NMSA 1978 (Repl. Pam. 1994), while on duty shall be subject to disciplinary action including dismissal and shall be reported to the local law enforcement agency.

(2) When employees, while on duty consume or have in their possession drugs, open containers of alcohol or any substance in *Schedules I and II of the Controlled Substances Act, Sections 30-31-1 to 30-31-41 NMSA 1978 (Repl. Pam. 1994)* without a valid prescription or as otherwise authorized by law, they shall be subject to disciplinary action including dismissal and shall be reported to the local law enforcement agency.

[1.7.8.18 NMAC – Rp & Rn., 1.7.8.19 NMAC, 1/14/2025]

1.7.8.19 PILOT

PROGRAM: The board may authorize a pilot program to evaluate impairment testing. Such pilot programs may authorize variances from provisions of 1.7.8 NMAC, including random drug testing for participants in the pilot program. [1.7.8.19 NMAC – Rp & Rn., 1.7.8.20 NMAC, 1/14/2025]

HISTORY OF 1.7.8 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives as: SPB-14, Drug and Alcohol Abuse, filed 4/4/1990.

SPB-14, Drug and Alcohol Abuse, filed 10/17/1990.

SPB-14, Drug and Alcohol Abuse, filed 12/13/1990.

SPB 11, Drug and Alcohol Abuse, filed 12/15/1992.

SPB 11, Drug and Alcohol Abuse, filed 3/18/1994.

SPB 11, Drug and Alcohol Abuse, filed 12/29/1994.

History of Repealed Material:

1 NMAC 7.8, Drug and Alcohol Abuse (filed 6/13/1997) repealed 7/7/2001.

1.7.8 NMAC, Drug and Alcohol Abuse (filed 6/14/2001) repealed 1/14/2025.

Other History:

SPB 11, Drug and Alcohol Abuse (filed 12/29/1994) was replaced by 1 NMAC 7.10, Drug and Alcohol Abuse, effective 1/31/1996.

1 NMAC 7.10, Drug and Alcohol Abuse (filed 1/12/1996) was replaced by 1 NMAC 7.10, Drug and Alcohol Abuse, effective 5/15/1996.

1 NMAC 7.10, Drug and Alcohol Abuse (filed 5/2/1996) was replaced by 1 NMAC 7.8, Drug and Alcohol Abuse, effective 7/1/1997.

1 NMAC 7.8, Drug and Alcohol Abuse (filed 6/13/1997) was replaced by 1.7.8 NMAC, Drug and Alcohol Abuse, effective 7/7/2001.

1.7.8 NMAC, Drug and Alcohol Abuse (filed 6/14/2001) was replaced by 1.7.8 NMAC, Drug and Alcohol Abuse, effective 1/14/2025.

STATE PERSONNEL OFFICE

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 7 STATE PERSONNEL ADMINISTRATION PART 9 PERFORMANCE APPRAISALS

1.7.9.1 ISSUING

AGENCY: State Personnel Board. [1.7.9.1 NMAC - Rp, 1.7.9.1 NMAC, 1/14/2025]

1.7.9.2 SCOPE: All state agencies in the classified service.

[1.7.9.2 NMAC - Rp, 1.7.9.2 NMAC, 1/14/2025]

1.7.9.3 STATUTORY

AUTHORITY: Subsection A of Section 10-9-10 NMSA 1978 and Section 10-9-15 NMSA 1978.

[1.7.9.3 NMAC - Rp, 1.7.9.3 NMAC, 1/14/2025]

1.7.9.4 DURATION:

Permanent.

[1.7.9.4 NMAC - Rp, 1.7.9.4 NMAC, 1/14/2025]

1.7.9.5 EFFECTIVE

DATE: January 14, 2025, unless

a later date is cited at the end of a section.

[1.7.9.5 NMAC - Rp, 1.7.9.5 NMAC, 1/14/2025]

1.7.9.6 OBJECTIVE:

The objective of Part 9 of Chapter 7 is: to provide for the regular appraisal and documentation of employee performance and review of agency compliance in conducting performance appraisals.

[1.7.9.6 NMAC - Rp, 1.7.9.6 NMAC, 1/14/2025]

1.7.9.7 DEFINITIONS:

[RESERVED]

1.7.9.8 FORM:

A. The performance of managers and employees shall be documented on a state personnel office (SPO) director approved appraisal form that includes:

(1) basic employee information (employee's name, working title, employee identification number, position number, anniversary date, and the name of their immediate supervisor);

(2) job assignments and goals;

(3) performance rating areas; and

(4) signature spaces for the employee, rater and reviewer to record initial, interim and final performance appraisal discussions.

B. A performance appraisal shall be initiated within 45 calendar days following the date of the employee's hire, reassignment, promotion, demotion, reduction, or transfer to a position and shall become a part of each employee's employment history.

[1.7.9.8 NMAC - Rp, 1.7.9.8 NMAC, 1/14/2025]

1.7.9.9 PERFORMANCE APPRAISAL:

A. Managers and supervisors must successfully complete a director-approved course of study on employee performance appraisal within 90 days of hire into a supervisor or manager position, and a

refresher course every three years, or as needed.

B. The performance appraisal of a career employee shall include, at least, a semi-annual interim review and a final annual review by the immediate supervisor by the employee’s anniversary date.

C. The performance appraisal of a probationary employee shall include, at least two interim reviews and a final annual review prior to the completion of the employee’s probationary period. The performance of promoted employees shall be reviewed through at least two interim reviews and a final annual review prior to the completion of a one-year period upon promotion.

D. The performance appraisal of an employee shall be performed by the immediate supervisor with employee input and participation. Additional input and participation from employee’s peers, customers, subordinates, or other appropriate personnel may be applied when appropriate.

E. Performance appraisals may be performed whenever an immediate supervisor wishes to make an employee’s performance a matter of record, upon change of immediate supervisor, or whenever appropriate.

F. Managers and immediate supervisors who fail to comply with the provisions of 1.7.9 NMAC may be subject to disciplinary action including dismissal. [1.7.9.9 NMAC - Rp, 1.7.9.9 NMAC, 1/14/2025]

1.7.9.10 [RESERVED]
[1.7.9.10 NMAC - Rp, 1.7.9.10 NMAC, 1/14/2025]

1.7.9.11 REBUTTAL: Employees may submit a rebuttal to performance appraisals, which shall become a part of the performance appraisal. [1.7.9.11 NMAC - Rp, 1.7.9.11 NMAC, 1/14/2025]

1.7.9.12 REPORT TO THE BOARD: During the fourth quarter of each calendar year the

SPO director shall report to the board on the record of each agency in conducting performance appraisals of its employees in the classified service. Agencies shall cooperate with the director, in accordance with the provisions of NMSA 1978, Section 10-9-15, and provide the director with such information concerning its performance appraisals as the director may require. [1.7.9.12 NMAC - Rp, 1.7.9.12 NMAC, 1/14/2025]

HISTORY OF 1.7.9 NMAC: Pre-NMAC History: Material in this part was derived from that previously filed with the commission of public records - state records center and archives as: SPB Rule 17, Performance Evaluation and Training, filed 5/22/1980; SPB Rule 17, Performance Appraisal and Training, filed 6/3/1981; SPB Rule 17, Performance Appraisal and Training, filed 10/21/1982; SPB Rule 13, Leaves of Absence, filed 7/22/1982; SPB-9, Performance Appraisal, filed 4/4/1990; SPB 12, Performance Appraisals, filed 12/15/1992; SPB 9, Performance Appraisals, filed 3/18/1994;

History of Repealed Material: 1 NMAC 7.9, Performance Appraisals, filed 6/13/1997. 1.7.9 NMAC, Performance Appraisals, filed 6/14/2001, replaced by 1.7.9 NMAC, Performance Appraisals, effective 1/14/2025.

Other History: 1 NMAC 7.11, Performance Appraisals, filed 1/12/1996 replaced SPB 12, filed 12/15/1992; 1 NMAC 7.11, Performance Appraisals, filed 5/2/1996; 1 NMAC 7.11, Performance Appraisals, filed 5/2/1996 replaced by 1 NMAC 7.9, Performance Appraisals, filed 6/13/1997; 1 NMAC 7.9, Performance Appraisals, filed 6/13/1997 replaced by 1.7.8 NMAC, Absence and Leave, effective 7/7/2001.

STATE PERSONNEL OFFICE

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 7 STATE PERSONNEL ADMINISTRATION PART 11 DISCIPLINE

1.7.11.1 ISSUING AGENCY: State Personnel Board. [1.7.11.1 NMAC - Rp, 1.7.11.1 NMAC, 1/14/2025]

1.7.11.2 SCOPE: All state agencies in the classified service. [1.7.11.2 NMAC - Rp, 1.7.11.2 NMAC, 1/14/2025]

1.7.11.3 STATUTORY AUTHORITY: Subsection H of Section 10-9-13, Subsection A of Section 10-9-18, Section 10-9-22, NMSA 1978; and Sections 28-2-1 to 28-2-6 NMSA 1978; Chapter 173, laws of 1997. [1.7.11.3 NMAC - Rp, 1.7.11.3 NMAC, 1/14/2025]

1.7.11.4 DURATION: Permanent. [1.7.11.4 NMAC - Rp, 1.7.11.4 NMAC, 1/14/2025]

1.7.11.5 EFFECTIVE DATE: January 14, 2025, unless a later date is cited at the end of a section. [1.7.11.5 NMAC - Rp, 1.7.11.5 NMAC, 1/14/2025]

1.7.11.6 OBJECTIVE: The objective of Part 11 of Chapter 7 is: to provide a mechanism by which management can implement constructive, progressive steps towards solving performance or behavior problems. [1.7.11.6 NMAC - Rp, 1.7.11.6 NMAC, 1/14/2025]

1.7.11.7 DEFINITIONS: [RESERVED]

1.7.11.8 DISCIPLINE: **A.** The primary purpose of discipline is to correct

performance or behavior that is below acceptable standards, or contrary to the employer's legitimate interests, in a constructive manner that promotes employee responsibility.

B. Progressive discipline shall be used whenever appropriate. Progressive discipline can range from a reminder to an oral or written reprimand, to a suspension, demotion or dismissal. There are instances when a disciplinary action, including dismissal, is appropriate without first having imposed a less severe form of discipline.

C. Agencies shall utilize alternative methods to resolve conflicts or improve employee performance or behavior whenever appropriate.

[1.7.11.8 NMAC - Rp, 1.7.11.8 NMAC, 1/14/2025]

1.7.11.9 NOTICES AND COMPUTATION OF TIME:

A. Notices prescribed by 1.7.11 NMAC shall be served in accordance with the provisions of 1.7.1.10 NMAC.

B. The computation of time prescribed or allowed by 1.7.11 NMAC shall be in accordance with the provisions of 1.7.1.11 NMAC. [1.7.11.9 NMAC - Rp, 1.7.11.9 NMAC, 1/14/2025]

1.7.11.10 JUST CAUSE:

A. An employee who has completed the probationary period required by Subsection A of 1.7.2.8 NMAC may be suspended, demoted, or dismissed only for just cause which is any behavior relating to the employee's work that is inconsistent with the employee's obligation to the agency.

B. Just cause includes, but is not limited to: inefficiency; incompetency; misconduct; negligence; insubordination; performance which continues to be unsatisfactory after the employee has been given a reasonable opportunity to correct it; absence without leave; any reasons prescribed in 1.7.8 NMAC; failure to comply with any provisions of these rules; falsifying official records and/or documents

such as employment applications, or conviction of a felony or misdemeanor when the provisions of the Criminal Offender Employment Act, Sections 28-2-1 to 28-2-6 NMSA 1978, apply.

[1.7.11.10 NMAC - Rp, 1.7.11.10 NMAC, 1/14/2025]

1.7.11.11 PROBATIONERS AND EMPLOYEES IN EMERGENCY OR TEMPORARY STATUS:

Probationers and employees in emergency or temporary status may be suspended, demoted, or dismissed effective immediately with written notice and without right of appeal to the board. The written notice shall advise the employee of the conduct, actions, or omissions which resulted in the suspension, demotion, or dismissal.

[1.7.11.11 NMAC - Rp, 1.7.11.11 NMAC, 1/14/2025]

1.7.11.12 ADMINISTRATIVE LEAVE PENDING DISCIPLINARY ACTION:

Agencies may authorize paid administrative leave for a period up to 160 consecutive work hours during a disciplinary action proceeding or investigation. Paid administrative leave in excess of 160 consecutive work hours must be approved by the state personnel office (SPO) director.

[1.7.11.12 NMAC - Rp, 1.7.11.12 NMAC, 1/14/2025]

1.7.11.13 EMPLOYEES IN CAREER STATUS:

A. Notice of contemplated action:

(1) To initiate the suspension, demotion, or dismissal of an employee in career status and an employee in term status who has completed the probationary period, the agency shall serve a notice of contemplated action on the employee which: describes the conduct, actions, or omissions which form the basis for the contemplated disciplinary action; gives a general explanation of the evidence the agency has; advises the employee of his or her right to inspect and obtain copies of any documentary

evidence relied upon; specifies what the contemplated action is; and states that the employee has eleven calendar days from service of the notice to respond in writing to the notice or to request an opportunity for an oral response.

(2) When the notice of contemplated action is served by certified mail or courier, the employee shall have three additional calendar days from service of notice in which to file a response.

B. Response to notice of contemplated action:

(1) A representative of the employee's choosing may respond in writing to the notice of contemplated action on behalf of the employee.

(2) If there is a request for an oral response to the notice of contemplated action, the agency shall meet with the employee within 11 calendar days from the date of receipt of the request, unless the employee and the agency agree in writing to an extension of time. A representative of the employee's choosing may represent the employee.

(3) The purpose of the oral response is not to provide an evidentiary hearing but is an opportunity for the employee to present his or her side of the story. It is an initial check against mistaken decisions, essentially a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.

C. Notice of final action:

(1) If the employee does not respond to the notice of contemplated action, the agency shall issue a notice of final action within 11 calendar days following the response period.

(2) If the employee has filed a written response or has been provided an opportunity for oral response, the agency shall issue a notice of final action no later than 11 calendar days from the date of receipt of the response.

(3) The notice of final action shall:

(a) specify the final action to be taken, which may be upholding the contemplated action, a lesser form of discipline than contemplated, or no disciplinary action;

(b) describe the conduct, actions, or omissions which form the basis for the disciplinary action, which may not include allegations not included in the notice of contemplated action;

(c) give a general explanation of the evidence the agency has;

(d) specify when the disciplinary action will be effective, which must be at least 24 hours from the time of service of the notice of final action; and

(e) inform the employee of his or her appeal rights.

(4) Appeal rights:

(a) an employee, not covered by a collective bargaining agreement, may appeal a final disciplinary action to the board by delivering a written statement of the grounds for appeal to the SPO director at 2600 Cerrillos Road, Santa Fe, New Mexico 87505 no later than 30 calendar days from the effective date of the final disciplinary action; the employee must submit a copy of the notice of final disciplinary action with the notice of appeal;

(b) an employee who is covered by a collective bargaining agreement may either appeal the final disciplinary action to the board as stated above in Subparagraph (a) of Paragraph (4) of Subsection C of 1.7.11.13 NMAC or make an irrevocable election to appeal to an arbitrator pursuant to the collective bargaining agreement. [1.7.11.13 NMAC - Rp, 1.7.11.13 NMAC, 1/14/2025]

HISTORY OF 1.7.11 NMAC: Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as: SPB Rule 14, Separations and

Demotions, filed 5/22/1980; SPB Rule 14, Separations and Demotions, filed 9/1/1981; SPB Rule 14, Separations and Demotions, filed 7/22/1982; SPB Rule 14, Separations and Demotions, filed 10/21/1982; SPB Rule 14, Separations and Demotions, filed 3/4/1986; SPB Rule 14, Separations and Demotions, filed 3/14/1986; SPB Rule 14, Separations and Demotions, filed 10/17/1986; SPB Rule 14, Separations and Demotions, filed 8/31/1987; SPB-18, Disciplinary Actions, filed 4/4/1990; SPB-18, Disciplinary Actions, filed 10/19/1990; SPB-18, Disciplinary Actions, filed 12/24/1991; SPB 17, Discipline, filed 12/15/1992; SPB 17, Discipline, filed 3/18/1994.

History of Repealed Material:

1 NMAC 7.11, Discipline, filed 6/13/1997.
1.7.11 NMAC, Discipline, filed 6/14/2001, replaced by 1.7.11 NMAC, Discipline, effective 1/14/2025.

Other History:

1 NMAC 7.16, Discipline, filed 1/12/1996 replaced SPB 17, filed 3/18/1994;
1 NMAC 7.16, Discipline, filed 5/2/1996;
1 NMAC 7.11, Discipline, filed 6/13/1997 replaced 1 NMAC 7.16, filed 5/2/1996;
1 NMAC 7.11, Discipline, filed 6/13/1997 replaced by 1.7.11 NMAC, Discipline, effective 7/7/2001.

STATE PERSONNEL OFFICE

This is an amendment to 1.7.1 NMAC, Sections 7, 8, 11, 13, and 15, effective 1/14/2025.

1.7.1.7 DEFINITIONS:

~~[A. "Agency" means any state department, bureau, division, branch or administrative group which is under the same employer.]~~

[B] ~~A.~~ **"Anniversary date"** means the date of ~~[appointment]~~ hire or reemployment and is changed as of the date of promotion, demotion, reduction, or transfer. The assignment of an employee to a new classification which best represents the job performed by the employee does not affect the employee's anniversary date. The ~~[director]~~ state personnel office (SPO) director shall resolve disputes over how an anniversary date is derived.

[C] ~~B.~~ **"Applicant"** means any person, who has applied for a position in the classified service.

[D] ~~C.~~ **"Appointment"** means the assumption of job duties by a candidate who was offered and then accepted a classified position in a state agency.

[E] ~~D.~~ **"Audit"** means an examination or inspection of an agency's personnel and human resources functions and activities, including but not limited to personnel transactions, recruitment, leave administration, collective bargaining agreement administration, and completion of personnel evaluations.

~~[F. "Board" means the personnel board]~~

[G] ~~E.~~ **"Break in employment"** means any period of time of at least one workday of not being in the classified service.

[H] ~~F.~~ **"Candidate"** means any applicant who is on the employment list for a position.

[I] ~~G.~~ **"Classified service"** means all positions in the executive branch of state government which are not exempt by law.

[J] ~~H.~~ **"Classification"** means a job that is occupationally and quantifiably distinct.

[K] ~~I.~~ **"Compa-ratio"** means pay expressed as a percentage of the midpoint of a pay band.

[L] ~~J.~~ **"Demotion"** means an involuntary downward change for disciplinary reasons with a reduction in pay within an employee's pay band or from a classified position in one pay band to a classified position in a lower pay band with a

reduction in pay, and/or removal of supervisory responsibilities and pay for disciplinary reasons.

~~[M.]~~ ~~“Director” means the state personnel director.~~

~~[N.]~~ **K. “Disciplinary action”** means any action taken by an agency to influence change in an employee’s performance or behavior to the expected standard, including ~~[letters of reprimand,]~~ suspensions, demotions and dismissals.

~~[O.]~~ **L. “Dismissal”** means the involuntary separation from employment.

~~[P.]~~ **M. “Diversity in the workplace”** means an acknowledgment of all people in the workplace equally, regardless of their differences. Agencies’ management of diversity will ensure that efforts are made to adapt to and accept the importance of all individuals who fall within a group identified for protection under equal employment laws and regulations.

~~[Q.]~~ **N. “Domestic partner”** means two individuals who have shared a common, primary residence for at least 12 consecutive months, sign an affidavit of domestic partnership, and meet all of the following criteria:

- (1) Both domestic partners must be unmarried.
- (2) Domestic partners must have been in a mutually exclusive relationship, intending to do so indefinitely, and the relationship is similar to a marriage relationship in the state of New Mexico.

(3) Domestic partners must meet the age requirements for marriage in New Mexico (18 years of age) and be mentally competent to consent to contract.

(4) Domestic partners must not be related by blood to the degree prohibited in a legal marriage in the state of New Mexico.

(5) Domestic partners must be jointly responsible for the common welfare of each other and share financial obligations.

(6) Domestic partner must not be ~~[married or]~~ a member of another domestic

partnership; nor have been so during the past 12 months. If domestic partnership dissolves and the same two people want to become partners again, they must once again meet the 12-month requirements.

(7) Domestic partners must provide proof of one of the following: joint mortgage or lease; joint ownership of a motor vehicle; joint bank account; joint credit account; domestic partner named as beneficiary of life insurance; domestic partner named as beneficiary of retirement benefits; domestic partner named as primary beneficiary in the employee’s will; domestic partner assigned durable property or health care power of attorney; or documentation of sharing of household expenses by both partners.

~~[R.]~~ ~~“Employee” means a person in a position in the classified service. [note: For purposes of brevity and consistency, this definition differs from Subsection I of Section 10-9-3 NMSA 1978, but in no way confers a greater right on certain persons than contemplated by Subsection I of Section 10-9-3 NMSA 1978.~~

~~[S.]~~ ~~“Employer” means any authority having power to fill positions in an agency.~~

~~[T.]~~ **Q. “Employment list”** the list of names of candidates referred to a hiring manager by the agency’s human resources, from which a candidate may be selected for an interview, and from which a candidate may be selected for appointment.

~~[U.]~~ **P. “Employment records”** means documents that contain information related to a person’s employment or application for employment.

~~[V.]~~ **Q. “Examination”** means ~~[ranked competitive]~~ assessment of qualifications, knowledge, skills, ~~[fitness]~~ and abilities of an applicant ~~[including tests].~~

~~[W.]~~ **R. “Exempt service”** means all positions in the executive branch of state government exempt from the classified service by law.

~~[X.]~~ **S. “Filed”** means received by the office.

~~[Y.]~~ **T. “Involuntary separation”** means involuntary removal of an employee from the classified service without prejudice as provided for in 1.7.10.13 NMAC.

~~[Z.]~~ **U. “Line authority”** means the assignment of activities or approval authority by the ~~[director]~~ SPO director to state personnel office staff or an agency in a manner that does not relinquish the ~~[director’s]~~ SPO director’s administrative oversight or authority.

~~[AA.]~~ **V. “Manager”** means an employee in a position that manages internal staff or external staff, or who plans, organizes, integrates, coordinates, and controls the activities of others. A manager also is held accountable for the performance of people, services, systems, programs, projects and resources and can change their direction, objectives and assignments to meet performance and business needs.

~~[BB.]~~ **W. “Midpoint”** means the salary midway between the minimum and maximum pay rates of a pay band for positions in the classified service. Midpoint represents a compa-ratio value of 1.00 or one hundred percent.

~~[CC.]~~ **X. “Minimum qualifications”** means requirements approved by the board that must be met to be considered for a position.

~~[DD.]~~ **Y. “Office”** means the ~~[state personnel office]~~ State Personnel Office.

~~[EE.]~~ **Z. “Pay band”** means the range of pay rates, from minimum to maximum.

~~[FF.]~~ ~~“Probationer” means an employee in the classified service who has not completed the one-year probationary period.~~

~~[GG.]~~ **AA. “Promotion”** means the change of an employee from a classified position in one pay band to a classified position in a higher pay band.

~~[HH.]~~ **BB. “Reduction”** means a voluntary change without prejudice, within an employee’s pay band, or from a classified position in one pay band to a classified position in a lower pay band.

[HH] CC. “Relation by blood or marriage within the third degree” includes spouse, domestic partner, parent, mother-in-law, father-in-law, step-parent, children, domestic partner children, son-in-law, daughter-in-law, step-child, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, grandparent, grandchild, uncle, aunt, nephew, niece, great-grandchild, and great-grandparent.

[JJ] DD. “Resignation” means the voluntary separation of an employee from the classified service.

[KK] EE. “Rules” means the rules and regulations of the personnel board.

[LL] FF. “Service of notice” shall be complete on the date the notice is mailed via certified mail to the address of record, delivered to a courier for delivery to the address of record, or hand delivered.

[MM] GG. “Signature” means handwritten or electronic signature(s), provided that the mechanism for electronic signatures is approved for use by the [director] SPO director, provides for authentication, and otherwise complies with the Uniform Electronic Transactions Act, Sections 14-16-1 to 21 NMSA 1978.

[NN] HH. “Status” means all of the rights and privileges of an appointment.

[OO] II. “Supervisor” means an employee in a non-manager classification who devotes a substantial amount of work time to supervisory duties, [customarily and] regularly directs the work of [two or more] other [employee] employees and has the authority in the interest of the employer to hire, promote, evaluate the performance of, or discipline other employees or to recommend such actions effectively, but does not include an individual who performs merely routine, incidental or clerical duties, or who occasionally assumes supervisory or directory roles or whose duties are substantially similar to those of subordinates, and does not include lead employees, employees

who participate in peer review or occasional employee evaluation programs.

[PP] JJ. “Suspension” means an involuntary leave of absence without pay for disciplinary reasons for a period not to exceed 30 calendar days.

[QQ] KK. “Transfer” means the movement of an employee from one position to another in the same pay band without a break in employment.

[RR] LL. “Without prejudice” means a declaration that no rights or privileges of the employee concerned are waived or lost except as may be expressly conceded or decided.

[SS] MM. “Writing or written” means in the written form and/or an alternative format, where deemed appropriate, and when requested, including electronic records that comply with the Uniform Electronic Transactions Act, Sections 14-16-1 to 21 NMSA 1978. [1.7.1.7 NMAC - Rp, 1 NMAC 7.1.7, 1/1/2020; A, 1/14/2025]

1.7.1.8 APPROVAL AUTHORITY:

A. Pursuant to the provision of Subsection A of Section 10-9-12 NMSA 1978, the [director] SPO director shall supervise all administrative and technical personnel activities of the state. The [director] SPO director may audit the administrative and technical personnel activities of the state. The [director] SPO director shall submit any findings of non-compliance with these rules to the board.

B. If it is established that an agency has violated the rules, an applicable collective bargaining agreement in place with the state, or the agency’s policies, and the agency is given adequate opportunity to correct violations and fails to do so, the [director] SPO director may suspend the agency’s line authority or right to approve personnel actions, to approve employment lists, to advertise employment positions, to negotiate with or to make agreements with exclusive bargaining

representatives, or to perform any activities related to the agency’s violations and require [director] SPO director approval until the [director] SPO director rescinds the suspension.

C. The [director] SPO director reserves the right to assign line authority under these rules so long as such line authority maintains the [director’s] SPO director’s administrative oversight and authority.

D. The [director] SPO director shall establish criteria governing the requirements which must be met to achieve and maintain line authority status.

E. The [director] SPO director may modify or withdraw line authority status. [1.7.1.8 NMAC - Rp, 1 NMAC 7.1.8, 1/1/2020; A, 1/14/2025]

1.7.1.11 COMPUTATION OF TIME:

A. In computing any period of time prescribed or allowed by these rules, the day from which period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation unless it is a Saturday, Sunday or a day on which a legal holiday is observed. In such a case, the period of time runs to the close of business on the next regular workday. If the period is less than 11 days, a Saturday, Sunday or legal holiday is excluded from the computation.

B. Whenever an employee is permitted or required by these rules to respond or do some other act within a prescribed period after service of [a] notice, [~~or paper upon the employee and the notice or paper is served by mail or courier service,~~ 3] three calendar days shall be added to the prescribed period. [1.7.1.11 NMAC - Rp, 1 NMAC 7.1.11, 1/1/2020; A, 1/14/2025]

1.7.1.13 SETTLEMENT AGREEMENTS:

Any settlement agreement reached by an agency and an employee to resolve a matter between them, that incorporates provisions covered by these rules, must conform to the provisions of

these rules, unless otherwise approved by the [director] SPO director. If a potential offer of settlement relates to a personnel action covered by these rules, including, but not limited to, disciplinary appeals or grievance arbitrations, [~~and prohibited practice complaints, or a collective bargaining agreement entered into by the state~~] an agency must secure approval from the [director] SPO director prior to extending the offer. If in the judgment of the [director] SPO director, the offer of settlement is in the best interest of the state, the [director] SPO director may authorize the agency to extend the offer of settlement to the employee. If such settlement also involves payment of monies by an agency, joint approval of the cabinet secretary of the department of finance and administration signifying budget availability and the [director] SPO director is required.

[1.7.1.13 NMAC - Rp, 1 NMAC 7.1.13, 7/7/2001, 1/1/2020; A, 1/14/2025]

1.7.1.15 TRAINING AND DEVELOPMENT: The [director] SPO director shall establish, pursuant to direction from the board, and maintain a training and development work plan. The board will review the training and development work plan on an annual basis.
[1.7.1.15 NMAC - Rp, 1 NMAC 7.1.15, 1/1/2020; A, 1/14/2025]

VETERINARY MEDICINE, BOARD OF

The New Mexico Board of Veterinary Medicine is approving a repeal of its rule 16.25.2 NMAC Occupational and Professional Licensing Veterinary Medicine Practitioners, Examination and Licensure - Veterinarians -, filed 10/08/2024 and replaced with 16.25.2 NMAC - NMAC Occupational and Professional Licensing Veterinary Medicine Practitioners, Examination and Licensure – Veterinarians, adopted 01/17/2014 and effective 01/14/2025.

The New Mexico Board of Veterinary Medicine is approving a repeal of its rule 16.25.7 NMAC Occupational and Professional Licensing Veterinary Medicine Practitioners, Facility Licenses –, filed 10/08/2024 and replaced with 16.25.7 NMAC - NMAC Occupational and Professional Licensing Veterinary Medicine Practitioners, Facility Licenses, adopted 01/17/2014 and effective 01/14/2025.

VETERINARY MEDICINE, BOARD OF

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 25 VETERINARY MEDICINE PRACTITIONERS PART 2 EXAMINATION AND LICENSURE - VETERINARIANS

16.25.2.1 ISSUING AGENCY: New Mexico Board of Veterinary Medicine
[16.25.2.1 NMAC - Rp, 16.25.2.1 NMAC, 01/14/2025]

16.25.2.2 SCOPE: Applies to all veterinarians licensed to practice in the state of New Mexico and individuals applying for a license to practice veterinary medicine in the state of New Mexico.
[16.25.2.2 NMAC - Rp, 16.25.2.2 NMAC, 01/14/2025]

16.25.2.3 STATUTORY AUTHORITY: Section 61-14-4; Section 61-14-5; Section 61-14-8; Section 61-14-9; Section 61-14-10; Section 61-14-12; Section 61-14-13; Section 61-14-14 and Section 61-14-15 NMSA 1978.
[16.25.2.3 NMAC - Rp, 16.25.2.3 NMAC, 01/14/2025]

16.25.2.4 DURATION: Permanent.
[16.25.2.4 NMAC - Rp, 16.25.2.4 NMAC, 01/14/2025]

16.25.2.5 EFFECTIVE DATE: January 14, 2025 unless

a later date is cited at the end of a section.

[16.25.2.5 NMAC - Rp, 16.25.2.5 NMAC, 01/14/2025]

16.25.2.6 OBJECTIVE: To set out the requirements for obtaining a license to practice veterinary medicine in the state of New Mexico as defined in Subsection B of Section 61-14-2 NMSA 1978.
[16.25.2.6 NMAC - Rp, 16.25.2.6 NMAC, 01/14/2025]

16.25.2.7 DEFINITIONS: [RESERVED]
[16.25.2.7 NMAC - Rp, 16.25.2.7 NMAC, 01/14/2025]

16.25.2.8 GENERAL ELIGIBILITY FOR LICENSURE: A license to practice veterinary medicine in the state of New Mexico is granted only to an applicant who fulfills all of the requirements specified in this part. The mere filing of an application shall not entitle the applicant to a license to practice veterinary medicine. Each applicant shall have the burden of demonstrating, to the satisfaction of the board of veterinary medicine, that he:

A. has reached the age of majority as recognized by the state of New Mexico;

B. is a person of good moral character, physically and mentally fit to practice veterinary medicine;

C. is in good standing in any other state(s) in which he is, or has been, licensed to practice veterinary medicine. If the applicant has had disciplinary proceedings instituted against him which have resulted in suspension or revocation of a license on any grounds other than nonpayment of a licensee fee, or he has voluntarily surrendered a license to practice veterinary medicine, the board will review the prior action(s) on a case by case basis prior to licensure;

D. is professionally qualified for a license to practice veterinary medicine in the state of New Mexico by taking and passing

the written examinations as defined in these rules, except as provided in Section 61-14-10 NMSA 1978;

E. is a graduate veterinarian as defined by Subsection B of Section 61-14-2 NMSA 1978;

F. has not had a United States drug enforcement administration (DEA) license, a state level controlled substances registration, or federal accreditation privileges through the United States department of agriculture (USDA) animal and plant health inspection service (APHIS) restricted or revoked, or surrendered such license or privilege while under investigation or in connection with any disciplinary action or pending disciplinary action. If applicant has had any of these actions taken against him, the board will review such actions on a case by case basis prior to licensure; and

G. understands with regard to any of the above provisions, the final authority to grant a license rests with the board. Determinations will be made on a case by case basis. [16.25.2.8 NMAC - Rp, 16.25.2.8 NMAC, 01/14/2025]

16.25.2.9 REQUIREMENT THAT A PRACTICING VETERINARIAN BE LICENSED:

A. With only those exemptions specified in Section 61-14-14 NMSA 1978, a graduate veterinarian must be licensed by the board to lawfully practice veterinary medicine in New Mexico as defined in Subsection B of Section 61-14-2 NMSA 1978.

B. Only veterinarians licensed by the state of New Mexico may practice veterinary medicine in New Mexico; working under the supervision of a licensed veterinarian does not waive the requirement to hold a license.

C. The requirement for direct supervision of non-veterinarians who treat animals is described in 16.25.9.20 NMAC. [16.25.2.9 NMAC - Rp, 16.25.2.9 NMAC, 01/14/2025]

16.25.2.10 BASIC LICENSURE REQUIREMENTS:

Except as noted, an applicant for a regular license to practice veterinary medicine in New Mexico must:

A. Submit a completed, signed, and notarized *application for licensure-DVM*. The application must:

- (1)** be submitted 30 days before the applicant's selected date to take the state examination;
- (2)** include the application/examination fee; and
- (3)** have attached a color passport-type head and shoulders photograph of the applicant.

B. Take and pass with a minimum score of seventy-five percent, the New Mexico veterinary licensing examination. Exceptions for endorsement applicants are set out in 16.25.2.10 NMAC.

C. Submit all of the following documents within 12 months after passing the state examination. An applicant who fails to provide required documents within 12 months must reapply for licensure.

(1) notarized copy of the applicant's diploma from a veterinary school accredited by the American veterinary medical association (AVMA). Exception for new graduates is set out in 16.25.2.12 NMAC;

(2) official veterinary school transcript bearing the seal of the institution;

(3) verifications of licensure from any and all state(s) in which the applicant is or has been licensed to practice veterinary medicine;

(4) one personal and one professional recommendation; and

(5) the applicant's scores on the national licensing examination for veterinarians.

(a) New Mexico's national examination score requirements are set out in 16.25. 2.16 NMAC.

(b) Exceptions for endorsement applicants are set out in Subsection B of 16.25.2.11 NMAC

(c)

Applicants for a temporary permit shall comply with requirements of Subsection A of 16.25.2.10 NMAC only. [16.25.2.10 NMAC - Rp, 16.25.2.10 NMAC, 01/14/2025]

16.25.2.11 LICENSURE BY ENDORSEMENT: A veterinarian who has been licensed in another state and has performed at least five years of clinical veterinary practice with at least 6,000 hours immediately preceding application for a New Mexico license, may qualify for licensure by endorsement. A qualified endorsement applicant:

A. Does not need to provide his score from the national licensing examination.

B. May take the jurisprudence examination for the standard endorsement fee at a special time, arranged through the executive director, rather than at one of the board set regularly scheduled examination times.

C. Applicant must report criminal convictions and disciplinary actions taken in all jurisdictions. [16.25.2.11 NMAC - Rp, 16.25.2.11 NMAC, 01/14/2025]

16.25.2.12 SENIOR STUDENTS AND NEW GRADUATES: If a senior student or new graduate's veterinary school has not yet provided the diploma by the applicant's examination date, a properly authenticated document such as a letter from the veterinary school dean evidencing graduation or impending graduation may temporarily substitute for the diploma. This provision is only for the purpose of taking the examination; the notarized diploma must be provided the soonest time it becomes available. The applicant cannot become licensed until all required documents, including the notarized copy of the diploma and the official transcript are received by the board. [16.25.2.12 NMAC - Rp, 16.25.2.12 NMAC, 01/14/2025]

16.25.2.13 GRADUATES OF NON-AVMA ACCREDITED VETERINARY SCHOOLS: A graduate of a veterinary school not accredited by the American veterinary medical association (AVMA) must furnish certification of completion of the educational commission for foreign veterinary graduates (ECFVG) program. This certification is in addition to all other licensing requirements as specified in 16.25.2.10 NMAC. Requirements for graduates of non-AVMA accredited schools are also set out in 16.25.5 NMAC.
[16.25.2.13 NMAC - Rp, 16.25.2.13 NMAC, 01/14/2025]

16.25.2.14 60-DAY TEMPORARY PERMIT:

A. Purpose. The temporary permit, good for a period of no more than 60-calendar days, is intended for experienced, licensed veterinarians who wish to practice in New Mexico for a brief period. The temporary permit is not granted to a new graduate or experienced veterinarian who has not yet taken the state licensing examination or met all other licensing requirements.

B. To qualify for a temporary permit, an applicant must:

(1) be currently licensed in and currently practice in another state, territory, or district of the United States;

(2) be in good standing in all jurisdictions in which he is or has been licensed;

(3) submit the completed, signed, and notarized *application for licensure-DVM* form along with a color passport-type, head and shoulders photograph and the temporary permit fee; and

(4) provide a verification of licensure from the state where the applicant currently practices veterinary medicine and holds licensure.

C. An applicant for a temporary permit does not need to take the state examination or provide national examination scores.

D. A temporary permit may not be renewed within a 12

month period from issuance without approval from the board.

[16.25.2.14 NMAC - Rp, 16.25.2.14 NMAC, 01/14/2025]

16.25.2.15 STATE EXAMINATION:

A. The board sets the state licensing examination for veterinarians on a regularly scheduled basis twice annually at a reduced fee. Applicants who wish to obtain their licenses sooner than the board set examination dates can take the examination at the higher fee of \$625. The examination is administered at the board office; arrangements for this type of examination are made with the executive director.

B. The state examination may be taken by senior year veterinary school students as well as graduate veterinarians.

C. The state examination is graded by individuals selected by the board of veterinary medicine. The minimum passing grade for the state examination is seventy-five percent.

D. Applicants will be notified by mail within two weeks after the examination of the results. Grades will be provided to applicants upon request.

E. An applicant who fails the examination can review the examination and his answer sheet at the board office 20 days from receipt of notification of examination results. Prior arrangement will be made with the executive director to designate a time for the review. Only the applicant and a member of the board or executive director may be present. Copying or removing examination questions or answers will result in license denial.

F. An applicant who has failed the state examination must retake it within 30 days. Applicant must pay an additional examination fee of \$625 to retake the examination.

G. Limitations. Once the application/examination fee has been submitted to the board it cannot be refunded. The state examination must be taken within one year from date of application submittal.

(1) If an applicant has applied to take the examination on a board set date and is unable to do so, the examination may be rescheduled on one of the subsequent board set dates within one year without reapplication or the payment of an additional fee.

(2) If an applicant has applied to take the examination on a specific date and is unable to do so, the examination may be rescheduled within one year without reapplication or payment of an additional fee.

[16.25.2.15 NMAC - Rp, 16.25.2.15 NMAC, 01/14/2025]

16.25.2.16 NATIONAL EXAMINATION SCORES: The board accepts, as sufficient to meet state requirements, the minimum passing grade for the national examination for veterinarians. This applies whether the applicant has taken the national board examination (NBE) or the North American veterinary licensing examination (NAVLE). In accordance with the national board of veterinary medical examiners (NBVME), candidates shall not be approved to take the North American veterinary licensing examination (NAVLE) more than five times and shall not be allowed to sit for the examination at a date that is later than five years after the initial attempt. Each of the final two attempts must be at least one year from the previous attempt.

[16.25.2.16 NMAC - Rp, 16.25.2.16 NMAC, 01/14/2025]

16.25.2.17 LICENSE RENEWAL:

A. A veterinarian's license expires and is due for renewal each year on the last day of his birth month.

B. A license is lapsed if the license renewal is not postal postmarked on or before the expiration date. Practicing veterinary medicine with a lapsed license is the same as practicing without a license. Anyone practicing veterinary medicine in New Mexico on a lapsed license is subject to penalties and

disciplinary action as provided in Section 61-14-18 NMSA 1978.

C. Licensee shall display at the business location in full view of the public, his original license certificate signed by the board and the current year renewal license. If licensee is providing veterinary services in a relief capacity, current year license renewal must be easily accessible.

[16.25.2.17 NMAC - Rp, 16.25.2.17 NMAC, 01/14/2025]

16.25.2.18 LICENSE

REINSTATEMENT: The board has no additional policies beyond what is stated in Section 61-14-12 NMSA 1978.

[16.25.2.18 NMAC - Rp, 16.25.2.18 NMAC, 01/14/2025]

16.25.2.19 EXAMINATION AND LICENSURE FEES:

The list of all fees relating to examination, licensure and permit fees is as follows and is posted at the board's web site: www.bvm.nm.gov

A. State jurisprudence examination.

(1) bi-annual board set dates, January and May - \$375

(2) applicant selected date - \$625 and

(3) licensure by endorsement - \$625

B. License and permit fees.

(1) initial license fee is prorated from date of license issue to last day of licensee's birth month;

(2) annual DVM license renewal - \$250

(3) 60-day temporary permit - \$315

(4) inactive status - \$125 Annual continuing education requirement must be fulfilled and reported; and

(5) license reactivation - \$190 along with completed application for reactivation and verification of required annual 15 continuing education hours while license in inactive status.

C. Late renewal penalties.

(1) postal postmarked no later than 30 days past expiration date - \$125 or

(2) postal postmarked more than 30 days after expiration date - \$125 plus \$12.50 per day not to exceed \$3,750.

D. The board may waive payment of a renewal fee and annual continuing education requirement of a licensee while on active duty with the armed services of the United States. Renewal fee and continuing education requirement will be waived for the duration of licensee's overseas deployment or a declared national emergency.

Requests for waivers will be addressed to the executive director of the board of veterinary medicine.

[16.25.2.19 NMAC - Rp, 16.25.2.19 NMAC, 01/14/2025]

16.25.2.20 ADDRESS CHANGE NOTIFICATION:

Throughout his period of licensure, every licensee must notify the board in writing within 30 days of a change of address. *Notice of change of address-DVM, RVT* form is available at the board's web site: www.nmbvm.org.

[16.25.2.20 NMAC - Rp, 16.25.2.20 NMAC, 01/14/2025]

HISTORY OF 16.25.2 NMAC: Pre-NMAC History:

BVE 75-1, Rules Governing the Examination and Licensing of Veterinarians, 12-5-75.

BVE 79-1, Rules Governing the Examination and Licensing of Veterinarians, 9-21-79.

BVE 88-1, Rules Governing the Examination and Licensing of Veterinarians, 10-14-88.

BVE 92-1, Rules Governing the Examination and Licensing of Veterinarians, 5-22-92.

BVE 93-1, Rules Governing the Examination and Licensing of Veterinarians, 6-3-93.

History of Repealed Material:

16 NMAC 25.2, Examination and Licensure - Repealed effective 7-25-01.

16.25.2 NMAC Examination and Licensure - Repealed effective 01-17-14.

16.25.2 NMAC Examination and Licensure - Repealed effective 01-14-25

VETERINARY MEDICINE, BOARD OF

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 25 VETERINARY MEDICINE PRACTITIONERS

PART 7 FACILITY LICENSURES

16.25.7.1 ISSUING

AGENCY: New Mexico Board of Veterinary Medicine.

[16.25.7.1 NMAC - Rp, 16.25.7.1 NMAC, 01/14/2025]

16.25.7.2 SCOPE:

Applies to all veterinary facilities in the state of New Mexico where, or out of which, veterinary medicine, dentistry, and surgery are practiced. [16.25.7.2 NMAC - Rp, 16.25.7.2 NMAC, 01/14/2025]

16.25.7.3 STATUTORY AUTHORITY:

Subsections F and J of Section 61-14-5 NMSA 1978. [16.25.7.3 NMAC - Rp, 16.25.7.3 NMAC, 01/14/2025]

16.25.7.4 DURATION:

Permanent. [16.25.7.4 NMAC - Rp, 16.25.7.4 NMAC, 01/14/2025]

16.25.7.5 EFFECTIVE DATE:

January 14, 2025 unless a later date is cited at the end of a section. [16.25.7.5 NMAC - Rp, 16.25.7.5 NMAC, 01/14/2025]

16.25.7.6 OBJECTIVE:

To establish requirements for the licensing of veterinary facilities. [16.25.7.6 NMAC - Rp, 16.25.7.6 NMAC, 01/14/2025]

16.25.7.7 DEFINITIONS:
[RESERVED]

[16.25.7.7 NMAC - Rp, 16.25.7.7 NMAC, 01/14/2025]

16.25.7.8 FACILITY LICENSE REQUIREMENTS:

A. General requirements.
 Every facility in New Mexico where the practice of veterinary medicine as defined in Section 61-14-2 NMSA 1978, regularly occurs must possess a facility license issued by the board of veterinary medicine.

(1) Failure to comply with this section may result in disciplinary action by the board.

(2) All facility licenses expire, and renewals are due, September 30 of each year.

(3) A facility license cannot be issued without a physical facility.

(4) Licensee manager must maintain New Mexico board of veterinary medicine minimum standards.

(5) A consulting veterinarian who provides consulting services only, (with no hands on practice whatsoever) does not need a facility license.

(6) A licensed veterinarian practicing in New Mexico under a 60-day temporary permit issued by the board does not need a facility license.

(7) A veterinarian working under the jurisdiction of another DVM or licensee manager is not required to hold a facility license.

B. One facility license independent of type of facility must be maintained for medical records and drug storage.

C. Licensee manager or responsible DVM. Each application for a facility license shall name the facility, facility owner, and licensee manager or responsible DVM and shall include the licensee manager's original signature.

(1) A facility owned by anyone other than a veterinarian currently licensed to practice in New Mexico must have a

New Mexico licensed veterinarian as the licensee manager or responsible DVM who will take full responsibility for maintaining minimum standards as stated in board promulgated rules. The responsibility shall include record keeping, controlled substances, and quality of care at the facility.

(2) The licensee manager or responsible DVM is the official holder of the facility's license.

(3) A facility's licensee manager or responsible DVM must be:

(a) the individual who oversees veterinary services at a facility currently in operation; and

(b) present at the facility often enough to have knowledge of and control over the facility's methods for complying with minimum standards and the degree to which the minimum standards are being met.

D. When it is determined that the owner, licensee manager or responsible DVM, or facility has violated any provisions of the Veterinary Practice Act or is in violation of the rules promulgated by the board, the board may take disciplinary action as provided by the Veterinary Practice Act.

[16.25.7.8 NMAC - Rp, 16.25.7.8 NMAC, 01/14/2025]

16.25.7.9 LICENSE FEES:

A current list of fees relating to licensure of facilities is also posted at the board's web site: www.bvm.nm.gov

A. Fees shall include but may not be limited to the following:

(1) initial facility license - \$155;

(2) annual license renewal - \$155; and

(3) late renewal penalties:

(a) postal postmarked after September 30 but no later than October 30 - \$65;

(b) postal postmarked after October 30 - \$155; and

(c) administrative penalties as may be determined by the board.

B. The names of facilities with license renewals more than 30 days overdue are presented to the board at the next regular board meeting for possible disciplinary action by the board.

[16.25.7.9 NMAC - Rp, 16.25.7.9 NMAC, 01/14/2025]

16.25.7.10 FACILITY INSPECTIONS:

A. Regular facility inspections. Each licensed veterinary facility is inspected by the facility inspector every other calendar year or at a frequency determined by the board. The board conducts regular facility inspections to:

(1) ensure that every licensed veterinary facility in New Mexico is operating according to the minimum standards promulgated by the board of veterinary medicine;

(2) assist facilities in achieving and maintaining minimum standards and to encourage the continuous improvement of quality of services;

B. Corrective actions.

(1) Plan of correction. When the facility inspector determines that a licensed facility must make corrections to comply with minimum standards, the facility inspector has authority from the board to:

(a) request the facility's licensee manager or responsible DVM submit a written plan of correction to facility inspector within a specified time frame; and

(b) follow up to ensure that an appropriate plan of correction is submitted and that minimum standards are maintained.

(c) the board will begin the procedures set out in the Uniform Licensing Act to issue a notice of contemplated action if a facility remains non-compliant after two notifications from the facility inspector. Such board action may result in revocation or suspension of licensure to practice in the state.

(2) Re-inspections and consultation. For very serious and chronic violations of the minimum standards, the facility inspector shall present those facilities to the board to determine a formal plan of action which may require mandatory re-inspections.

(a) For each mandatory re-inspection, the board may charge an administrative fee of \$500.

(b) For mandatory, individualized training other than initial training provided at the time of the inspection when violations are found, the board may charge the facility a consulting fee of \$62.50 per hour for additional consultation not to exceed \$625. On a case by case basis, the board may grant credit hours toward the regular annual continuing education (CE) requirement to the licensee manager and any other licensed associates for these types of consultations.

(3) The board mandates re-inspections and individualized training, with corresponding fees, only in cases of very serious or continued violations not for new facilities undergoing their initial inspections.

C. Voluntary consultation.

(1) Upon request, the facility inspector provides an initial professional courtesy inspection to assist a new facility or new licensee manager in setting up a clinic.

(2) A facility's licensee manager may arrange for longer term, more intensive training, consultation, or assistance by the facility inspector relating to specific areas of clinic operations, record keeping or handling of controlled substances, etc., for a fee of \$62.50 per hour not to exceed \$625. Arrangements shall be approved by the board and coordinated through the board's executive director; and

(3) On a case by case basis, the board may grant credit hours toward the regular annual CE requirement to the clinic's licensee manager and any other

licensed associates for voluntary consultations.
[16.25.7.10 NMAC - Rp, 16.25.7.10 NMAC, 1/14/2025]

HISTORY OF 16.25.7 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:
BVE 92-7, Rules Governing Veterinary Facilities, filed 5-22-92.
BVE 93-7, Rules Governing Veterinary Facilities, filed 6-3-93.

History of Repealed Material:
16 NMAC 25.7, Facilities, filed 5-17-96 - Repealed effective 9-1-00.
16.25.7 NMAC, Facility Licenses, filed 8-2-00 - Repealed effective 01-17-14.
16.25.7 NMAC, Facility Licenses, filed 01-17-14 - Repealed effective 01-14-25

VETERINARY MEDICINE, BOARD OF

**TITLE 16
OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 25
VETERINARY MEDICINE PRACTITIONERS
PART 10 DISBURSEMENTS FROM THE ANIMAL CARE AND FACILITY FUND**

16.25.10.1 ISSUING AGENCY: New Mexico Board of Veterinary Medicine.
[16.25.10.1 NMAC-N, 1/14/2025]

16.25.10.2 SCOPE: These rules apply to all organizations and individuals applying for disbursements from the animal care and facility fund.
[16.25.10.2 NMAC-N, 1/14/2025]

16.25.10.3 STATUTORY AUTHORITY: Section 61-14-7.1, NMSA 1978 directs the animal sheltering committee of the New Mexico board of veterinary medicine to develop criteria for individuals, nonprofit organizations, animal

shelters and euthanasia agencies to receive monetary assistance for dog and cat spaying and neutering from the animal care and facility fund; and recommend to the board the disbursements of money from the animal care and facility fund to eligible individuals, nonprofit organizations, animal shelters and euthanasia agencies.
[16.25.10.3 NMAC-N, 1/14/2025]

16.25.10.4 DURATION: Permanent.
[16.25.10.4 NMAC-N, 1/14/2025]

16.25.10.5 EFFECTIVE DATE: January 14, 2025
[16.25.10.5 NMAC-N, 1/14/2025]

16.25.10.6 OBJECTIVE: To establish criteria and procedures for the disbursement of funds from the animal care and facility fund to eligible recipients for providing spay and neuter services to dogs and cats.
[16.25.10.6 NMAC-N, 1/14/2025]

16.25.10.7 DEFINITIONS:
A. "Animal sheltering committee" is as established pursuant to Section 61-14-7.1, NMSA 1978

B. "Disbursement" means payment of monies from the animal care and facility fund pursuant to the requirements in, Section 77-1B-4, NMSA 1978. Eligible applicants will receive monies in advance of services provided pursuant to the terms of the application, except that eligible individual applicants will receive reimbursement paid directly to providers for services performed.

C. "Eligible applicant" means:
(1) an animal shelter, euthanasia agency, or nonprofit organization in good standing with the secretary of state in the state of licensure; or

(2) an individual with a household income that does not exceed two hundred percent of the federal poverty level guidelines as published by the U.S. department of health and human services.

D. "Fund" means

the animal care and facility fund established in Subsection A of Section 77-1B-4, NMSA 1978, including the statewide spay and neuter subaccount established in Subsection D of Section 77-1B-4, NMSA 1978.

E. “Monies” means fees, income and money in the animal care and facility fund, including money in the statewide spay and neuter subaccount.

F. “Qualified service provider” means a veterinarian or other licensed provider of spay/neuter services to eligible applicants in New Mexico.

G. “Qualified” means licensed to provide veterinary services in New Mexico and in good standing with the Board as well as with the provider’s licensing entity.
[16.25.10.7 NMAC-N, 1/14/2025]

16.25.10.8 DETERMINATION OF APPLICANT ELIGIBILITY:

A. All organizations or individuals seeking disbursements from the animal care and facility fund shall submit a completed application on a form approved by the animal sheltering committee.

B. The application shall include:
(1) the name, business address and nonprofit tax ID number in the case of organizations with such status;

(2) the name of the qualified service provider expected to provide spay and neuter services if not the organization itself; and

(3) such other information as determined by the board.

C. The animal sheltering committee shall update application guidelines as necessary.
[16.25.10.8 NMAC-N, 1/14/2025]

16.25.10.9 OBLIGATIONS OF SUCCESSFUL APPLICANTS:

A. Applicants receiving disbursements from the animal care and facility fund shall:
(1) maintain all relevant organizational documents showing that they are in good standing with the secretary of state;

(2) submit an amended application in the event that their proposed scope of services or proposed service provider(s) change, which amendment shall be submitted within 60 days of such change;

(3) submit an annual report based on the date of initial approval, to the board that shall include:

(a) the number of spay and neuter surgeries that the organization has sponsored or performed during the relevant period, which is one year from the date of disbursement of money unless otherwise specified and sanctioned in the application;

(b) the average cost of each spay and neuter surgery performed;

(c) certification that the recipients of the services performed have household incomes not exceeding two hundred percent of the federal poverty level guidelines;

(d) any other information as determined by the animal sheltering committee or the board.

(4) submit additional reports as required by the board.

(5) perform or facilitate the performance of spay and neuter surgeries for cats and dogs residing in New Mexico.

(6) monies unspent before the deadline given shall be returned to the NMBVM to be reverted to the animal care and facility fund.
[16.25.10.9 NMAC-N, 1/14/2025]

16.25.10.10 SUBMISSIONS FOR DISBURSEMENT BY INDIVIDUAL APPLICANTS: To qualify for a disbursement, individual applicants shall provide:

A. the names, addresses and means of contact for the persons responsible for the dog(s) or cat(s) receiving the service;

B. a statement that the person or persons identified above has a household income that does not exceed two hundred percent of

the current federal poverty level guidelines published by the United States department of health and human services; and

C. the name and address of a proposed, qualified service provider to whom the monies will be paid directly.

[16.25.10.10 NMAC-N, 1/14/2025]

16.25.10.11 LOSS OF STATUS

A. An otherwise eligible applicant for disbursement of money from the animal care and facility fund may be denied future disbursements for the following reasons:

(1) failure to submit its annual report as required in Paragraph (3) of Subsection A of 16.25.10.9 NMAC;

(2) failure to remain in good standing with the secretary of state where the organization was incorporated; or
(3) failure to comply with the policies, procedures or other requests from the animal sheltering committee or board.

B. The animal sheltering sommittee shall recommend any loss of status to the board for consideration at a public meeting. The board shall provide the organization at issue 20 days’ notice of such determination by certified mail to the service’s business address on file and may optionally and additionally provide such notice electronically. The board may deliberate on any loss of status in closed session pursuant to Paragraph (3) of Subsection H of Section 10-15-1, NMSA 1978, of the Open Meetings Act.
[16.25.10.11 NMAC-N, 1/14/2025]

16.25.10.12 PROCEDURE FOR BOARD APPROVAL OF DISBURSEMENTS:

A. A majority of a quorum of the animal sheltering committee shall recommend to the board disbursements of money from the fund that comply with this part.

B. A majority of the board shall timely approve, amend, or deny the amount to be disbursed

as recommended by the animal sheltering committee, or partial amount, during the open meeting.

C. The board shall provide written notice to the successful applicants, whose applications have been approved or approved as amended, within 10 days of approval.

D. Within 10 days of board approval of a disbursement, the board’s executive director or the director’s designee shall sign a voucher to submit to the secretary of finance and administration pursuant to Subsection E of Section 77-1B-4, NMSA 1978.
[16.25.10.12 NMAC-N, 1/14/2025]

VETERINARY MEDICINE, BOARD OF

This is an amendment to 16.24.4 NMAC, Section 8 effective 01/14/2025

16.24.4.8 FEES: All fees are payable to the board and are non-refundable. No individual fee shall exceed \$150.00 annually. Fees are as follows.

A. Application for euthanasia technician license
[~~\$100~~] \$50

B. Renewal for euthanasia technician license
[~~\$100.00~~] \$50

C. Application for 60-day temporary license
[~~\$75.00~~] \$50

D. Application for euthanasia instructor certification
\$150.00

E. Renewal for euthanasia instructor certification
\$150.00

F. Application for euthanasia agency license
\$150.00

G. Renewal for euthanasia agency license
\$150.00

H. Late renewal fee (includes technician, instructor and agency) [~~\$100.00~~] \$125

I. Verification of licensure or certification

[~~\$25.00~~] \$30
J. Listing of licensees (paper or electronic)

[~~\$75.00~~] \$150
K. Charge for insufficient funds

[~~\$50.00~~] \$65
L. Duplicate licenses
\$25.00

[16.24.4.8 NMAC - N, 7/1/18, A 1/14/2025]

VETERINARY MEDICINE, BOARD OF

This is an amendment to 16.25.6 NMAC, Sections 9 & 10 effective 01/14/2025

16.25.6.9 EXAMINATIONS:

A. Examinations shall be held as specified by the board of veterinary medicine.

(1) Applicants must pass the American association of state veterinary boards (AAVSB) veterinary technician national examination (VTNE) administered by the professional examination service (PES) with the passing grade established by PES.

(2) Prior to taking the VTNE, applicant must apply for sponsorship by the board. The list of all fees relating to examinations is set out at Subsection C of 16.25.6.9 NMAC and is posted at the board’s web site at www.nmbvm.org. In addition, the applicant must take and pass with a minimum score of seventy five percent, the New Mexico veterinary technician licensing examination.

B. No application shall be acted upon until the examination fee is received by the executive director of the board of veterinary medicine. If the board deems an applicant ineligible for examination, fees will not be refunded.

C. The list of fees relating to examinations is as follows and is posted at the board’s web site: www.nmbvm.org.

(1) state jurisprudence examination:

(a) board set dates, January and May – \$75 or

(b) date selected by applicant – \$100

(2) VTNE: board sponsorship – [~~\$50~~] \$65.

D. Limitations:
(1) Once the fees have been submitted to the board, the fees cannot be refunded.

(2) An applicant has a one year time limit within which to take the state examination.

E. Any applicant requesting an examination or re-examination by the board, other than board-set examinations, shall submit the application for review by the board. If the board determines that there is sufficient justification for administering a special examination, the expense of such special examination shall be borne by the applicant requesting the examination.

F. An applicant failing the examination may retake the entire examination at a scheduled time and will be charged the full examination fee.

G. The executive director will notify candidates of the examination results within 30 days of the date of the examination.
[16.25.6.9 NMAC - Rp, 16.25.6.9 NMAC, 01-17-2014]

16.25.6.10 RENEWAL OF LICENSE: A list of all fees relating to renewal of a registered veterinary technician license is listed at Subsection D of 16.25.6.10 NMAC and at the board’s web site: www.nmbvm.org.

A. A veterinary technician’s license expires and is due for renewal each year on the last day of December. If a registered veterinary technician’s license lapses and is not renewed within five years, they must reapply, retake and pass the examination before they can obtain licensure, Section 61-14-12, NMSA 1978

B. A registered veterinary technician license is lapsed if the license renewal is not

postal postmarked on or before the December 31 expiration date.

C. Registered veterinary technicians shall display at the business location, in full view of the public, the current year license renewal certificate.

D. License fees:

(1) initial

license fee is prorated from date of license issue to last day of December;

(2) annual

renewal fee – \$75

(3) inactive

status – [~~\$37.50~~] \$47. Annual continuing education requirement must be fulfilled and reported;

(4) license

reactivation – [~~\$50~~] \$65 along with completed application for reactivation and verification of required annual 8.00 continuing education hours while license in inactive status; and

(5) late

renewal penalties:

(a)

postal postmarked no later than 30 days after December 31 expiration date – [~~\$25~~] \$32; or

(b)

postal postmarked more than 30 days after December 31 expiration date – [~~\$25~~] \$32 plus [~~\$5~~] \$6.25 per day not to exceed [~~\$300~~] \$375.

E. Continuing

education.

(1) Each

registered veterinary technician licensed to practice in New Mexico must certify that he has completed at least eight hours of approved continuing education during the preceding year. The hours will be derived from seminars, short courses, or scientific programs approved by RACE, AVMA, NAVTA, or sponsored by a veterinary medical association, veterinary organization, university, or by the board. There will be no exemptions for age or retirement.

(2) A waiver

of delinquent hours may be granted by the board if a request is made in writing. The hours must be made up in the next calendar year and is in addition to the current year annual CE requirement.

(3) Continuing

education hours will be accumulated on an annual basis from January through December.

(4) A

maximum of eight credit hours may be accrued as excess and carried forward to the subsequent licensing year.

(5) A form

to be completed by the registered veterinary technician at the time of annual renewal will be provided by the board of veterinary medicine.

(6) The burden

of proving the validity of the reported hours lies solely with the registered veterinary technician.

(7) A new

licensee must comply with the continuing education requirement beginning the next full licensure year after graduation.

(8) In

general, CE must be in the form of contact hours. Credit for non-contact forms of instruction including online training or articles in printed periodicals is accepted, if the instruction:

(a)

is designed for veterinary technicians; and

(b)

non-contact hours do not comprise more than half of the annual requirement of eight CE hours. [16.25.6.10 NMAC - Rp, 16.25.6.10 NMAC, 01/17/2014; A, 05/08/2016, A, 1/14/2025]

VETERINARY MEDICINE, BOARD OF

**This is an amendment to 16.25.8
NMAC, Section 9 effective
01/14/2025**

16.25.8.9 INSTRUCTION, EXAMINATIONS, AND LICENSING:

A. To obtain a

bovine AI and bovine PD permit, an applicant must:

(1)

Complete bovine AI and bovine PD

instruction given by the bovine AI and PD examiner or through another institution approved by the board. To request board approval for a particular bovine AI and PD course of instruction, an applicant must provide to the board a course outline or description, including number of instructional contact hours and sponsoring group or organization. At its next meeting, the board will make its determination whether the instruction or course is adequate and if approval will be granted.

(2) Pass

bovine AI and PD written and proficiency examinations prepared and administered by the board or its appointed agent(s). The purpose of the examination(s) is to determine the knowledge and proficiency of each applicant.

(3) Be

recommended by the board appointed examiner as qualified for the bovine AI and PD permit(s).

B. Upon the

examiner's recommendation, the board may issue a bovine AI and bovine PD permit.

C. Each bovine AI

and PD permit applicant has one year in which to apply to the board for a permit after passing the proficiency examination(s). If the applicant does not apply for a permit within one year, applicant must retake the appropriate examination(s).

D. Fees:

(1) Fees for

instruction are paid directly to the instructor or institution that provides the instruction.

(2) Fees for

the proficiency examinations are paid directly to the board appointed examiner.

(3) Fees for

initial bovine AI and PD permits and annual renewals are paid to the board. A current list of fees relating to bovine artificial insemination and bovine pregnancy diagnosis permits is also posted at the board's web site: www.bvm.nm.gov

(a)

Initial permit: each permit, bovine AI or bovine PD – [~~\$75~~] \$95.

(b) Annual permit renewal: each permit, bovine AI or bovine PD – ~~[\$75]~~ \$95.

(c) Late-renewal penalty fees:

(i) postal postmarked after December 31 but no later than January 31 – ~~[\$50]~~ \$65; or

(ii) postal postmarked after January 31 – ~~[\$75]~~ \$95.
 [16.25.8.9 NMAC - A, 16.25.8.9 NMAC; A, 07/01/2018, A, 1/14/2025]

**VETERINARY
 MEDICINE, BOARD OF**

This is an amendment to 16.25.9 NMAC, Section 9 effective 01/14/2025

16.25.9.9 PREMISES - GENERAL REQUIREMENTS:

A. All premises where veterinary medicine including its various branches is being practiced and all instruments, equipment, apparatus, and apparel used in connection with those practices, shall be kept clean and sanitary and shall conform to the standards specified for different types of facilities.

B. ~~[Emergency service either by staff veterinarians or by pre-arranged referral to another veterinarian within a reasonable distance shall be provided at all times. Referral must be acknowledged and agreed upon by both the referring and referred veterinarians.]~~ Every veterinary facility shall provide information regarding the availability of the nearest emergency services and make that information easily available to the public.

C. Every veterinary facility shall maintain the following:

(I) A sanitary environment to include the proper routine disposal of waste material, proper sterilization or sanitation of all equipment used in diagnosis or treatment, and adequate storage to provide a neat and orderly appearance;

(2) An adequate library of textbooks, journals or other current veterinary reference materials, readily available on the premises or available through electronic access;

(3) Proper storage and environmental control for all medicines and biologics based on the manufacturer’s recommendations;

(4) Properly maintained records; and

(5) Legally accessible methods for the disposal of deceased animals and infectious waste.
 [16.25.9.9 NMAC - Rp 16.25.9.9 NMAC, 01/17/2014, A, 1/14/2025]

End of Adopted Rules

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Other Material Related to Administrative Law

**TRANSPORTATION,
DEPARTMENT OF****NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Department of Transportation gives Notice of a Minor, Nonsubstantive Correction to 18.3.4 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule, as follows:

In the emergency amendment explanatory statement, the incorrect rule citation "18.11.10 NMAC" was corrected to the correct rule citation "18.3.4 NMAC".

Subparagraph (f), Paragraph (2), Subsection B of Section 12: The rule citation embedded within this subparagraph "Section 18.3.4.12(B)(2)(g)" was corrected to proper legislative, rule citation "Subparagraph (g) of Paragraph (2) of Subsection B of 18.3.4.12 NMAC".

A copy of this Notification will be filed with the official version of the above rule.

**End of Other Material
Related to Administrative
Law**

2025 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXVI, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 3	January 14
Issue 2	January 16	January 28
Issue 3	January 30	February 11
Issue 4	February 13	February 25
Issue 5	February 27	March 11
Issue 6	March 13	March 25
Issue 7	March 27	April 8
Issue 8	April 10	April 22
Issue 9	April 24	May 6
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Issue 13	June 26	July 15
Issue 14	July 17	July 29
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Issue 19	September 25	October 7
Issue 20	October 9	October 21
Issue 21	October 23	November 4
Issue 22	November 6	November 18
Issue 23	November 20	December 9
Issue 24	December 11	December 23

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. The *New Mexico Register* is available free online at: <http://www.srca.nm.gov/new-mexico-register/>. For further information, call 505-476-7941