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New Mexico Register

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

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The New Mexico Register

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New Mexico Register

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Notices of Rulemaking and Proposed Rules

ENVIRONMENT DEPARTMENT

NOTICE OF PUBLIC HEARING FOR AMENDMENTS TO 20.7.4 NMAC, UTILITY OPERATOR CERTIFICATION

The Water Quality Control Commission (“WQCC”) will hold a public hearing beginning **on August 10, 2021**, following the regularly scheduled WQCC public meeting and continuing thereafter as necessary via the WebEx online meeting platform. The videoconference’s Meeting ID and Password, videoconference link, and telephone numbers are as follows:

Beginning Tuesday, August 10, 2021:

To connect via video conference, go to:
Meeting link: <https://nmed-oit.webex.com/nmed-oit/j.php?MTID=m915e8e39fddf48a5a6f4538c8ff81011>
Meeting number: 177 786 5919
Password: 2pqDb2PQ2TZ
Join by video system
Dial: 1777865919@nmed-oit.webex.com
You can also dial 173.243.2.68 and enter your meeting number.

Join by phone:
+1-415-655-0001 US Toll
Access code: 177 786 5919
Global call-in numbers

Please visit the WQCC website prior to the hearing for any updates: <https://www.env.nm.gov/water-quality-control-commission/wqcc/>. The purpose of the hearing is to consider proposed amendments to 20.7.4 NMAC, Utility Operator Certification. The New Mexico Environment Department’s Drinking Water Bureau (“Bureau”) proposed these amendments to clarify the experience that operators must possess to achieve certain levels of certifications, add an operator in training certification, explain the general service area of water and wastewater systems, update fee

schedules for operators obtaining certifications, and make minor edits to assist both the Bureau and certified operators in using the regulations, in accordance with the state Water Quality Act and Utility Operator Certification Act.

The proposed amendments to 20.7.4 NMAC may be reviewed online at: <https://www.env.nm.gov/water-quality-control-commission/wqcc-21-26-in-the-matter-of-proposed-amendments-to-utility-operator-certification/>. Due to restrictions currently in place by the Governor’s Executive Orders and various emergency public health orders designed to protect the public and prevent the spread of the Novel Coronavirus Disease – 2019 (COVID-19), the WQCC Administrator’s office is closed to the public. Therefore, in-person review of the proposed amendments is not possible at this time. Persons who wish to review a physical copy of the proposed amendments should contact the WQCC Administrator at the address provided below.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing; to introduce exhibits; and to examine witnesses.

Pursuant to 20.1.6.202 NMAC, those wishing to present technical testimony must file a written notice of intent to present technical testimony with the WQCC Administrator **on or before 5:00 p.m. Mountain Daylight Time on July 21, 2021**, 20 days prior to the hearing. Notices of intent to present technical testimony should reference the name of the regulation, the date of the hearing, and the docket number, **WQCC 21-26**.

The form and content of the notice of intent to present technical testimony shall:

- Identify the person for whom the witness(es) will testify;

- Identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their education and work background;
- Include a copy of the full written direct testimony of each technical witness in narrative form;
- Include the text of any recommended modifications to the proposed regulatory change; and
- List and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

Notices of intent to present technical testimony shall be filed with:
Pamela Jones, WQCC Administrator
New Mexico Environment
Department
Harold Runnels Building
P.O. Box 5469
Santa Fe, NM 87502
telephone: (505) 660-4305
email: pamela.jones@state.nm.us

Those wishing to do so may offer non-technical public comment at the hearing or submit a non-technical written statement in lieu of oral testimony at or before the hearing. Written comments regarding the proposed amended rule may be addressed to Pamela Jones, WQCC Administrator, at the above address, and should reference docket number **WQCC 21-26**. Pursuant to 20.1.6.203 NMAC, any person may file an entry of appearance as a party. The entry of appearance shall be filed with the WQCC Administrator, at the above address, no later than July 21, 2021, 20 days before the date of the hearing.

The hearing will be conducted in accordance with the WQCC Rulemaking Procedures 20.1.6 NMAC; the Water Quality Act, Sections 74-6-1 to 74-6-17 NMSA 1978 (1967 as amended through 2019); the State Rules Act, Section 14-4-5.3 NMSA 1978; and other applicable procedures.

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Pamela Jones, WQCC Administrator, at the above address, by June 29, 2021. (TDD or TTY users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

STATEMENT OF NON-DISCRIMINATION: NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kathryn Becker, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us. If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above.

**AVISO DE AUDIENCIA PÚBLICA
PARA ENMIENDAS A 20.7.4
NMAC
CERTIFICACIÓN DE
OPERADOR DE SERVICIOS
PÚBLICOS**

La Comisión de Control de Calidad del Agua ("WQCC" por sus siglas en inglés) celebrará una audiencia pública a partir del 10 de agosto

de 2021, después de la reunión pública de la WQCC programada regularmente, y continuará después según sea necesario a través de la plataforma de reuniones en línea WebEx. El ID y la contraseña de la reunión de la videoconferencia, el enlace de la videoconferencia y los números de teléfono son los siguientes:

A partir del martes, 10 de agosto de 2021:

Para conectarse por videoconferencia, vaya a:

Enlace de la reunión: <https://nmed-oit.webex.com/nmed-oit/j.php?MTID=m915e8e39fddf48a5a6f4538c8ff81011>

Número de la reunión: 177 786 5919

Contraseña: 2pqDb2PQ2TZ

Únase por sistema de vídeo

Marque: 1777865919@nmed-oit.webex.com

También puede marcar 173.243.2.68 e introducir el número de reunión.

Únase por teléfono

+1-415-655-0001 US Toll

Código de acceso: 177 786 5919

Números de llamadas globales

Consulte el sitio web de la WQCC antes de la audiencia para ver cualquier actualización: <https://www.env.nm.gov/water-quality-control-commission/wqcc/>. El propósito de la audiencia es considerar las enmiendas propuestas a 20.7.4 NMAC, Certificación de Operadores de Servicios Públicos. La Oficina de Agua Potable del Departamento de Medio Ambiente de Nuevo México ("Oficina") propuso estas enmiendas para aclarar la experiencia que los operadores deben poseer para lograr ciertos niveles de certificaciones, añadir una certificación de operador en formación, explicar el área de servicio general de los sistemas de agua y aguas residuales, actualizar las tablas de tarifas para los operadores que obtienen certificaciones, y hacer ediciones menores para ayudar tanto a la Oficina como a los operadores certificados en el uso de las regulaciones, de acuerdo con la Ley de Calidad del Agua del estado y la Ley de Certificación de Operadores de Servicios Públicos.

Las enmiendas propuestas a 20.7.4 NMAC pueden consultarse en línea en: <https://www.env.nm.gov/water-quality-control-commission/wqcc-21-26-in-the-matter-of-proposed-amendments-to-utility-operator-certification/>. Debido a las restricciones actualmente en vigor por las Órdenes Ejecutivas de la Gobernadora y varias órdenes de salud pública de emergencia diseñadas para proteger al público y prevenir la propagación de la Nueva Enfermedad por Coronavirus – 2019 (COVID-19), la oficina de la administradora de la WQCC está cerrada al público. Por lo tanto, la revisión en persona de las enmiendas propuestas no es posible en este momento. Las personas que deseen ver una copia impresa de las enmiendas propuestas deben comunicarse con la administradora de la WQCC en la dirección indicada más abajo.

Todas las personas interesadas tendrán una oportunidad razonable en la audiencia para presentar evidencias, datos, puntos de vista y argumentos pertinentes, de forma oral o por escrito; presentar pruebas instrumentales y para interrogar a los testigos.

De conformidad con 20.1.6.202 NMAC, quienes deseen presentar un testimonio técnico deben presentar un aviso por escrito de su intención de presentar un testimonio técnico ante la administradora de la WQCC **a más tardar a las 5:00 p.m., hora de verano de la montaña, del 21 de julio de 2021**, 20 días antes de la audiencia. Los avisos de intención de presentar testimonios técnicos deben hacer referencia al nombre de la regulación, la fecha de la audiencia y el número de expediente, **WQCC 21-26**.

La forma y el contenido del aviso de la intención de presentar un testimonio técnico deberán:

- Identificar a la persona por quien testificará el testigo o testigos;
- Identificar cada uno de los testigos técnicos que la persona tiene

intención de presentar e indicar las calificaciones de dicho testigo, incluida una descripción de su formación y experiencia laboral;

- Incluir una copia del testimonio directo completo por escrito de cada testigo técnico en forma narrativa;
- Incluir el texto de cualquier modificación recomendada para el cambio regulatorio propuesto; y
- Enumerar y adjuntar todas las pruebas instrumentales que se prevé que ofrezca esa persona en la audiencia, incluida cualquier declaración propuesta de las razones para la adopción de las normas.

Los avisos de intención de presentar un testimonio técnico se presentarán a:

Pamela Jones, administradora de la WQCC
 Departamento de Medio Ambiente de Nuevo México
 Edificio Harold Runnels
 P.O. Box 5469
 Santa Fe, NM 87502
 teléfono: (505) 660-4305
 correo electrónico: pamela.jones@state.nm.us

Aquellos que deseen hacerlo pueden ofrecer comentarios públicos no técnicos en la audiencia o presentar una declaración no técnica por escrito en lugar de un testimonio oral en la audiencia o antes de la audiencia. Los comentarios por escrito sobre la norma enmendada propuesta pueden dirigirse a Pamela Jones, administradora de la WQCC, a la dirección indicada anteriormente, y deben hacer referencia al número de expediente WQCC 21-26. De conformidad con 20.1.6.203 NMAC, cualquier persona puede presentar un registro de comparecencia como parte. El registro de comparecencia deberá presentarse a la administradora de la WQCC, en la dirección indicada anteriormente, a más tardar hasta el 21 de julio de 2021, 20 días antes de la fecha de la audiencia.

La audiencia se llevará a cabo de acuerdo con los Procedimientos de Elaboración de Normas de la WQCC 20.1.6 NMAC; la Ley de

Calidad del Agua, Secciones 74-6-1 a 74-6-17 NMSA 1978 (1967 según enmendada hasta el 2019); la Ley de Normas del Estado, Sección 14-4-5.3 NMSA 1978; y otros procedimientos aplicables.

Si alguna persona requiere asistencia, un intérprete o un aparato auxiliar para participar en este proceso, comuníquese con Pamela Jones, administradora de la WQCC, en la dirección anterior, a más tardar hasta el 29 de junio de 2021. (Los usuarios de TDD o TTY pueden acceder al número a través de la Red de Retransmisión de Nuevo México, 1-800-659-1779 (voz); los usuarios de TTY: 1-800-659-8331).

AVISO DE NO

DISCRIMINACIÓN: El NMED no discrimina por motivos de raza, color, nacionalidad, discapacidad, edad o sexo en la administración de sus programas o actividades, como lo exigen las leyes y reglamentos aplicables. NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de consultas sobre los requisitos de no discriminación implementados por 40 C.F.R. Partes 5 y 7, incluido el Título VI de la Ley de Derechos Civiles de 1964, según enmendada; Sección 504 de la Ley de rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, el Título IX de las Enmiendas de Educación de 1972 y la Sección 13 de las Enmiendas de la Ley Federal de Control de la Contaminación del Agua de 1972. Si tiene alguna pregunta sobre este aviso o cualquiera de los programas, políticas o procedimientos de no discriminación de NMED, puede comunicarse con: Kathryn Becker, coordinadora de no discriminación, NMED, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855 o nd.coordinator@state.nm.us. Si cree que ha sido discriminado con respecto a un programa o actividad del NMED, puede comunicarse con la coordinadora de no discriminación.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMED or Department) will hold a public video/telephonic rulemaking hearing on July 13, 2021. The hearing will begin at 10:00 a.m. and will be held via Microsoft Teams. The purpose of the rulemaking hearing is to take public comment regarding proposed amendments to **5.7.20 NMAC, LEGISLATIVE LOTTERY SCHOLARSHIP PROGRAM.**

Join via Microsoft Teams:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_YWZjYmU4YmYtODU5OS00MDhkLTg0NDQtMmQzMMDM3YWI5MWY4%40thrad.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22c327f958-5970-4536-8f6b-03d48b60d29e%22%7d

Or call in (audio only)

+1 (505) 312-4308

Phone Conference ID: 111 595 871#

Amendments:

5.7.20.7 NMAC, DEFINITIONS

5.7.20.8 NMAC, STUDENT ELIGIBILITY

Purpose:

The proposed amendments are based upon changes that were made to the program through the enactment of S.B. 234, 55th Leg., 1st Sess. (N.M. 2021). Pursuant to S.B. 234, the definition of a qualified student for the New Mexico Legislative Lottery Scholarship is expanded to include students that completed the requirements of a home-based or non-public-school primary educational program in the state.

Summary of proposed changes:

The amendment to Section 5.7.20.7 NMAC updates the definition of qualified student for the New Mexico

Legislative Lottery Scholarship to include students that completed the requirements of a home-based or non-public-school primary educational program in the state. Additional language is added to clarify that the home-schooled student must have been registered with the New Mexico Public Education Department as established in current statutes governing homeschooling. The amendment to Section 5.7.20.8 NMAC updates the provisions regarding establishing initial eligibility to include references to home-schooled students.

Details for Obtaining a Copy, Public Hearing and Comments:

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

A public hearing will be held on July 13, 2021 from 10:00 a.m. until 10:30 a.m. via Microsoft Teams. Any person who is or may be affected by this proposed rule may participate.

Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@state.nm.us. Written comments must be received no later than 4:00 p.m. on July 9, 2021. Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Sections 6-24-1 et seq. NMSA 1978 and Sections 21-21N-1 et seq. NMSA 1978.

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

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public video/telephonic rulemaking hearing on July 13, 2021. The hearing will begin at 10:30 a.m. and will be held via Microsoft Teams. The purpose of the rulemaking hearing is to take public comment regarding proposed amendments to **5.7.35 NMAC, GROW YOUR OWN TEACHERS SCHOLARSHIP PROGRAM.**

Join via Microsoft Teams:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_OGFINjU0ZTQtMDIhNC00YTZkLWExOWItM2M3ZmM4YjEzMDE1%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22c327f958-5970-4536-8f6b-03d48b60d29e%22%7d

Or call in (audio only)
 +1 (505) 312-4308
 Phone Conference ID: 345 568 732#

Amendments:

5.7.35.6 NMAC, OBJECTIVE
 5.7.35.7 NMAC, DEFINITIONS
 5.7.35.8 NMAC, STUDENT ELIGIBILITY AND AWARD PROCESS
 5.7.35.9 NMAC, AMOUNT OF SCHOLARSHIP AND DURATION
 5.7.35.10 NMAC, ADMINISTRATION OF THE PROGRAM

Purpose:

The proposed amendments are based upon changes that were made to the program through the enactment of H.B. 22, 55th Leg., 1st Sess. (N.M. 2021). Pursuant to H.B. 22 eligibility for the Grow Your Own Teachers Program has been expanded to include eligibility for all school employees in teaching assistant positions. H.B. 22 also provides conditions for professional leave for award recipients. In addition, H.B. 22 expands program eligibility to individuals who are legally authorized to work in the United States, rather than requiring citizenship for eligibility.

Summary of proposed changes:

The amendment to Section 5.7.35.7 NMAC removes the definition “educational assistant” and adds the definition “school employee”. Occurrences of the term “educational assistant” are updated throughout the rule to “school employee.” The amendment to 5.7.35.8 NMAC removes the requirement for United States citizenship and replaces it with the requirement that the school employee be authorized to work in the United States. The amendment to Section 5.7.35.10 NMAC adds provisions related to professional leave for program award recipients.

Details for Obtaining a Copy, Public Hearing and Comments:

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

A public hearing will be held on July 13, 2021 from 10:30 a.m. until 11:00 a.m. via Microsoft Teams. Any person who is or may be affected by this proposed rule may participate.

Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@state.nm.us. Written comments

must be received no later than 4:00 p.m. on July 9, 2021. Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978 and Chapter 230, Laws of 2019.

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

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public video/telephonic rulemaking hearing on July 13, 2021. The hearing will begin at 9:30 a.m. and will be held via Microsoft Teams. The purpose of the rulemaking hearing is to take public comment regarding proposed amendments to **5.100.5 NMAC, EXEMPTION UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT.**

Join via Microsoft Teams:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_Y2IwYjk1NDktODI0Yi00Zjg1LTlhNGUtMzh1Y2I1M2E1ODg2%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7

a70e60ff%22%2c%22Oid%22%3a%22c327f958-5970-4536-8f6b-03d48b60d29e%22%7d

Or call in (audio only)
+1 (505) 312-4308
Phone Conference ID: 173 431 256#

Amendments:
5.100.5.6 NMAC, OBJECTIVE

Purpose:
The purpose of the proposed rule change is to include and list the exceptions to the Post-Secondary Educational Institution Act. The amendment includes the addition of an exemption for chartered, nonprofit religious non-degree and degree granting institutions whose sole purpose is to train students in religious disciplines to prepare them to assume a vocational objective relating primarily to religion. The amendment also adds provisions regarding the requirements for exemption of non-accredited private post-secondary educational institutions that offer a degree program.

Summary of proposed changes:
The amendment to Section 5.100.5.6 NMAC adds a listing of various operations which are excepted under the Post-Secondary Educational Institution Act. The addition of the listing is for clarity. The listing includes provisions relating to an exemption for chartered, nonprofit religious non-degree and degree granting institutions whose sole purpose is to train students in religious disciplines to prepare them to assume a vocational objective relating primarily to religion. Lastly, the amendment adds requirements for exemption of non-accredited private post-secondary educational institutions that offer a degree program.

Details for Obtaining a Copy, Public Hearing and Comments:
The proposed rule is also posted on the NMHED website and may be accessed at <http://www.hed.state.nm.us/> under the "Events" section.

To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@state.nm.us or (505)476-8411.

A public hearing will be held on July 13, 2021 from 9:30 a.m. until 10:00 a.m. via Microsoft Teams. Any person who is or may be affected by this proposed rule may participate. **Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@state.nm.us. Written comments must be received no later than 4:00 p.m. on July 9, 2021.** Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

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

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

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing on Tuesday, July 13, 2021 from 2 p.m. to 4 p.m. (MDT) in Mabry Hall, located in the Jerry

Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501. The location of the public hearing is subject to change due to concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham's Executive Order 2021-012, Renewing the State of Public Health Emergency Initially Declared in Executive Order 2020-004, Other Powers Invoked in That Order, and All Other Orders and Directives Contained in Executive Orders Tied to the Ongoing Public Health Emergency; or with any executive order that supersedes Executive Order 2021-012. Continuous updates on hearing changes and Zoom information will be provided on the PED website. The purpose of the public hearing is to receive public input on the proposed amendment to 6.30.15 NMAC, Community Schools. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the rule changes. Written comment will also be accepted at the hearing.

Explanation of Purpose of Text

The purpose of the proposed new rule **6.30.15 NMAC, Community Schools**, is to provide criteria for the development and implementation of the community schools act. Development and implementation includes establishing a set of research- and evidence-based strategies and best practices that support students and their families by making schools centers of the community that reflect local needs, assets, and priorities.

Summary of Text

The proposed new rule **6.30.15 NMAC, Community Schools**, includes the statutory requirements that must be met for the implementation of a community school initiative, details what eligible applicants must submit to the PED to be considered for a community school

grant, and outlines the responsibilities of the Coalition for Community Schools. Additionally, the proposed new rule contains the responsibilities of a lead partner agency, including employing a community school coordinator.

Statutory Authorization(s): Sections 9-24-8, 22-2-1, 22-2-2, and 22-32-1 et seq. NMSA 1978.

No technical information served as a basis for this proposed rule change.

Public Comment. Interested parties may provide comment at the public hearing or may submit written comments by mail to John Sena, Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 121, Santa Fe, New Mexico 87501, by electronic mail to rule.feedback@state.nm.us, or by fax to (505) 827-6520. Written comments must be received no later than 5 p.m. (MDT) on Tuesday, July 13, 2021. The PED encourages the early submission of written comments. The public comment period is from Tuesday, June 8, 2021 to Tuesday, July 13, 2021 at 5:00 p.m. (MDT).

The PED will review all feedback received during the public comment period and issue communication regarding a final decision at a later date.

Copies of the proposed rules may be accessed through the page titled, "Rule Notification," on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from John Sena at (505) 570-7816 during regular business hours.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact John Sena at (505) 570-7816 as soon as possible before the date set for the public hearing. The PED

requires at least 10 calendar days advance notice to provide any special accommodations requested.

TRANSPORTATION, DEPARTMENT OF

NOTICE OF PROPOSED RULEMAKING

PROPOSED NEW RULE, 18.11.10 NMAC

The Aviation Division of the New Mexico Department of Transportation (Aviation Division) is proposing a new rule, 18.11.10 NMAC, Rural Air Service Enhancement Grant Program.

Approval of the initial rulemaking action for the proposed new rule was granted to the Aviation Division by the New Mexico State Transportation Commission on May 20, 2021 pursuant to Sections 9-5-1, 67-3-8, 67-3-11, 67-1-13, 67-3-28 and 67-1-13 NMSA 1978. The legal authority authorizing this rulemaking is Section 64-1-13 NMSA 1978 and Senate Bill 133.

Purpose: The purpose of this rule is to implement the newly enacted Rural Air Service Enhancement Grant Program.

Summary of Full Text: In the 2021 regular session, the New Mexico legislature enacted Senate Bill 133 to create the Rural Air Service Enhancement Act and the Rural Air Service Enhancement Fund. Senate Bill 133 provides that legislative appropriations and other moneys are deposited in the Rural Air Service Enhancement Fund for the purpose of carrying out the Rural Air Service Enhancement Act. The Rural Air Service Enhancement Act was established to provide grant funds to municipalities and counties for use in establishing and maintaining rural air service. The Rural Air Service Enhancement Act is administered by the Aviation Division of the New Mexico Department of Transportation. The proposed

rule describes the process by which municipalities and counties are to competitively select an air carrier to provide rural air service between two or more airports, necessary provisions that are to be included in a service agreement between the municipality or county and the selected air carrier, the contents of the grant application to be submitted to the Aviation Division, the criteria that the Aviation Division will use in awarding a grant, the process for the eventual award of grant to a municipality or county, and the reimbursement process.

Copy of the full text of the proposed new rule may be found on the NMDOT website at the following Internet link, under the *Public Notices* tab: <https://dot.state.nm.us/content/nmdot/en/public-notice.html>. A copy of the proposed rule may also be requested by contacting Pedro Rael at: Telephone (505) 629-5105 or Email: pedro.rael@state.nm.us.

NMDOT will hold a public hearing for the purpose of receiving oral and written public comment from interested parties on the proposed new rule, 18.11.10 NMAC. The hearing is scheduled on July 8th, 2021, from 10:00 a.m. to 11:30 a.m. at New Mexico Department of Transportation District 3, 7500 Pan American Freeway NE, Albuquerque, New Mexico. The Aviation Division will be hosting a virtual meeting contemporaneously with the scheduled public hearing. Any member of the public who wishes to participate virtually must contact Pedro Rael at: Telephone (505) 629-5105 or Email: pedro.rael@state.nm.us no later than 12:00 pm on July 6th, 2021 in order to be placed upon the public comment listing and to receive the Zoom invitation. The Zoom invitation will include a call-in number for those participants who are unable to access the Zoom platform via computer.

To submit written views and comments on or before July 8th, 2021 please send to: Pedro Rael, Aviation Division, New Mexico

Department of Transportation, P.O. Box 1149, Santa Fe, New Mexico 87504, Telephone (505) 629-5105; Email: pedro.rael@state.nm.us. Written comments will be accepted from the date this notice is published in the New Mexico Register, before and at the scheduled hearing, and until the close of the final hearing scheduled in this rulemaking. If you plan to submit written comments, argument or data at the hearing, please make sure any documentation contains your name, phone number and email address, and please bring (3) copies of any documents to the hearing. If submitting written comments by email, please indicate the rule number in the subject line. All public written comments will be posted on the Departments website within three days of receipt. Oral comments will only be accepted at the public hearing, and may be subject to time limitations. After the close of the final hearing scheduled in this rulemaking, the rulemaking record will be closed and no other comments will be accepted.

Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule revisions in an accessible form may contact Pedro Rael at (505) 629-5105 at least ten days before the hearing.

End of Notices of Rulemaking and Proposed Rules

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Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.65.3 NMAC, Sections 2, 3, 7, 9 10, 11 and 12, effective 6/8/2021.

6.65.3.2 SCOPE: [All EPPs] Educator preparation programs approved by the department and seeking approval of the department, serving candidates in New Mexico. [6.65.3.2 NMAC - Rp, 6.65.3.2 NMAC, 10/29/2019, A, 6/8/2021]

6.65.3.3 STATUTORY AUTHORITY: Sections 9-24-8, 22-2-1, 22-2-2, and 22-10A-19.2 NMSA 1978. [6.65.3.3 NMAC - Rp, 6.65.3.3 NMAC, 10/29/2019; A, 6/8/2021]

6.65.3.7 DEFINITIONS:

- A. "Candidate"** means an individual enrolled in an EPP for licensure offered through a department-approved EPP provider.
- B. "Certified review team"** means the team trained by the department to conduct comprehensive state EPP approvals. Members of the certified review team may serve in multiple roles. The following shall be represented:
- (1) a representative of the department with expertise in culturally and linguistically responsive instruction;
 - (2) a dean or director from [another] a department-approved EPP, other than the one being reviewed;
 - (3) a faculty member from [another] a department-approved EPP, other than the one being reviewed;
 - (4) a member of a LEA administrative team; and
 - (5) a principal or eligible cooperating teacher from a local public school.

C. "Clinical experience" means the guided, hands-on application of knowledge and theory to actual practice through collaborative and facilitated learning activities taking place in field-based assignments.

D. "Completer" means a candidate who earns a certificate or diploma from [an EPP approved by the department.] a department-approved EPP.

E. "Comprehensive state approval" means the process conducted by the certified review team to evaluate and approve EPPs.

F. "Comprehensive state approval site visit" means the visit conducted by a certified review team to evaluate EPP performance for certification.

G. "Cooperating teacher" means an educator who meets the following qualifications:

- (1) is employed by a LEA;
- (2) is mutually selected by the LEA and the EPP;
- (3) has at least three years of experience under the appropriate license;
- (4) is the primary evaluator of the candidate during their clinical experience;
- (5) has completed an introductory mentorship course provided by the department; and

[~~(5)~~] (6) either meets the necessary performance level as defined by the department on their educator effectiveness report or, for an educator who recently relocated to New Mexico and does not yet have an educator effectiveness report, to have met one of the following requirements:

- (a) the teacher is a level three-A teacher with a minimum of six years teaching experience; or

(b) the teacher is a nationally board certified teacher.

H. "Day-one ready educator" means a teacher who positively impacts measurable student success from the first day the educator begins teaching by having a deep understanding of the diverse cultural and linguistic needs of all students, demonstrating deep content knowledge, and having the ability to support all students' social and emotional needs, motivate and actively engage all students, [~~the ability to~~] and personalize learning based on students' needs, including the needs of indigenous students, students with disabilities, bilingual students, and English language learners, and a willingness to engage in continuous efforts to improve teaching abilities.

I. "Disposition" means the professionalism demonstrated by a candidate indicating capacity to be a day-one ready educator.

J. "EAR" means educator accountability report required annually and designed to create a uniform statewide educator accountability reporting system to measure and track teacher and administrator education candidates from pre-entry to post-graduation in order to benchmark the productivity and accountability of New Mexico's educator workforce.

K. "EPP" means an educational preparation program offered by an educational preparation provider [~~that is~~] intended to lead to teacher licensure upon candidates' successful completion of the program.

L. "EPP advisory board" means the group of individuals appointed by the EPP who have unique knowledge regarding the educational needs of the local

culturally and linguistically diverse community, including knowledge of the needs of indigenous students, students with disabilities, bilingual students, and English language learners.

M. “EPP application”

means a written request, on a department-approved form, to the PPSC to be a department-approved EPP.

N. “EPP provider”

means any individual, private or public education association, corporation, or institution of higher education offering an EPP.

O. “EES” means

the department-approved educator evaluation system.

P. “Initial approval”

means the first time an EPP provider [~~seeks and is~~ sought and was granted approval from the PPSC to create a new EPP in the state of New Mexico.

Q. “LEA” means a

local educational agency. A LEA may be a public school district, a state-chartered charter school, or a state-educational agency.

R. “New Mexico

teacher assessments” means the tests required for individuals seeking initial New Mexico licensure.

S. “PPSC” means the

professional practices and standards council, which approves EPPs as defined in 6.2.8 NMAC.

T. “Program

revision” means the addition of new licensure programming or modifications made to an existing department-approved EPP, including changes to standards.

U. “Quality review

rubric” means the department-approved tool used by the certified review team during a comprehensive state approval site visit.

V. “Revocation”

means a department decision to no longer recognize an EPP as approved by the department nor to license candidates completing coursework at the revoked EPP provider within three semesters of revocation.

[6.65.3.7 NMAC - Rp, 6.65.3.7 NMAC, 10/29/2019; A, 6/8/2021]

6.65.3.9 EDUCATOR

PREPARATION PROGRAM

GENERAL REQUIREMENTS:

EPPs shall meet requirements [~~as-stated~~] in [state] statute, regulation, and [~~the following additional-requirements~~] this section.

A. EPPs shall establish rigorous entry requirements, including a successful completion of the department’s required background check and approval process.

B. EPPs shall ensure [~~that~~] opportunities for clinical experiences, including culturally and linguistically responsive experiences, are provided [~~to-candidates~~] continuously throughout [~~their~~] candidates’ enrollment. Clinical experiences shall:

(1) [~~Clinical-experiences shall~~] begin upon the candidate’s entrance into an EPP;

(2) [~~The-majority-of-clinical-experiences shall~~] align with the area, subject, or category of certification or license being sought by the candidate, except that at least one of the clinical experiences may be in a diverse setting where indigenous students, students with disabilities, bilingual students, and English language learners attend school; and

(3) [~~During~~] include at least one [~~of-the-candidate’s multiple~~] clinical [~~experiences~~] experience where the [~~candidate~~] candidate shall serve as a teacher in a school under the supervision of a cooperating teacher and plan and deliver independent instruction to students on a regularly scheduled basis.

C. EPPs shall ensure [~~that~~] candidates embrace and execute their responsibility as educators to develop the skills and capacities to implement meaningful culturally and linguistically relevant practices for parent and family engagement, [~~notably~~] keeping families fully informed of their child’s progress [~~towards~~] toward college-and-career readiness, on a regular basis, using objective measures in all subject areas, to include families where a language other than English is spoken.

D. EPPs shall establish

partnerships with stakeholder groups to fulfill requirements related to clinical experiences and meet the needs of LEAs. At a minimum, partnerships shall include:

- (1) classroom teachers;
- (2) principals;
- (3) superintendents;
- (4) human resource directors;
- (5) curriculum directors; and
- (6) the EPP advisory board.

E. Programs for all teachers shall include instruction in pedagogy [~~that is~~] aligned with department standards pursuant to 6.61.2 NMAC through 6.61.12 NMAC, including culturally and linguistically relevant pedagogy that serves indigenous students, students with disabilities, bilingual students, and English language learners.

F. EPPs shall conduct a minimum of three formally documented observations that include verbal and written feedback on the candidate’s practice.

(1) Observations and evaluations of candidates shall be aligned with the following four domains of EES to serve all New Mexico students, including indigenous students, students with disabilities, bilingual students, and English language learners:

- (a) planning and preparation;
- (b) creating an environment for learning;
- (c) teaching for learning; and
- (d) professionalism.

(2) Results of evaluations and observations shall inform program interaction with the candidate including feedback, placement, remediation, and support.

(3) Documentation of observations shall be stored by the EPP for a minimum of five years after candidate

completion and shall be available to the completer and the department upon request.

G. EPP providers shall establish rigorous exit requirements in alignment with those required to seek licensure from the department. [These] Exit requirements shall include, at a minimum, [~~include~~] the following:

(1) successful demonstration of competency in all relevant areas, subjects, or categories of the New Mexico teacher assessments; and

(2) a written recommendation from the EPP that the candidate demonstrates the dispositions necessary for success in the classroom and other learning environments, including an understanding of culturally and linguistically relevant pedagogy.

H. EPP providers shall detail in the EPP application how the EPP provider plans to provide support to the candidates' completion of all teaching licensure requirements and department processes, including passage of all [~~necessary~~] required assessments.

I. In a form approved by the department and no later than September 1, all EPPs shall annually submit candidate-level data required by the EAR. Failure to comply with data reporting and collection requests may result in revocation of the EPP's approval.

J. EPPs shall fully comply, in a timely manner, with all requirements that allow the department to generate the EAR and the comprehensive state approval. [6.65.3.9 NMAC - Rp, 6.65.3.9 NMAC, 10/29/2019; A, 6/8/2021]

6.65.3.10 EDUCATOR ACCOUNTABILITY REPORT:

A. Each EPP's annual EAR shall include the following information on teacher and administrator education candidates and indicators of program success:

(1) the standards for entering and exiting the program;

(2) the number of hours required for clinical experience, including student teaching and administrator internship;

(3) the schools and school districts in which candidates completed their clinical experience;

~~(3)~~ (4) the number and percentage of candidates needing developmental course work upon entering the program;

~~(4)~~ (5) the number and percentage of completers for each program;

~~(5)~~ (6) the number and types of degrees received by completers;

~~(6)~~ (7) the number and percentage of completers who pass the New Mexico teacher or administrator assessments for initial licensure on the first attempt;

~~(7)~~ (8) a description of each program's placement practices;

~~(8)~~ (9) the number and percentage of completers hired by New Mexico school districts; and

~~(9)~~ (10) the demographics of an EPP's candidates and completers.

B. The EAR shall include an evaluation plan that includes high performance objectives. The plan shall include objectives and measures for increasing the following:

(1) student achievement for all students, including indigenous students, students with disabilities, bilingual students, and English language learners;

(2) teacher and administrator retention, particularly in the first three years of a teacher's or administrator's career;

(3) the percentage of candidates who pass the New Mexico teacher assessments for initial licensure on the first attempt;

(4) the percentage of secondary school classes taught in core academic subject areas by teachers who demonstrate by means of rigorous content area assessments a high level of subject area mastery and a

thorough knowledge of the state's academic content and performance standards;

(5) the percentage of elementary school classes taught by teachers who demonstrate by means of a high level of performance in core academic subject areas their mastery of the state academic content and performance standards, including those that address cultural and linguistic awareness;

(6) the number of teachers trained in math, science, and technology;

(7) the number of teachers trained in special education;

(8) the number of teachers teaching in low socioeconomic schools; and

(9) the number of teachers retained in teaching in New Mexico;

(10) the number of teachers in bilingual and English as a second language.

C. EPPs shall administer a completer survey within six months of completion that measures the completer's perception of their own readiness and individual effectiveness in the classroom.

D. EPPs shall initiate all necessary data requests to fill EAR requirements and shall be responsible for collecting, analyzing, and reporting data.

[6.65.3.10 NMAC - Rp, 6.65.3.10 NMAC, 10/29/2019; A, 6/8/2021]

6.65.3.11 COMPREHENSIVE STATE APPROVAL SITE VISITS:

EPPs shall fully cooperate with the comprehensive state approval process. The department shall develop and publish on the department website an EPP manual outlining the comprehensive site visit process that shall include all documents necessary for the state approval. Site visits shall occur every three years on a calendar determined by the department unless the status of a program, as outlined in 6.65.3.12 NMAC, changes in a way that merits more frequent visits.

A. The comprehensive state approval process shall assess the

performance of the EPP on the four components of the quality review rubric:

- (1) curriculum design and delivery;
- (2) clinical experience;
- (3) candidate quality; and
- (4) continuous improvement.

B. The comprehensive state approval site visit shall include the following three elements:

(1) Self-evaluation. EPPs shall complete the self-evaluation documents in the EPP manual prior to the site visit. Documents shall be submitted to the department at least four weeks prior to the site visit. Documents shall include the following:

- (a) quality review rubric;
- (b) quality review worksheets for each of the four key components on the quality review rubric; and
- (c) data and other documentation listed as supplemental evidence in the EPP manual accompanied by any releases for such information, if necessary.

(2) Comprehensive state approval site visit. The certified review team shall conduct the site visit and review the EPP using the quality review rubric.

(3) Summative conference. The certified review team shall debrief the site visit with the EPP and present their initial findings.

C. At the end of the comprehensive state approval site visit, the EPP shall be assessed on its overall performance and shall be rated with one of the following site visit classifications defined in the EPP manual:

- (1) [industry-leader] exemplary;
- (2) well-developed;
- (3) proficient;
- (4) developing; or
- (5) underdeveloped.

D. The certified review team shall release a final written report to the EPP containing the EPP's scores on each component of the quality review rubric and their overall performance no later than 90 calendar days after the comprehensive state approval site visit.

E. EPPs shall have 30 calendar days after receiving the report to submit a response, in writing, to the department to indicate any alleged factual errors and to provide any documentation deemed necessary to support the allegations. If, after review of the EPP's response, the department determines the error to be valid, the report shall be amended within 20 calendar days.

[6.65.3.11 NMAC - Rp, 6.65.3.11 NMAC, 10/29/2019; A, 6/8/2021]

6.65.3.12 COMPREHENSIVE STATE APPROVAL PROCESS:

The comprehensive state approval process shall determine whether an EPP earns approval for continued operation, is placed on probation, or has its approval revoked. The EPP status shall determine the frequency of comprehensive state approval site visits and the scope of EPP responsibilities. EPPs shall be notified of their status by the department no later than November 30 annually.

A. Level one probation. EPPs shall be placed on level one probation if the EPP fails to demonstrate progress toward meeting objectives included in its EAR or if the certified review team identifies an issue during the comprehensive state approval site visit resulting in an underdeveloped classification outlined in Subsection C of 6.65.3.11 NMAC. The secretary shall notify the EPP of level one probation status in writing no later than 30 calendar days after the EPP is placed on level one probation. Responsibilities of EPPs on level one probation shall include the following:

- (1) participation in professional development and technical assistance prescribed by the department;

(2)

development of an improvement plan that addresses program deficiencies that shall be submitted to the certified review team for approval within 90 calendar days of notification of level one probation status; and

(3)

participation in department monitoring to ensure implementation and progress as outlined in the approved improvement plan.

(4) An EPP

may exit level one probation after one academic year and upon fulfillment of its probationary responsibilities and demonstration of progress toward EAR objectives.

(5) Within two

academic years, an EPP shall fulfill its level one probationary responsibilities and demonstration of progress toward EAR objectives. An EPP shall not be allowed to remain on level one probation for more than two academic years after initial level one probation status placement.

B. Level two probation. EPPs shall be placed on level two probation if the EPP fails to demonstrate substantial progress outlined in the improvement plan. The secretary shall notify the EPP of level two probation status in writing no later than 30 calendar days after the EPP is placed on level two probation. Responsibilities of EPPs on level two probation shall include the following:

(1)

participation in professional development and technical assistance prescribed by the department;

(2)

development or amendment of an improvement plan that addresses program deficiencies that shall be submitted to the certified review team for approval within 90 calendar days of notification of level two probation status;

(3)

participation in department monitoring to ensure implementation and progress as outlined in the approved improvement plan; and

(4)

participation in an annual state

approval site visit until the EPP exits level two probation.

(5) An EPP may exit level two probation to level one probation after one academic year and upon fulfillment of its probationary responsibilities and demonstration of progress toward EAR objectives.

(6) Within two academic years, an EPP shall fulfill its level two probationary responsibilities and demonstration of progress toward EAR objectives. An EPP shall not be allowed to remain on level two probation for more than two academic years after initial level two probation status placement.

C. Revocation.

(1) The department may revoke an EPP's approval for any of the following reasons:

(a) not exiting level one or level two probation status within two academic years; or

(b) failing to meet reporting or compliance requirements as set forth by statute, department regulation, or guidance provided in department manuals.

(2) The department shall notify EPP providers of revocation in writing no later than 30 calendar days after the EPP's approval is revoked. Immediately upon receipt of a notice of revocation, the EPP provider shall do the following:

(a) cease recruitment and acceptance of new candidates;

(b) allow candidates [currently] enrolled in the EPP to complete the licensure program, provided they complete the program within three semesters of the notice of revocation; and

(c) work with candidates unable to complete the licensure program within three semesters by providing options for transfer to another EPP.

(3) An EPP provider that has received a notice of revocation may file a request for

reconsideration by the department no later than 30 calendar days after the notice of revocation has been received.

(a) The department shall review the materials submitted by the EPP provider for reconsideration including written statements of position, documents, and comments supporting the claim.

(b) The department, after considering the request, shall make a decision and inform the EPP provider in writing of its decision within 60 calendar days of receipt of the request for reconsideration.

(c) The decision of the department shall be final.

(4) An EPP with revoked approval shall wait two years following the date of revocation before reapplying via the application process defined in 6.65.3.8 NMAC. [6.65.3.12 NMAC - Rp, 6.65.3.12 NMAC, 10/29/2019; A, 6/8/2021]

REGULATION AND LICENSING DEPARTMENT ATHLETIC COMMISSION

**TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 6 BOXING, WRESTLING, AND MARTIAL ARTS
PART 19 CONDUCT OF BARE-KNUCKLE CONTESTS**

15.6.19.1 ISSUING AGENCY: New Mexico Athletic Commission. [15.6.19.1 NMAC - N, 6/11/2021]

15.6.19.2 SCOPE: The provisions in Part 19 apply to all licensees of the commission. [15.6.19.2 NMAC - N, 6/11/2021]

15.6.19.3 STATUTORY AUTHORITY: Part 19 of Chapter 6 of Title 15 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30, NMSA 1978 (1980 Repl.

Pamp.); specifically Sections 60-2A-2, 60-2A-4, 60-2A-8, 60-2A-9, 60-2A-10, 60-2A-20, 60-2A-21, 60-2A-29, and 60-2A-31. [15.6.19.3 NMAC - N, 6/11/2021]

15.6.19.4 DURATION: Permanent. [15.6.19.4 NMAC - N, 6/11/2021]

15.6.19.5 EFFECTIVE DATE: June 11, 2021, unless a later date is cited at the end of a section. [15.6.19.5 NMAC - N, 6/11/2021]

15.6.19.6 OBJECTIVE: The objective of Part 19 of Chapter 6 is to set forth all commission requirements for the conduct of any bare-knuckle contests regulated by the commission. [15.6.19.6 NMAC - N, 6/11/2021]

15.6.19.7 DEFINITIONS:
A. "Contests" are considered "bare-knuckle contests" and not "fights" or "prize fights."
B. "Down" means that some part of the contestant's body other than their feet is on the ring floor; or the contestant is hanging helplessly on the ring ropes/cage; or the contestant is rising from a down position.

C. "KO" means loss by a knockout
D. "TKO" means loss by a technical knockout and refers to the ending of a bout by a referee for any reason other than a count-out or a disqualification. [15.6.19.7 NMAC - N, 6/11/2021]

15.6.19.8 CHANGES IN ANNOUNCED OR ADVERTISED BARE-KNUCKLE PROGRAMS:
A. **Notice of change required:** A notice of any change in the announced or advertised programs for any main event contest must be filed with, and approved by, the commission at least 48 hours before the weighing-in time of the contest.

B. **Posting of notice:** Notices of any such change or substitution must also be conspicuously posted at all box offices on the premises and announced from the ring before the opening contest.

C. Refund policy:

If any patrons apply for refunds on their purchased tickets, the promoter or promoting corporation shall make such refunds upon demand, provided such tickets are presented at the box office on the day or night of the contest.

[15.6.19.8 NMAC - N, 6/11/2021]

15.6.19.9 DURATION OF MATCHES:

All matches must be between three and five rounds with all championship fights lasting five rounds.

[15.6.19.9 NMAC - N, 6/11/2021]

15.6.19.10 BARE-KNUCKLE ROUNDS:**A. Number of rounds**

allowed: There shall be no less than 17 scheduled rounds on any one program, unless otherwise approved by the commission.

B. Round duration and intermission between rounds for contestants:

Each round shall be no more than three minutes in duration and there shall be a 90 second rest period intermission allowed between rounds.

[15.6.19.10 NMAC - N, 6/11/2021]

15.6.19.11 CONTESTANTS' SECONDS:**A. Approval of**

seconds by commission: the commission must approve all seconds.

(1) Each contestant must submit the name of his chief second and his assistant second to the commission for approval.

(2) Only seconds approved by the commission shall be permitted in the contestant's corner.

(3) Before the fight begins, the referee must be informed who the chief second is.

B. Number of seconds per contestant:

(1) The maximum number of seconds a contestant may have is three.

(2) Only one of a fighter's seconds will be permitted inside the ring/ropes/cage between rounds.

C. Conduct of seconds:

(1) Seconds must remain seated during each round.

(2) Seconds must not interfere with or move a fighter who has been knocked down until they are instructed to do so by the ringside physician.

(3) Seconds are prohibited from entering the ring between rounds and assisting a contestant back to his corner unless the contest has been terminated by the referee or ringside physician.

(4) A second may step on the ring apron to retire their fighter in defeat.

[15.6.19.11 NMAC - N, 6/11/2021]

15.6.19.12 CONTESTANTS' EQUIPMENT:**A. Wrapped Hands:**

The following requirements apply to the wrapping of a fighter's hands for a bareknuckle fight.

(1) Hands shall be wrapped with gauze and athletic tape that ends no closer than one inch from the fighter's knuckles. The wrap must include the wrist and may travel up to three inches past the junction of the wrist bone.

(2) Gauze may be applied to the wrist, palm of the hand, back of the hand, and thumb. The length of gauze to be utilized may not exceed a length of 10 feet per hand.

(3) Tape may be applied to the wrist, palm of the hand, back of the hand, and thumb. The tape shall not be greater than one inch in width and shall not exceed 10 feet in length per hand.

(4) The use of water, plaster, ointments, Vaseline, glues or any other liquid or materials to the hand wraps or bandages is strictly prohibited.

B. Shoes: Shoes are required and must be soft material that are not fitted with spikes, cleats, hard soles, or hard heels shall be permitted in the ring.

C. Mouthpieces: Each contestant shall wear an individually

fitted mouthpiece that shall remain in the contestant's mouth at all times during the competition.

(1) The round cannot begin until the contestants are wearing mouthpieces.

(2) If the mouthpiece is dislodged during competition, the referee will call time at the first opportune moment without interfering with the immediate action and have the mouthpiece replaced.

(3) The referee shall direct the other contestant to the farthest neutral corner and escort the contestant with the dislodged mouthpiece to the contestant's corner to have the mouthpiece rinsed and replaced.

(4) The referee may deduct points or disqualify a participant if he deems that the mouthpiece is being intentionally spit out.

D. Abdominal

guards: Contestants may wear an abdominal guard of a standard type that provides sufficient protection to withstand any low blow. The use of this equipment shall be determined by the fighters or promotion on an individual basis.

E. Attire and groin

protection: All contestants shall be required to wear shorts or boxing trunks, the belt of which shall not extend above the waistline and protective cups/groin protectors that are properly fitted and shall be firmly in place before the contestant enters the ring. All trunks shall be without pockets.

[15.6.19.12 NMAC - N, 6/11/2021]

15.6.19.13 NUMBER OF BARE-KNUCKLE CONTEST OFFICIALS REQUIRED:

There shall be at least two physician in attendance at all times, one of which must remain ringside. In addition, at least the following officials shall be present at each contest:

A. one referee;

B. three judges;

C. one timekeeper; and

D. one announcer.

[15.6.19.13 NMAC - N, 6/11/2021]

15.6.19.14 POSITION OF JUDGES AND PHYSICIANS:

A. Judges: The judges shall be stationed at opposite sides of the ring.

B. Physicians: The physician shall be stationed at places designated by the commission representative in charge.

[15.6.19.14 NMAC - N, 6/11/2021]

15.6.19.15 FEMALE

FIGHTERS: The weight classes for female fighter shall be the same as used by male fighters.

A. A female fighter shall not engage in a contest with a male fighter.

B. Female contestants shall be permitted to wear a body shirt or blouse without buttons, buckles or ornaments. Other apparel or equipment is prohibited.

C. All female fighters must provide a **negative pregnancy test** prior to each bout.

[15.6.19.15 NMAC - N, 6/11/2021]

15.6.19.16 BARE-KNUCKLE CONTESTANTS:

A. All event contestants: All contestants, participating in the program must report to the designated dressing room of the event premises no later than one hour before the commencement of the first scheduled contest unless otherwise permitted by the New Mexico Athletic Commission.

B. Confinement to dressing rooms: All contestants will remain in their dressing rooms until ordered to the ring by the commission representative in charge.

C. Physical appearance: All finger nails must not extend past the tip of the fingers and thumbs.

D. Contestant's ring costume:

(1) Each contestant on a program must provide himself with a ring costume approved by the commission.

(2) No makeup or cosmetics shall be applied to a fighter's face.

E. Contestant's conduct after contest is finished:

After the decision of any contest has been announced, each contestant and his seconds must leave the ring at once and retire to the contestant's dressing room after being cleared by a ring-side physician.

F. Contestant's minimum age: No fighter shall be less than 18 years old at the time the sign a contract to fight.

[15.6.19.16 NMAC - N, 6/11/2021]

15.6.19.17 WEIGHING-IN CEREMONIES:

A. Schedules of ceremonies: The times and places of all weigh-in ceremonies for indoor or outdoor programs shall be determined by the commission. However, all weigh-ins shall take place no later than twelve o'clock noon on the day of the contest.

B. Contestant weigh-ins: All contestants shall be weighed-in on scales approved by the commission, and in the presence of their opponents and the commission representative.

C. Postponement of weigh-in: In the event a contest is postponed, for any reason whatsoever, more than 24-hours prior to the contest, a second weigh-in and additional physical examinations may be required on the day to which the contest has been rescheduled.

[15.6.19.17 NMAC - N, 6/11/2021]

15.6.19.18 LICENSURE OF AGENTS REQUIRED: The commission shall issue licenses to all agents present to perform functions representative of the commission at a Bare-Knuckle program. This requirement shall include, cut men, seconds, managers, and any others performing duties specified and ordered by the commission at a program.

[15.6.19.18 NMAC - N, 6/11/2021]

15.6.19.19 THE REFEREE:

A. Referee's wearing apparel: The commission shall prescribe the type, style, and color of the referee's apparel.

B. Referee instructs the contestants: Before the start of each contest, the referee must call the contestants together for final instructions. Each contestant may only be accompanied by his chief second, except in cases where a contestant also requires the services of an interpreter. After receiving the referee's instructions, the contestants shall shake hands and retire to their respective corners to await the gong for the first round.

[15.6.19.19 NMAC - N, 6/11/2021]

15.6.19.20 INSPECTORS:

A. Appointed by the commission: The commission shall appoint inspectors to be present at all contests. Inspectors shall work in cooperation and in conjunction with any police officers as may be detailed for this duty at contests.

B. Prohibitions to assigning officials: The commission will not and shall not assign officials who are directly or indirectly associated with, including but not limited to any financial interest in, the management of any contestant; or who is an individual promoter; or who is a stockholder in, or employee of, a promoter corporation or an unincorporated club or association engaged in the promotion of contests.

[15.6.19.20 NMAC - N, 6/11/2021]

15.6.19.21 PROHIBITED ACTIVITIES:

A. Excessive spraying of water on contestant: Any excessive or undue spraying or throwing of water on any contestant between rounds is forbidden.

B. Application of monsel's solution: The application of monsel's solution, or any use of its derivatives on the body of the contestant between rounds, is prohibited.

C. Persons forbidden to coach contestants: The licensed promoter, matchmaker and any promotion employees or contract employees are forbidden from coaching any contestant at any time during the progress of any contest.

D. Persons**disqualified from officiating:**

Officials, directors, matchmakers, or stockholders of any promoting corporation or licensed club are disqualified from officiating in any capacity at any contest conducted by such corporation. They are also prohibited from interfering in any way with the contestants participating in said program.

E. Persons prohibited**from holding financial interest in**

contest: No official or employee of this commission, or of its medical panels or medical advisory board, and no judge or referee licensed by this commission may, directly or indirectly, have any financial interest in any contestant, wrestler, promoting corporation, or in any manager's contract with any licensed athlete, or in any assignment thereof.

[15.6.19.21 NMAC - N, 6/11/2021]

15.6.19.22 OUTDOOR

CONTESTS: The following special rules and regulations pertain to outdoor programs only. All other rules and regulations of the commission not affected or modified below remain in full force and effect for all outdoor contests, as well as, other programs.

A. Postponement

of event: In the event of rain immediately before or during the course of any outdoor program, except during the course of the main event, the promoter may postpone the program to a time and place approved by the commission.

(1) An

announcement giving the full details of the postponement shall be made by the promoter.

(2) Any patron

desiring a refund of the purchase price of his ticket may apply for the refund at the box office on the premises, except when the main contest is held on the scheduled date or one of the successive rain-out dates indicated on the ticket.

(3) All

contestants who have fulfilled their contracts before the rain-out, shall be paid in full by the promoter.

(4) On the date

to which the program is postponed, the promoter shall have scheduled substitute contests in such number and duration as directed by the commission.

B. Rearrangement or shortening of program:

In the event of threatening weather and rain, the program of contests may be rearranged or shortened by the promoter with the consent of the commission representative in charge.

C. Reimbursement

of expenses to contestants: All contestants in a contest who were unable to compete because of weather conditions or a rearrangement or shortening of the program, shall have their expenses and other fees paid by the promoter as the commission representative in charge may direct.

D. Stopping the

contest because of rain: In the event that rain occurs after the main event is completed, the program shall be considered as having been completed.

(1) In the

event of rain during the progress of the main event, the contest shall be continued or stopped at the discretion of the commission representative in charge.

(2) If the main

contest is stopped, the provisions of Subsection A of 15.6.19.22 NMAC as to postponement and refunds shall apply.

[15.6.19.22 NMAC - N, 6/11/2021]

15.6.19.23 UNIFORM REGULATIONS FOR PROFESSIONAL BOXING:**A. Contest elements**

considered: In scoring a contest, the elements of offense, defense, clean hitting, ring generalship and sportsmanship shall be carefully considered.

B. Scoring judges:

Three judges approved by the commission shall evaluate each contest and score the contest.

C. "10 point" must

system: The 10-point must system will be the standard system of scoring a bare-knuckle contest.

D. Winner's points:

The winner of any round is marked a "10".

E. Loser's points:

The loser of any round is marked "one" to "nine".

F. Mandatory eight-

count: Mandatory eight-count will be the standard procedure in all contests.

G. Three knockdown

rule: There shall be NO three-knockdown rule called in any contest.

H. 20 second count:

A contestant shall receive a 20-second count if he is knocked out of the ring and onto the floor.

I. Referee is sole

arbiter: The referee is the sole arbiter of a contest and is the only individual authorized to stop a bout.

J. Knockdown rated:

The referee shall call a knockdown as such as soon as it occurs.

K. Ring generalship:

The contestant who takes advantage of the full "nine" count should be credited with "ring generalship", which would not be credited to him if he arose immediately and tried to continue in a possibly groggy condition.

L. Foul blows:

The use of foul blows and other tactics shall result in a penalty of one point for each foul committed, and the referee shall advise the judges immediately of the number of points to be deducted.

M. Disqualification

for second's assist: Contestants are to be unassisted by their seconds. If a contestant is assisted by his second, the referee shall disqualify the fighter.

N. Saved by the bell:

A contestant who has been knocked down cannot be saved by the bell in any round.

[15.6.19.23 NMAC - N, 6/11/2021]

15.6.19.24 KNOCKDOWNS:**A. Judges scoring**

knockdowns: The judges may score a knockdown in any one round as either one or two points in favor of a contestant who scored the knockdown.

B. Judges score

independently: Each judge must

determine for himself which value shall be placed on the knockdown. [15.6.19.24 NMAC - N, 6/11/2021]

15.6.19.25 PROTOCOL FOR USING SCORECARDS, THE TALLY AND DECISION:

A. The Rounds

Scoring: Judges shall clearly write their decision and sign their scorecards; and they must mark their cards in ink or in indelible pencil at the end of each round.

B. The tally: At the conclusion of the round, each judge must tally up the points he has awarded each contestant and submit the scorecard to the referee.

C. The decision: After the scorecards have all been checked by the commission representative, they must be returned to the announcer who shall announce the decision of the judges from the ring.

D. Main event protocol on announcing the decision: In main events, the announcer shall call out the points awarded by each judge. The decision must then be awarded to the contestant with the greatest number of points on two of the scorecards. [15.6.19.25 NMAC - N, 6/11/2021]

15.6.19.26 MAJOR FOULS:

- A.** The following are major fouls.
- (1) Hitting an opponent who is down or who is rising from the down position.
 - (2) Using the knee against the opponent.
 - (3) Purposely going down without being hit.
 - (4) Failure to heed the referee’s warning concerning low blows or other minor fouls.
 - (5) Any dangerous and un-sportsmanlike conduct in the ring.
 - (6) Throwing an opponent out of the ring or fenced area.
 - (7) Attacking an opponent who is under the care of the referee.
 - (8) Timidity, including, without limitation,

avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece or faking an injury.

(9) Tripping an opponent.

(10) Use of body lock throws to move your “opponent.”

B. The referee may disqualify the offending contestant, and award the bout or any points to the contestant being fouled.

C. Disqualification on fouls to the body may only occur if the referee deems that these fouls are flagrant or continual.

[15.6.19.26 NMAC - N, 6/11/2021]

15.6.19.27 MINOR FOULS:

A. The following are minor fouls.

(1) Holding an opponent.

(2) Deliberately maintaining a clinch.

(3) Hitting with the inside or butt of the hand, the wrist, or the elbow.

(4) Backhanded blows.

(5) Low blows.

(6) Hitting or flicking with an open hand.

(7) Wrestling or roughing the ropes.

(8) Deliberately striking at the part of the body over the kidneys.

(9) Use of a pivot blow or rabbit punch.

(10) Hitting on the break.

(11) Butting with the head.

(12) Eye gouging of any kind.

(13) Biting.

(14) Hair pulling.

(15) Fish hooking.

(16) Groin attacks of any kind.

(17) Putting a finger into any orifice or into any cut or laceration on an opponent

(18) Small joint manipulation.

(19) Striking to the spine or the back of the head.

(20) Throat strikes of any kind, including, without limitation, grabbing the trachea.

(21) Clawing, pinching or twisting the flesh.

(22) Grabbing the clavicle.

(23) Holding the shorts or wrists of an opponent.

(24) Spitting at an opponent.

(25) Holding the ropes or the fence.

(26) Using abusive language in the ring or fenced area.

(27) Interference by the corner.

B. It is within the discretion of the referee to determine whether the offending contestant should merely be warned, or have points deducted, for committing a minor foul.

C. If a fighter injures themselves while attempting to intentionally foul their opponent, the referee will not take any action in his favor, and this injury will be the same as one produced by a fair blow.

[15.6.19.27 NMAC - N, 6/11/2021]

15.6.19.28 REFEREE’S NOTICE TO JUDGES CONCERNING FOULS:

A. In the event that the referee determines that a foul has been committed, he shall notify the judges immediately.

B. The judges shall deduct one point from the offending contestant’s scores.

C. On any illegal blow to the body the referee may order a deduction of points and will give the necessary time for recovery to the injured fighter (with a maximum of five minutes) after consulting with the ringside physician. If the referee rules this foul was accidental and after five minutes the injured fighter can’t continue, the rules governing accidental fouls shall apply. A contestant who is hit with an accidental low blow must continue after the five-minute rest or he will lose the bout.

D. There may be a deduction of points by the referee at any time for illegal blows or conduct by the fighter or their corner men.

E. In the case of a clear and intentional foul that causes an injury and the contest can still continue, the contestant who was doing the fouling will have two points deducted.

(1) The referee must stop the action and inform all judges and the commission or commission representative of this deduction.

(2) Point deductions for intentional fouls will be at the referee discretion.

(3) The referee has the authority to stop a bout or contest at any stage on account of an intentional foul being committed by either contestant. In such an event, in a bare-knuckle contest the referee may award the decision to the boxer who was intentionally fouled.
[15.6.19.28 NMAC - N, 6/11/2021]

15.6.19.29 CONDITIONS FOR COUNTING A

CONTESTANT OUT: A fighter who is hit with an accidental low blow must continue the contest after a reasonable time, but no more than five minutes, or he will lose the contest.
[15.6.19.29 NMAC - N, 6/11/2021]

15.6.19.30 WRITTEN REPORT TO COMMISSION REGARDING FOULS:

If, in any contest, a contestant is penalized with the loss of three or more rounds due to fouls, the referee and each judge must report the matter to the commission, in writing, within 24 hours.

[15.6.19.30 NMAC - N, 6/11/2021]

15.6.19.31 TECHNICAL KNOCKOUTS; TECHNICAL DECISIONS; TECHNICAL DRAWS; DISQUALIFICATIONS; NO CONTESTS:

A. Technical knockouts.

(1) When a cut is produced by a legal punch and the contest is stopped because

of that cut, the injured fighter shall lose by a technical knockout and the commissions shall enter the letters TKO in the record.

(2) When a referee stops a contest to save any contestant from further punishment, he must award the other contestant the decision by a technical knockout.

(3) If a fighter sustains an injury from a fair blow and the injury is severe enough to terminate the bout, the injured fighter will lose by a TKO.

(a) Any contestant losing by a TKO shall receive a minimum of a 30 day medical suspension.

(b) Any contestant losing by a KO shall receive a minimum of a 60 day medical suspension.

B. Technical decisions.

(1) In the case where a clear and intentional foul causes an injury and the injury results in the contest being stopped in a *later* round, the injured contestant will win by a technical decision if he is ahead on the score cards.

(2) If the accidental foul occurs after the completion of four rounds and the bout must be stopped immediately because the fouled contestant is injured severely enough that he cannot continue, a technical decision shall be awarded to the contestant who is ahead on the score cards at the time the bout is stopped.

(a) Partial or incomplete rounds will be scored.

(b) At the discretion of the Judges, if no action has occurred, the round may be scored as an *even* round.

(3) If in the later rounds, the injury has worsened as a result of legal blows, and the injured fighter cannot continue, a decision shall be rendered by referring to the scorecards. The judges, who must inform the commission and both contestants that the foul is the result of an accidental foul, shall score partial rounds.

C. Technical draws.

(1) In the case where a clear and intentional foul causes an injury and the injury results in the contest being stopped in a *later* round, a technical draw will be declared if the injured contestant is even or behind on the scorecards.

(2) If an accidental foul occurs before the completion of four rounds and the injured contestant cannot continue, the contest will be declared a technical draw.

D. Disqualifications.

(1) In the case where an intentional foul causes an injury, and the injury is severe enough to terminate the bout immediately; the contestant causing the injury shall lose by disqualification, even if he is the injured contestant.

(2) If the referee deems that a contestant has conducted himself in an un-sportsman-like manner, he may stop the bout and disqualify that contestant.

E. No contests: If, before four rounds are completed in a contest, an accidental foul causes an injury severe enough for the referee to stop the bout immediately, the bout will result in a no contest.

[15.6.19.31 NMAC - N, 6/11/2021]

15.6.19.32 COUNTING:

A. Timekeeper calls off the seconds: When a contestant is down, the timekeeper shall immediately commence calling off the seconds indicating the count with a motion of his arm.

B. Referee picks up the count: When the timekeeper commences calling off the seconds, the referee must immediately order the other contestant to a neutral corner and shall pick up the count from the timekeeper, indicating the count with a motion of his arm.

C. Reaching the count of ten.

(1) If a contestant is unable to continue at the count of 10, the referee shall declare the other contestant the winner by a knockout.

(2) If a contestant who has fallen or has been knocked out of the ring during the contest fails to be on his feet in the ring before the expiration of 10 seconds, the referee shall count him out as if he were down.

(3) A contestant who has fallen or has been knocked out of the ring must return to the ring unassisted.

(4) If a contestant who has fallen fails to be on his feet in the ring at the time the round terminates, the timekeeper or referee, whoever has the count at the time, shall continue the count to 10. If the contestant fails to rise before the count of 10, the bout shall be awarded to the other contestant by a knockout in the round just ended.

(5) If a contestant has been knocked out of the ring at the time the round terminates, the timekeeper or referee, whoever has the count at the time, shall continue the count to 20. If the contestant fails to rise before the count of 20, the bout shall be awarded to the other contestant by a knockout in the round just ended. The contestant must return to the ring unaided.
[15.6.19.32 NMAC - N, 6/11/2021]

15.6.19.33 WEIGHT LIMITS FOR BARE-KNUCKLE CONTESTS:

A. The classes for bare-knuckle fighters competing in contests or exhibitions and the weights for each class are shown in the following schedule.

(1) Atomweight: 105 to 115 lbs.

(2) Strawweight: over 115 to 125 lbs.

(3) Flyweight: over 125 to 135 lbs.

(4) Featherweight: over 135 to 145 lbs.

(5) Lightweight: over 145 to 155 lbs.

(6) Welterweight: over 155 to 170 lbs.

(7) Middleweight: over 170 to 185 lbs.

(8) Light heavyweight: over 185 to 205 lbs.

(9) Heavyweight: over 205 to 265 lbs.

(10) Super heavyweight: anything over 265 lbs.

B. Weight loss of up to two lbs. is allowed. Fighters have up to one hour to lose weight. The weight loss described must not occur later than one hour after the initial weigh-in. Unarmed combatants over weight may be fined, have their license suspended, and have their license revoked by the commission.
[15.6.19.33 NMAC - N, 6/11/2021]

History of 15.6.19.33 NMAC:
[RESERVED]

SUPERINTENDENT OF INSURANCE, OFFICE OF

**TITLE 13 INSURANCE
CHAPTER 10 HEALTH
INSURANCE
PART 31 PRIOR
AUTHORIZATION**

13.10.31.1 ISSUING
AGENCY: Office of Superintendent of Insurance (“OSI”).
[13.10.31.1 NMAC - N, 01/01/2022]

13.10.31.2 SCOPE: These rules apply to every:
A. health insurer as defined in Subsection H of Section 59A-22B-2 NMSA 1978;
B. multiple employer welfare arrangement; and
C. Medicaid managed care organization, that requires prior authorization as a condition to payment for a medical service, pharmaceutical, or medical supply benefit. The subject entities are referred to collectively herein as “carriers” and individually as a “carrier.” The requirements of these rules supersede any conflicting provision of any rule previously adopted by the superintendent, and are superseded by any conflicting provision of federal or state law applicable to a Medicaid managed care organization.
[13.10.31.2 NMAC - N, 01/01/2022]

13.10.31.3 STATUTORY AUTHORITY: Section 59A-2-9.8 NMSA 1978, Section 59A-15-20 NMSA 1978; Sections 59A-22B-1 through 59A-22B-5 NMSA 1978; and Sections 59A-57-1 through 59A-57-11 NMSA 1978.
[13.10.31.3 NMAC - N, 01/01/2022]

13.10.31.4 DURATION:
Permanent.
[13.10.31.4 NMAC - N, 01/01/2022]

13.10.31.5 OBJECTIVE:
To establish and standardize oversight, reporting, transparency and confidentiality procedures for prior authorization processes.
[13.10.31.5 NMAC - N, 01/01/2022]

13.10.31.6 EFFECTIVE DATE: January 1, 2022, unless a later date is cited at the end of a section.
[13.10.31.6 NMAC - N, 01/01/2022]

13.10.31.7 DEFINITIONS:
Terms used in these rules are as defined in Section 59A-22B-2 NMSA 1978, and in 13.10.29 NMAC, except as supplemented and superseded below.

A. “Benefit” means any medical service, medical service location, medical provider selection, pharmaceutical, or medical supply that is the subject of a prior authorization request.

B. “Utilization review organization” or “URO” means an entity engaged by a carrier to determine medical necessity for covered services. A URO includes a pharmacy benefits manager (“PBM”) who determines medical necessity for a carrier’s prescription drug coverage.
[13.10.31.7 NMAC - N, 01/01/2022]

13.10.31.8 GENERAL REQUIREMENTS: A carrier shall comply with the standard prior authorization processes specified in these rules.

A. **Responsibility for requesting prior authorization.**

(1) A carrier shall accept a prior authorization request submitted by a provider or by a covered person.

(2) If a covered person directly submits, or attempts to submit, a prior authorization request, the carrier shall provide the covered person all assistance required to properly submit the request, including assistance with obtaining required documentation and information to meet clinical guidelines.

(3) A carrier shall prohibit its participating providers from billing a covered person for a delivered benefit for which prior authorization was required if the provider failed to obtain the required authorization without the covered person's informed and documented consent.

(4) A carrier shall allow non-participating providers to:

(a) request prior authorizations and submit supporting documentation by all submission methods authorized by these rules; and

(b) receive confirmations and tracking numbers as required by these rules.

B. Requests for multiple benefits.

(1) A carrier shall allow a provider to submit a single request for multiple benefits that will be delivered contemporaneously to the same covered person.

(2) If a carrier does not grant prior authorization for all of the benefits in a multiple benefit request, the carrier must clearly state which benefits are approved and which are denied.

(3) A carrier shall permit a provider or covered person to appeal the denial of any benefits regardless of the number of benefits requested at one time.

C. Changes to prior authorization requirements.

(1) After inception of coverage, a carrier shall not expand the list of benefits for which prior authorization is required except when a new covered benefit is added to the plan, when safety or other concerns have arisen

with respect to the benefit, when authorized by a state or federal regulatory agency, or as indicated by changes in nationally recognized clinical guidance.

(2) After inception of coverage, a carrier shall notify its network providers before adding a prior authorization requirement.

(3) A carrier may remove a prior authorization requirement at any time. A carrier who removes a prior authorization requirement during a plan year shall notify its network providers of the change as soon as practicable, and no more than 60 days after the requirement is removed.

D. Retroactive denials. A carrier shall not retroactively deny authorization if a provider relied upon a written prior authorization from the carrier received prior to providing the benefit, except in those cases where there was material misrepresentation or fraud by the provider.

E. Retrospective Authorization Requests. A carrier shall establish written policies and guidance for the process and circumstances under which it will consider a retrospective authorization. A carrier's policies shall not unreasonably limit the ability of a provider to request or obtain a retrospective authorization.

F. Mental health parity. A carrier shall not apply more restrictive prior authorization requirements for covered behavioral health services than for covered medical and surgical services.

G. Expiration of prior authorization. A carrier's prior authorization shall expire no sooner than 60 days from the date of approval, unless an earlier expiration is warranted by the clinical criteria. A carrier shall allow a request for the extension of an authorization as supported by the clinical criteria.

H. Reasonable prior authorization requirements. A carrier shall not impose a prior authorization requirement that deters or unreasonably delays the delivery

of medically necessary and covered benefits warranted by prevailing standards of care. A carrier shall only require prior authorization for a benefit to the extent reasonably necessary to contain inappropriate or unnecessary costs or implement demonstrably effective medical management services.

[13.10.31.8 NMAC - N, 01/01/2022]

13.10.31.9 PRIOR AUTHORIZATION SUBMISSION:

A. A carrier shall:

(1) accept prior authorization requests submitted at any time prior to the delivery of service;

(2) accept prior authorization requests telephonically and by facsimile;

(3) offer at least one bi-directional electronic prior authorization portal;

(4) allow a provider to upload in a secure manner the supporting documentation associated with an electronic prior authorization request, subject to reasonable limits on file type and size;

(5) accept and consider any information from a provider that will assist in the review;

(6) require only the information necessary to evaluate the request;

(7) not reject a request solely on the basis of documentation or submission errors that do not prevent substantive review;

(8) ensure that the system it operates for receiving electronic prior authorization requests and supporting documentation satisfies all applicable Health Insurance Portability and Accountability Act ("HIPAA") transaction requirements and operating rules no later than the effective date that such requirements and rules are established;

(9) make its system available for accepting electronic prior authorization requests and supporting documentation 24-hours per day, seven-days per

week. Planned maintenance or down time of the system shall be performed during historically low-utilization periods; and

(10) notify providers of planned maintenance or downtime of the system at least 24-hours in advance. A carrier shall notify providers of any unplanned system downtime as soon as practicable.

B. Confirmation of receipt and tracking numbers.

(1) Within one business day of receipt, a carrier shall confirm receipt of a prior authorization request and any supporting documentation to the submitter. The carrier also shall assign a unique tracking number to the request. The tracking number shall identify the request throughout the processing cycle, including after approval or denial.

(2) The confirmation that includes the tracking number shall be communicated by electronic portal, fax or email.

(3) A carrier shall provide the tracking number of a prior authorization request to the covered person upon request.

(4) A carrier may assign other identifiers to a prior authorization request.

[13.10.31.9 NMAC - N, 01/01/2022]

13.10.31.10 DOCUMENTATION AND TRANSPARENCY:

A. Prior authorization forms.

(1) A carrier shall accept the uniform prior authorization request form(s) developed by the superintendent and found on the superintendent’s website at www.osi.state.nm.us.

(2) A carrier may ask the superintendent to approve a non-uniform prior authorization request form. If the superintendent approves the non-uniform request form, the carrier shall prominently publish the form to providers on its website.

B. Document retention. A carrier shall maintain a record of each prior authorization

request and its associated documentation. The carrier shall store the records in compliance with all applicable state and federal privacy and security laws and regulations.

The record shall be retained for as long as required by federal and state document retention guidelines, laws and regulations.

C. Access to information about services requiring prior authorization.

(1) A carrier shall make available on its member and provider websites a list of all benefits for which a prior authorization is required. The list shall be presented clearly and in readily understandable language appropriate for the intended audience. The list shall be updated at least annually and upon notification to providers of any change.

(2) Prior authorization information presented on the provider website shall include general clinical criteria requirements and shall list supporting documentation that is expected to accompany the prior authorization request. If a prior authorization is denied, the criteria used to deny the request shall be supplied to the provider in full upon request.

(3) Information on benefits requiring prior authorization, associated clinical criteria and supporting documentation may be located in an area(s) of a website(s) that is not accessible to a covered person, including the carrier’s prior authorization portal.

(4) A carrier shall provide an on-line search tool for any provider to use to search the list of benefits that require prior authorization.

[13.10.31.10 NMAC - N, 01/01/2022]

13.10.31.11 AUTO-ADJUDICATION:

A. No later than January 1, 2022, a carrier shall implement a process to auto-adjudicate electronically submitted prior authorization requests.

(1) A carrier shall comply with all statutory

timelines applicable to prior authorization review. A list of all statutory prior authorization review timelines is posted on the OSI website.

(2) A carrier may reject for correction an auto-adjudicated prior authorization request for reasons other than medical necessity as long as the rejection is completed within statutory timelines.

(3) A carrier may pend an auto-adjudicated prior authorization request if it requires manual review, as long as the review is completed within statutory timelines.

(4) A carrier shall not automatically deny an auto-adjudicated prior authorization request. A carrier shall only deny a prior authorization request based on a live review.

B. Incomplete information. If a provider fails to supply sufficient information to evaluate a prior authorization request, the carrier shall allow the provider a reasonable amount of time, taking into account the circumstances of the covered person, but not less than 4 hours for expedited requests and two calendar days for standard requests, to provide the specified information.

C. Notice. A carrier shall provide written notice to the provider and covered person of a determination to approve or deny authorization. The Notice shall contain the reasons for a denial.

D. Delegation. A carrier may delegate one or more of the obligations mandated by these rules to a qualified third party, including a URO. A carrier who delegates any obligation mandated by these rules remains responsible for compliance with the delegated obligation.

E. Reporting. At least annually, a carrier shall report to the superintendent data and information about the auto-adjudication process, when and as directed by the superintendent.

[13.10.31.11 NMAC - N, 01/01/2022]

13.10.31.12 [RESERVED]
[13.10.31.12 NMAC - N, 01/01/2022]

13.10.31.13 PENALTIES: In addition to any applicable suspension, revocation or refusal to continue any certificate of authority or license under the Insurance Code, a penalty for any violation of this rule may be imposed against an insurer in accordance with Sections 59A-1-18 and 59A-46-25 NMSA 1978.
[13.10.31.13 NMAC - N, 01/01/2022]

13.10.31.14 SEVERABILITY: If any section of this rule, or the applicability of any section to any person or circumstance, is for any reason held invalid by a court of competent jurisdiction, the remainder of the rule, or the applicability of such provisions to other persons or circumstances, shall not be affected.
[13.10.31.14 NMAC - N, 01/01/2022]

History of 13.10.31 NMAC:
[RESERVED]

SUPERINTENDENT OF INSURANCE, OFFICE OF

TITLE 13 INSURANCE CHAPTER 10 HEALTH INSURANCE PART 35 MINIMUM STANDARDS FOR DENTAL AND VISION PLANS

13.10.35.1 ISSUING AGENCY: Office of Superintendent of Insurance ("OSI").
[13.10.35.1 NMAC - N, 01/01/2022]

13.10.35.2 SCOPE: This rule applies to every carrier who offers or sells any individual or group dental or vision insurance plan ("plan") separately from a health benefits plan. This rule does not apply to any pediatric dental or vision plan, or to any prepaid dental plan. Subject to the foregoing, this rule applies to a group dental or vision plan offered or sold to a New Mexico resident under a master policy delivered outside of this state.
[13.10.35.2 NMAC - N, 01/01/2022]

13.10.35.3 STATUTORY AUTHORITY: Sections 59A-2-9 and 59A-23G-1 et seq. NMSA 1978.
[13.10.35.3 NMAC - N, 01/01/2022]

13.10.35.4 DURATION: Permanent.
[13.10.35.4 NMAC - N, 01/01/2022]

13.10.35.5 EFFECTIVE DATE: January 1, 2022 unless a later date is cited at the end of a section. If the superintendent previously approved a subject plan, that plan shall comply with this rule no later than January 1, 2022, if issued on or after that date.
[13.10.35.5 NMAC - N, 01/01/2022]

13.10.35.6 OBJECTIVE: Establish minimum regulatory standards and sales practices relating to dental and vision plans; standardize and simplify the terms and coverages; facilitate public understanding and comparison of coverage; eliminate provisions that may be misleading or confusing in connection with the purchase and renewal of the coverages or with the settlement of claims; and require disclosures in the marketing and sale of the subject plans.
[13.10.35.6 NMAC - N, 01/01/2022]

13.10.35.7 DEFINITIONS: For definitions of terms contained in this rule, refer to 13.10.29 NMAC, unless otherwise noted below.

A. "Domestic co-insured" means a spouse or domestic partner insured under the same plan or certificate.

B. "Preferred provider" means a dental or vision care provider, or group of providers, who contracts with a dental or vision insurance carrier to provide dental or vision services to a covered person.
[13.10.35.7 NMAC - N, 01/01/2022]

13.10.35.8 GENERAL PROHIBITED POLICY PROVISIONS:

A. Probationary and waiting periods. Except as otherwise expressly allowed under Sections 10 and 11 of this rule, a plan shall not

include any probationary or waiting period during which no coverage is provided for a covered benefit, except an eligibility waiting period during which no premium is paid.

B. Riders and other supplements. Any rider, amendment, endorsement or other supplement shall explicitly state which terms of coverage the carrier has amended or supplemented from the original plan.

C. Exclusions. A plan that includes a preexisting condition exclusion shall comply with these requirements:

(1) each plan application shall include a prominent notice that the plan includes a preexisting exclusion, and display either the full text of the exclusion or directions as to how to obtain a copy of that text.

(2) the carrier shall not enforce a preexisting condition exclusion if an enrollee renews coverage under a plan offered by the same carrier.

(3) a plan application shall not request family member health information unless the family member is also seeking coverage under the plan; and

(4) a plan may exclude benefits for the replacement of a tooth that the covered person lost prior to the covered person's plan effective date, unless the covered person had coverage from a prior carrier.

D. Evidence of coverage. Upon request, a carrier shall provide a current or former enrollee evidence of that person's current or former coverage under a plan.

E. Marketing of blanket or group coverages. A carrier shall not sell any blanket coverage to a group that is not described in Section 59A-23-2 NMSA 1978, or group coverage that is not identified or described in Section 59A-23-3 NMSA 1978.

F. Arbitration provisions. A plan shall not require a covered person to submit a dispute to mediation or arbitration.

G. Plan governance.
A covered person’s rights under any plan shall be governed by the terms of the plan approved by the superintendent, and by applicable state and federal law.

H. Discrimination. No plan shall discriminate in eligibility for coverage or benefits on the basis of sex, sexual orientation, gender, race, religion, or national origin-

I. Conversion privileges. A carrier shall not offer a conversion plan that is not approved by the superintendent.

J. Gag rule. A plan shall not include, and a carrier shall not otherwise impose, a gag rule or practice that prohibits a dental or vision service provider from discussing a treatment option with a covered person.

[13.10.35.8 NMAC - N, 01/01/2022]

13.10.35.9 GENERAL STANDARDS FOR POLICIES AND BENEFITS:

A. For individual plans. The following general standards apply to individual plans.

(1) An individual plan shall have a minimum term of 12 months.

(2) A “noncancellable,” “guaranteed renewable,” or “noncancellable and guaranteed renewable” individual plan shall not provide for termination of coverage of the domestic co-insured solely because of the occurrence of an event specified for termination of coverage of the covered person, other than nonpayment of premium. In addition, the plan shall provide that in the event of the covered person’s death, the domestic co-insured of the covered person, if covered under the plan, shall become a covered person with the issuance of a new policy and completed agreement.

(3) An individual plan shall protect consumer rights as follows:

(a) The terms “noncancellable” or “noncancellable and guaranteed renewable” may only be used in an individual dental or vision plan

if the covered person has the right to continue the coverage by timely paying premiums, until the age of 65 or until eligibility for Medicare, whichever is later, during which time the carrier has no unilateral right to change any provision of the plan.

(b) The term “guaranteed renewable” may only be used in a plan where the covered person has the right to continue in force, by timely paying premiums, until the age of 65 or until eligibility for Medicare, whichever is later, during which period the carrier has no unilateral right to change any provision of the plan, other than changes in premium rates by classes.

(c) A plan shall not terminate the coverage of a covered person except for “good cause,” as follows:

(i) failure of the covered person or subscriber to pay the premiums and other applicable charges for coverage;

(ii) material failure to abide by the rules, policies or procedures of the plan;

(iii) fraud or misrepresentation affecting coverage;

(iv) policyholder request for cancellation;

(v) policy term ends; or

(vi) a reason for termination or failure to renew that the superintendent determines is not objectionable.

(4) If an individual plan covers domestic co-insureds, the age of the younger insured shall be used as the basis for meeting the age and durational requirements of the definitions of “noncancellable” or “guaranteed renewable.” However, this requirement shall not prevent termination of coverage of the older insured upon attainment of the stated age so long as the policy may be continued in force as to the younger spouse to the age or for the durational period specified in the policy.

B. For individual and group plans. The following general standards apply to both individual and group plans.

(1) A carrier may not terminate a plan unless it provides written notice of termination to a covered person one month prior to the coverage renewal date. A notice of termination shall:

(a) be in writing and dated;

(b) state the reason(s) for termination, with specific references to the clauses of the dental or vision plan giving rise to the termination;

(c) state that a covered person’s plan cannot be terminated because of health status, need for services, race, gender, or sexual orientation of covered persons under the contract. Age may only be a factor in termination of coverage as outlined in Paragraph (4) of Subsection A and Paragraph (7) of Subsection B of this section;

(d) state that a covered person who alleges that an enrollment has been terminated or not renewed because of the covered person’s health status, need for health care services, race, gender, age or sexual orientation may file a complaint with the superintendent of by phone or on the Office of Superintendent of Insurance website; and

(e) state that in the event of termination by either the covered person or the plan, except in the case of fraud or deception, the plan shall, within 30 calendar days, return to the covered person or subscriber the pro rata portion of the money paid to the plan that corresponds to any unexpired period for which payment had been received together with amounts due on claims, if any, less any amounts due to the plan, provided, however, that the superintendent may approve other reasonable reimbursement practices.

(2) A plan shall include a notice prominently printed on or attached to the first page of the plan stating that the covered person shall have the right to return the plan within 30 days of its delivery, and to have the premium and any

required membership fees refunded, if after examination of the plan the covered person is not satisfied for any reason, provided no claim has been paid.

(3) If a plan includes a conversion privilege, the provision shall be captioned, "Conversion Privilege." The provision shall specify who is eligible for conversion and the circumstances that govern conversion, or may state that the conversion coverage will be provided as an approved plan form used by the carrier for that purpose.

(4) If a carrier requires submission of a claim form as a condition of payment, the carrier, upon receipt of notice of a claim, shall furnish to the covered person a form to be delivered in the manner offered by the carrier that is preferred by the covered person. If the carrier does not furnish a claim form within 15 days after notice of a claim, the claimant shall be deemed to have complied with the requirement to provide proof of loss if the notice of claim contains written proof describing the claim, including the character and extent of the loss of which the claim is made. Adequate proof of loss must be in the possession of the insurance company at the time funds are disbursed in payment of claims.

(5) A grace period of at least 10 days for a monthly premium plan and at least 31 days for any plan billed less frequently shall be granted for the payment of each premium falling due after the first premium. During this grace period, the plan shall continue in force.

(6) A carrier shall not use any untrue statement or inducement not specified in a policy to solicit a prospective plan enrollee.

(a) A statement shall be deemed untrue if it does not conform to fact in any respect and would be considered significant to a person contemplating enrollment with a plan.

(b) Inducements shall meet the requirements of Subsections G and H of Section 59A-16-17 NMSA 1978.

(7) A plan may terminate the coverage of a dependent due to limiting age for a dependent per the plan's contracted age limits. However, a plan must offer coverage to dependents, regardless of age, who are physically or mentally disabled prior to reaching the limiting age and are incapable of self-sustaining employment. Coverage for a child who is physically or mentally disabled prior to reaching the limiting age and incapable of self-sustaining employment on the date the child would otherwise age out of coverage shall continue if the child depends on the covered person for support and maintenance. The plan may require that within 31 days of the date the company receives proof of the child's incapacity, the covered person may elect to continue the plan in force with respect to the child.

C. For group coverage. A group plan shall comply with Sections 8, 9, 11, and 12 of 13.10.5 NMAC, and Subsection D of 13.10.5.10 NMAC.

[13.10.35.9 NMAC - N, 01/01/2022]

13.10.35.10 DENTAL PLANS:

A. Applicability. This section applies only to subject dental plans.

B. Definitions. For purposes of this section:

(1) "Dental plan" is a policy, contract, agreement or arrangement under which an entity undertakes to reimburse claims for the cost of dental services or dental supplies.

(2) "Dental service" means a professional service rendered by a person duly licensed under the laws of this state to practice dentistry or dental therapy, or dental hygienists or dental hygienists certified in collaborative practice and any service constituting the practice of dentistry under state law.

C. Required minimum benefits. A dental plan shall, at a minimum, provide each covered person benefits for the following dental services and dental supplies.

(1) Diagnostic services. A dental plan shall cover the following diagnostic services with a waiting period of no longer than six consecutive months:

(a) one clinical oral examination twice per plan year;

(b) clinical oral examinations when performed as a part of an emergency service to relieve pain and suffering.

(2) Radiology services. A dental plan shall cover the following radiology services with a waiting period of no longer than six consecutive months:

(a) Bitewing x-rays at least once a year unless greater frequency is deemed medically necessary; and

(b) Panoramic films or an intraoral-complete series, at least once every five consecutive years.

(3) Preventive services. A dental plan shall cover the following services with no waiting period, subject to the following limitations:

(a) Prophylaxis. A dental plan shall cover at least two prophylaxis services every plan year.

(b) Fluoride treatment. A dental plan shall cover at least one fluoride treatment per calendar year furnished in a health care setting for children up to 14 years old or older as medically necessary.

(c) Molar sealants. A dental plan shall cover one treatment of molar sealant per tooth every five consecutive years as medically necessary. A dental plan may exclude coverage where an occlusal restoration has been completed on the tooth. A dental plan may apply a waiting period of six consecutive months for medically necessary sealants.

(4) Cavities. A dental plan shall cover necessary fillings for cavities.

(5) Craniomandibular and temporomandibular joint disorders. A dental plan sold in conjunction

with a qualified health plan shall cover the diagnosis and treatment of craniomandibular and temporomandibular joint disorders, if such coverage is not offered by the qualified health plan.

D. Maximum out-of-pocket. To be certified for sale on New Mexico’s health insurance exchange, a dental plan shall comply with any federally mandated maximum out-of-pocket limits for dental plans.
[13.10.35.10 NMAC - N, 01/01/2022]

13.10.35.11 VISION PLANS:

A. Applicability. This section only applies to subject vision plans.

B. Definitions. For purposes of this section:

(1) “covered materials” means materials that are reimbursable by a vision plan to a vision care provider subject to any deductible, copayment, coinsurance, or other plan limitation;

(2) “covered services” means services that are reimbursable by a vision plan vision plan to a vision care provider subject to any deductible, copayment, coinsurance, or other plan limitation;

(3) “materials” means ophthalmic devices, including:
(a) lenses;

(b) frames;

(c) contact lenses; and

(d) spectacle or contact lens treatments and coatings;

(4) “noncovered materials” means materials that are not covered by a vision plan;

(5) “noncovered services” means services that are not covered by a vision plan.

(6) “vision services” means services provided by a vision care provider;

(7) “vision plan” is a policy, contract, agreement or arrangement under which an entity undertakes to reimburse claims for

the cost of vision services or vision materials; and

(8) “vision care provider” means an individual licensed under state law as an optometrist or ophthalmologist.

C. Required minimum benefits. A vision plan shall provide each covered person benefits for the following vision services and vision materials. A pediatric vision plan sold in conjunction with a qualified health plan shall provide vision coverage mandated by law for the qualified health plan, or the benefits mandated by this rule, whichever are most favorable to the member.

(1) Examinations. At least once every consecutive two-year period for adults and once every 12-month consecutive period for children under the age of 19, a comprehensive vision examination. The comprehensive vision examination shall include a complete analysis of the eyes and related structures, as appropriate, to determine the presence of vision problems or other abnormalities.

(2) Lenses. If the vision examination indicates that corrective lenses are necessary, each covered person is entitled to necessary frames and lenses, including coverage for single vision, bifocal, trifocal, and lenticular as medically necessary and up to the stated benefit limit of the plan. This benefit may be limited to once each two-year consecutive period, unless medical necessity requires increased frequency, and may be subject to a maximum one month waiting period.

(3) Contact lenses shall be covered as follows:

(a) Medically necessary contact lenses shall be covered in full, up to a benefit maximum, subject to prior authorization from the vision plan if dispensed or provided by an in-network provider or vendor.

(b) A vision plan shall provide an elective contact lens allowance up to the stated benefit limit of the plan.

(c) This benefit may be limited to once each 12-month consecutive period, and may be subject to a maximum one month waiting period.

D. Noncovered services and materials. A vision plan may exclude coverage for the following services and materials:

(1) any that are not medically necessary;

(2) any that were not obtained in compliance with the requirements of the vision plan;

(3) any medical or surgical treatment of the eyes;

(4) vision therapy; and

(5) two pairs of glasses in lieu of bifocals.
[13.10.35.11 NMAC - N, 01/01/2022]

13.10.35.12 COORDINATION AND COMBINATION OF BENEFITS:

A. A dental or vision plan shall only coordinate or combine benefits as permitted under state or federal law and as specified in the plan.

B. A carrier and plan that offers both dental and vision benefits is subject to both the dental and vision provisions of this rule.
[13.10.35.12 NMAC - N, 01/01/2022]

13.10.35.13 COVERAGE DOCUMENTATION:

A. Coverage forms and benefits disclosures.

(1) A carrier shall issue a policy, certificate of coverage or summary of benefits to each covered person on or before the effective date of coverage or of a change in coverage. Covered groups may distribute a certificate of coverage or summary of benefits on behalf of the carrier.

(2) The policy, certificate of coverage or summary of benefits shall include a clear and complete statement of:

(a) the covered services, supplies and materials;

(b) any limitations or exclusions including any charge, deductible or copayment feature;

(c) where and in what manner information is available as to how services may be obtained;

(d) a clear and understandable description of the method for resolving a covered person's complaint.

(e) conditions for renewal and reinstatement;

(f) procedures for filing claims;

(g) a statement of the amounts payable to the carrier by a covered person and the times at which the amounts shall be paid;

(h) the period during which the plan is effective; and

(i) on the front page, the identity of the carrier.

(3) Any subsequent change in coverage or premium shall be explained in a separate document delivered to the covered person.

B. Notice required.

The following language shall be provided in a summary of benefits: READ YOUR PLAN CAREFULLY - THIS BENEFITS SUMMARY PROVIDES A VERY BRIEF DESCRIPTION OF THE IMPORTANT FEATURES OF YOUR PLAN. THIS IS NOT THE INSURANCE CONTRACT. YOUR FULL RIGHTS AND BENEFITS ARE EXPRESSED IN THE ACTUAL PLAN DOCUMENTS THAT ARE AVAILABLE TO YOU UPON YOUR REQUEST TO US.

C. Contact information. The policy, certificate or summary of benefits shall state the plan's contact information and the website and phone number of the office of superintendent of insurance. [13.10.35.13 NMAC - N, 01/01/2022]

13.10.35.14 NETWORK ADEQUACY: Each dental or vision

plan that in any way conditions coverage on the provision of services by a preferred provider shall maintain an adequate network of such providers:

A. Attestation.

A carrier shall submit to the superintendent annually an attestation of compliance with all of the criteria of this section by October 1, 2022 and every year thereafter.

(1) That, in population areas of 50,000 or more residents, two dental or vision care providers are available in any county within no more than 20 miles or 20 minutes' average driving time for ninety percent of the enrolled population, or, in population areas of less than 50,000, whether two dental or vision care providers are available in any county or service area within no more than 60 miles or 60 minutes' average driving time for ninety percent of the enrolled population. For remote rural areas, the superintendent shall consider on a case by case basis whether the dental or vision plan has made sufficient providers available given the number of residents in the county or service area and given the community's standard of care.

(2) That the dental or vision plan provides reasonable and reliable access for its covered persons to qualified health care professionals in those specialties that are covered by the dental or vision plan.

(3) Any major deficiencies in the dental or vision plan's provider network and a description of current activities to remedy network deficiencies.

B. Provider lists. A dental or vision carrier must maintain a list on its website of all providers contracted with the plan.

(1) The list shall be updated monthly and shall;

(a) include specialty providers;

(b) identify the providers who are not currently accepting new patients; and

(c) be available to both covered persons and plan applicants.

(2) The dental or vision plan shall audit its provider list for accuracy on an annual basis.

C. Out of state providers. A carrier is permitted to enter contracts or other arrangements with out of state providers to meet the access requirements of this rule.

D. Provider grievances. A dental or vision carrier shall accept, investigate and resolve provider grievances about plan operations pursuant to 13.10.16 NMAC.

E. Emergency care. If a covered person receives emergency care for a covered dental or vision service specified in this rule and cannot reach a preferred dental or vision provider, as judged by the perspective of a reasonable person in the same or similar circumstances or after prior authorization, the plan shall reimburse the covered person as if the care was provided in-network.

F. Preferred provider arrangements. A dental or vision carrier that delivers services through a preferred provider arrangement shall comply with the preferred provider arrangements law, Section 59A-22A-2 NMSA 1978. [13.10.35.14 NMAC - N, 01/01/2022]

13.10.35.15 UTILIZATION MANAGEMENT DETERMINATIONS:

A. Denial of services. A benefit denial that is based on a determination that a dental or vision service is not medically necessary, and that is the result of a formal prior authorization review process, shall be supported by a contemporaneous opinion of a provider licensed to provide the requested service. Any such determination shall be made in accordance with medical necessity standards and appropriate clinical guidelines.

B. Pretreatment Estimates. A carrier may issue a non-binding pretreatment estimate for the coverage and reimbursement of proposed dental or vision services. A pretreatment estimate does not determine medical necessity and does not serve as a prior authorization.

(1) A pretreatment estimate shall include a statement that clearly indicates to the covered person that the estimate is not a guarantee of coverage.

(2) A pretreatment estimate shall clearly identify the services that require an approved prior authorization for coverage and shall include a statement that the covered person may be liable for the full cost of the service if an approved prior authorization is not obtained.

C. Timeliness of determinations. A carrier shall make all prior authorization determinations as required by the exigencies of the situation and in accordance with sound medical principles, and in no more than five business days. If after five business days the carrier does not expect to be able to complete the determination due to unforeseen circumstances or missing information, the carrier shall inform the covered person or their provider of the circumstances or the information missing and the need to extend the determination timeframe.

D. Post-authorization denials. A carrier shall not deny any claim subsequently submitted for procedures specifically included in an approved prior authorization unless the date of service is within 18 months and at least one of the circumstances below applies for each denied procedure:

(1) benefit limitations, such as annual maximums and frequency limitations not applicable at the time of prior authorization are reached due to utilization subsequent to the issuance of prior authorization;

(2) documentation for the claim provided by the person submitting the claim clearly fails to support the claim as originally authorized;

(3) if, after the issuance of the prior authorization, new procedures are provided to the patient or a change in the patient's condition occurs such that the prior authorized procedure would no longer be considered medically necessary

based on the prevailing standard of care;

(4) if, after the issuance of the prior authorization, new care is rendered to the patient or a change in the patient's condition occurs such that the prior authorized procedure would at that time require disapproval pursuant to the terms and conditions for coverage under the patient's plan in effect at the time the prior authorization was issued;

(5) another payer is responsible for the payment;

(6) another payer has already paid the claim;

(7) the claim was submitted fraudulently or the prior authorization was based on whole or material part on erroneous information provided to the carrier by the provider, covered person or other person not related to the carrier; or

(8) the person receiving care was not eligible for covered benefits on the date of service and the carrier did not know, and with the exercise of reasonable care could not have known of the person's eligibility status.

E. Notice of denial.

If a carrier denies a request for prior authorization, it shall deliver to the covered persons a written explanation of the basis for the denial within 24 hours of the determination for emergency care and within 10 calendar days for all other care. [13.10.35.15 NMAC - N, 01/01/2022]

13.10.35.16 CONSUMER COMPLAINTS: A carrier shall state in all plan documents that a covered person who cannot resolve a complaint with the plan may contact the office of the superintendent of insurance. [13.10.35.16 NMAC - N, 01/01/2022]

13.10.35.17 PENALTIES: In addition to any applicable suspension, revocation or refusal to continue any certificate of authority or license under the Insurance Code, a penalty for any material violation of this rule may be imposed against a health care insurance carrier by the superintendent in accordance with

Sections 59A-1-18 and 59A-46-25 NMSA 1978. [13.10.35.17 NMAC - N, 01/01/2022]

13.10.35.18 SEVERABILITY: If any section of this rule, or the applicability of any section to any person or circumstance, is for any reason held invalid by a court of competent jurisdiction, the remainder of the rule, or the applicability of such provisions to other persons or circumstances, shall not be affected. [13.10.35.18 NMAC - N, 01/01/2022]

History of 13.10.35 NMAC:
[RESERVED]

SUPERINTENDENT OF INSURANCE, OFFICE OF

This is an amendment to 13.10.17 NMAC, Sections 11 and 12, effective January 1, 2022.

13.10.17.11 [INITIAL- DETERMINATIONS:

~~**A. Expedited initial decision.** A health care insurer shall make its initial certification or adverse determination decision in urgent care situations in accordance with the medical exigencies of the case. The health care insurer shall make decisions within 24 hours after receipt of the request for an expedited decision. An expedited decision is not available for post-service claims.~~

~~**B. Standard initial decision.** A health care insurer shall make all other initial utilization review decisions within five days after receipt of the request. The health care insurer may extend the review period for a maximum of 10 days if it:~~

~~(1) can demonstrate reasonable cause beyond its control for the delay;~~

~~(2) can demonstrate that the delay will not result in increased medical risk to the covered person; and~~

~~(3) provides a written progress report and explanation for the delay to the covered person and provider within the original five-day review period.~~

C. Coverage. When considering whether to certify a health care service requested by a provider or covered person, the health care insurer shall determine whether the requested health care service is covered by the health benefits plan. Before denying a requested health care service on grounds of a lack of coverage, the health care insurer shall determine that there is no provision of the health benefits plan under which the requested health care service could be covered. If the health care insurer finds that the requested health care service is not covered by the health benefits plan, the health care insurer need not address the issue of medical necessity.

D. Medical necessity.

(1) If the health care insurer finds that the requested health care service is covered by the health benefits plan, then when considering whether to certify a requested health care service, the health care insurer shall assign a physician, registered nurse, or other health care professional to determine, within the timeframe required by the medical exigencies of the case, whether the requested health care service is medically necessary.

(2) Before a health care insurer denies a health care service requested by a provider or covered person on grounds that it is determined to be not medically necessary, experimental, or investigational a physician shall render an opinion, either after consultation with specialists who are experts in the area that is the subject of review or after application of uniform standards used by the health care insurer. The physician shall be under the clinical authority of the medical director responsible for health care services provided to covered person.

E. Incomplete information. If the covered person fails to provide sufficient information to determine whether, or to what extent, benefits are covered or payable under the health benefits plan, the covered person shall be afforded a reasonable amount of time, taking

into account the circumstances, but not less than two days, to provide the specified information.

(1) Expedited initial decision. If the covered person has been afforded time to provide additional information, then the health care insurer shall have 24 hours after the additional information is received to make its determination.

(2) Standard initial decision. If the covered person has been afforded time to provide additional information, then the health care insurer shall have five days after the additional information is received to make its determination.]

[RESERVED]

[13.10.17.11 NMAC - Rp,
13.10.17.15 NMAC, 1/1/2017;
Repealed 01/01/2022]

13.10.17.12 NOTICE OF INITIAL DETERMINATION:

A. Certification. The health care insurer shall send written notice to the covered person and provider of the certification by mail or electronic communication within one day after the date the health care service was certified, unless earlier notice is required by the medical exigencies of the case.

B. Notice of adverse determination or administrative decision; explanatory contents. The health care insurer shall notify a covered person and provider of an adverse determination by telephone or as required by the medical exigencies of the case, but in no case later than one day after making the adverse determination. Additionally, the health care insurer shall notify the covered person and provider of the adverse determination or administrative decision in writing by mail or electronic communication sent within one day after the telephone notice.

C. Contents of notice of initial adverse determination or administrative decision.

(1) The notices required in Paragraph C, Subparagraphs (2) and (3) of Section 13.10.17.12 shall be provided to the covered person, the covered

person's authorized representative, if applicable, and to a provider or other health care professional with knowledge of the covered person's medical condition.] The notices required in Subsections A and B, of this section shall be provided to the covered person, the covered person's authorized representative, if applicable, and to a provider or other health care professional with knowledge of the covered person's medical condition.]

(2) A. Adverse determination.

(a) (1)

If an adverse determination is based on a determination that the requested service is experimental, investigational or not medically necessary, clearly and completely explain why the requested health care service is not medically necessary or is experimental or investigational; a statement that the health care service is not medically necessary, is experimental, or is investigational will not be sufficient.

(b) (2) If an adverse determination is based on a lack of coverage, identify all health benefits plan provisions relied on in making the adverse determination, and clearly and completely explain why the requested health care service is not covered by any provision of the health benefits plan; a statement that the requested health care service is not covered by the health benefits plan will not be sufficient.

(c) (3) If the service has already been provided, then include the date of service, the provider, the claim amount (if applicable), and a statement describing the availability, upon request, of the diagnosis code and its corresponding meaning, and the treatment code and its corresponding meaning.

(d) (4) Include a description of the health care insurer's standard that was used in denying the claim.

(e) (5) Provide information stating that a request for review of an adverse determination must be filed with the health care insurer within 180 days.

(f) (6) If the adverse determination involves an urgent care situation, provide information that an expedited IRO review to be conducted at the same time as an expedited internal review may be requested.

(g) (7) Describe the procedures and provide all necessary grievance forms for requesting internal review of the decision.

(3) B. Administrative decision.

(a) (1) If the decision involves claims payment, handling or reimbursement for health care services, identify the provisions of the plan that were relied upon in making the decision, including cost-sharing provisions such as co-payments, co-insurance and deductibles.

(b) (2) If the decision involves termination of coverage, identify the provisions of the plan that were relied upon in making the determination.

(c) (3) If the service has already been provided, then include the date of service, the provider, the claim amount (if applicable), and a statement describing the availability, upon request, of the diagnosis code and its corresponding meaning, and the treatment code and its corresponding meaning.

(d) (4) Provide information that a request for an internal review of an administrative decision must be filed with the health care insurer within 180 days.

(e) (5) Describe the procedures and provide all necessary grievance forms for requesting internal review of the decision.

[13.10.17.12 NMAC - Rp, 13.10.17.16 NMAC, 1/1/2017; A and Rn, 01/01/2022]

**TRANSPORTATION,
DEPARTMENT OF**

The New Mexico Department of Transportation State Traffic Commission approved the repeal of its rule 18.27.5 NMAC, Prequalification of Contractors Rule (filed 12/16/2014) and replaced it with 18.27.5 NMAC, Prequalification of Contractors Rule approved on 5/20/2021, effective 6/8/21.

**TRANSPORTATION,
DEPARTMENT OF**

**TITLE 18
TRANSPORTATION AND
HIGHWAYS
CHAPTER 27 HIGHWAY
CONSTRUCTION GENERAL
PROVISIONS
PART 5 CONTRACTOR
PREQUALIFICATION RULE**

18.27.5.1 ISSUING AGENCY: The New Mexico department of transportation, PO Box 1149, Santa Fe, New Mexico, 87504-1149.
[18.27.5.1 NMAC - Rp, 18.27.5.1 NMAC, 6/8/2021]

18.27.5.2 SCOPE: This rule applies to the New Mexico department of transportation construction projects and to all contractors and subcontractors seeking or anticipating the performance of work within project limits.
[18.27.5.2 NMAC - Rp, 18.27.5.2 NMAC, 6/8/2021]

18.27.5.3 STATUTORY AUTHORITY: Section 13-1-82 NMSA 1978 13-1-133 to -134 NMSA 1978, 67-3-2, 67-3-11, 67-3-14, and 67-3-43 NMSA 1978, 23 USC Section 112(b), 23 CFR Sections 635.110 and 635.114.
[18.27.5.3 NMAC - Rp, 18.27.5.3 NMAC, 6/8/2021]

18.27.5.4 DURATION: Permanent.

[18.27.5.4 NMAC - Rp, 18.27.5.4 NMAC, 6/8/2021]

18.27.5.5 EFFECTIVE DATE: June 8, 2021, unless a later date is cited at the end of a section.
[18.27.5.5 NMAC - Rp, 18.27.5.5 NMAC, 6/8/2021]

18.27.5.6 OBJECTIVE: To establish policies and procedures for a determination of responsibility through a contractor prequalification system that directly rewards good performers and encourages poor performers to improve.
[18.27.5.6 NMAC - Rp, 18.27.5.6 NMAC, 6/8/2021]

18.27.5.7 DEFINITIONS:
A. This rule adopts the abbreviations, symbols and definitions in the division 100-general provisions of the current edition of the *New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction* and incorporates the same by reference.

B. CID is the abbreviation of construction industries division.

C. Compass form means the New Mexico department of transportation form generated at prequalification project closure that documents certain contractor performance measurement data.

D. Department means the New Mexico department of transportation.

E. Innovative contracting is an alternate form of competitive bidding consistent with federal and state procurement laws that can result in work being awarded to a responsible bidder that did not submit the lowest monetary bid.

F. Modified bid amount means the contractor's bid multiplied by the contractor's prequalification factor rolling average or Pqfra. The modified bid amount will be used solely for determining the apparent lowest responsible bidder. The modified bid amount will not be used for payment.

G. Packet or prequalification packet means the

current New Mexico department of transportation contractor prequalification application form issued by the office of inspector general and completed by a contractor or subcontractor.

H. Performance factor or Pf means the numerical quantification of a contractor's past performance on closed projects for certain objectively measurable criteria.

I. Pf claim or Pfc means the performance measurement of a contractor's unsuccessful demand for reconsideration of a claim, pursued beyond the cabinet secretary administrative remedy level final determination through recourse to litigation or arbitration subsequent to an unsuccessful public works mediation.

J. Pf disincentive or Pfd means the performance measurement of a contractor's quality of work for certain contract items related to pavement and structures work where the materials are subject to laboratory testing by both the contractor and department or quality-based price reductions. Applicable project contract items for Pf disincentive are governed by division 400, 500, and 900 quality criteria, as established in the current edition of the *New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction* and as may be amended by special provision.

K. Pf liquidated damages or Pfd means the performance measurement of a contractor's timely completion of the contract.

L. Pf non-conformance or Pfn means the performance measurement of a contractor's compliance with the terms and conditions of the contract.

M. Pf safety or Pfs means the performance measurement of a contractor's safety reflected by the contractor's experience modifier rate or emr provided by the contractor's bonding company.

N. Prequalification factor rolling average or Pqfra means

the final measure of responsibility that may be applied to a contractor's bid resulting in a modified bid amount.

O. Prequalification factor year or Pqfyr means the yearly calculation of a contractor's performance factors.

P. Prequalification factor or Pqf means the overall mathematical analysis of the performance factors that measure contractor responsibility.

Q. Prequalification project means a major construction project that is let through the plans specifications and estimates bureau of the department, as a competitive sealed bid procurement resulting in a contract executed by the department. The definition of prequalification project expressly excludes maintenance and other construction services work procured by any other means, including but not limited to, multiple source award, price agreement, sole source, qualification-based, design-build, job order contracting or small purchase procurement methods.

R. Prequalification project closure for purposes of the application of the prequalification calculation means the date of physical completion of the project as established in the current edition of the *New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction*, section 109.10.8, which is documented on the compass form.

S. Responsibility means an objective determination made by the department, based on past performance, of the contractor's capability in all respects to perform fully and make satisfactory delivery of the requirements of the contract including the integrity and reliability that will assure good faith performance.

T. Rolling average means a calculation to analyze data points by creating a series of averages of different subsets of the full data set. [18.27.5.7 NMAC - Rp, 18.27.5.7 NMAC, 6/8/2021]

18.27.5.8 PREQUALIFICATION

PROCEDURE: To obtain prequalified status, the current version of the prequalification packet must be obtained from the office of inspector general through use of the department website. Each contractor and subcontractor seeking to become prequalified shall submit its prequalification packet and any supporting information to the department's office of inspector general as indicated in the prequalification packet. Untimely, incomplete and non-conforming packets will not be processed.

A. Prequalified status will be granted upon the approval of a timely, complete and conforming prequalification packet by the office of inspector general.

B. An untimely, incomplete, or nonconforming packet will result in delays affecting prequalification status and will negatively impact the prime contractor's ability to bid on New Mexico department of transportation projects.

(1) Obtaining prequalified status is a condition to submitting a bid. Prime contractors submitting a new prequalification packet or renewal prequalification packet must be approved no later than seven calendar days before the opening of any bid.

(2) A prime contractor's submitting a bid without timely obtaining prequalified status shall result in a determination that its bid is non-responsive and the bid shall be rejected.

C. Subcontractors, at any tier, must obtain prequalified status before performing any work on the project. Work performed without prequalified status shall be non-compensable.

D. For prime contractors and subcontractors who are currently prequalified by the effective date of this rule the applicant will not need to submit a new prequalification packet until the anniversary date of their last packet.

E. Within five calendar days from the receipt of

a prequalification packet the office of inspector general will provide notice of receipt of the packet to the contractor.

(1) If the packet submitted is complete and conforming then the office of inspector general will provide written notice to the applicant of approved prequalified status.

(2) If the packet submitted is incomplete or does not conform to the requirements then the office of inspector general will provide written notice to the applicant that the packet will not be processed until the packet is complete and conforms to the requirements.

(3) The date of the written notice of approved prequalified status shall establish prequalification eligibility for a period of one year. Prequalified status shall automatically terminate if not renewed prior to the expiration date established by the written notice of approved prequalification status.

F. Renewal packets shall be submitted no more than 30 calendar days before the expiration date on the document published by the office of inspector general titled prequalified contractors and subcontractors list. Prequalified status shall automatically terminate for the failure to submit a timely, complete and conforming renewal packet. Prequalified status shall be re-established upon the approval of a complete and conforming renewal packet.

G. Appeal of the denial of prequalification eligibility based upon the receipt of untimely, incomplete or non-conforming packet shall be submitted in writing to the office of inspector general with supporting documentation within seven calendar days of the denial of prequalified status. If the appeal is untimely the aggrieved party waives the right to appeal. The inspector general, or designee, will issue a final written decision upholding or reversing the denial of prequalified status within seven calendar days of the receipt of a timely appeal. The inspector general's decision

constitutes the final action taken by the office of inspector general related to a denial of prequalified status under this section.

H. Obtaining prequalification status, a performance factor, or a prequalification factor rolling average does not grant a license to do business, a right to bid or to be awarded a contract.

I. In the event a contractor or subcontractor is suspended or debarred, its prequalification status shall immediately and automatically terminate without further notice. In order to obtain renewed prequalification status after a period of suspension or debarment a new complete and conforming prequalification packet must be submitted and approved.

[18.27.5.8 NMAC - Rp, 18.27.5.8 NMAC, 6/8/2021]

18.27.5.9 DEFICIENT, FALSE OR MISLEADING STATEMENTS: Any deficient, deceptive, false, fraudulent or misleading statements in the prequalification packet or incomplete affidavit may subject the offending party to an automatic rejection or revocation of prequalified status, suspension, debarment proceedings or other civil and criminal penalties under the department rules and may be reported to the New Mexico attorney general and the federal highway administration for further action.

[18.27.5.9 NMAC - Rp, 18.27.5.9 NMAC, 6/8/2021]

18.27.5.10 LICENSING: Only contractors licensed in New Mexico may perform highway construction work for the department. The timing and requirements for licensure appear in the invitation for bids for the project. All persons seeking additional information should refer to the New Mexico CID rules and regulations and the Construction Industries Licensing Act. Contractors are not required to have the necessary construction industry licenses to submit a prequalification packet.

[18.27.5.10 NMAC - Rp, 18.27.5.10 NMAC, 6/8/2021]

18.27.5.11 PREQUALIFICATION

CALCULATION: Prequalification calculations shall only be applied to those prequalification projects, which the contractor performed pursuant to a contract with the department and obtained prequalification project closure status documented by a completed compass form. The department will gather prime contractor performance data from each prequalification project upon prequalification project closure. The data collected will be used to calculate a yearly prequalification factor. The department may apply prequalification factor rolling average calculations as a responsibility evaluation to evaluate prime contractor bids for award of department projects, as indicated in the invitation for bids.

A. The performance factors are claims, disincentives, liquidated damages, non-conformance, and safety.

(1) Pf claim data will be documented on the compass form and will be collected from the department's closed project records.

(2) Pf disincentive data will be documented on the compass form and will be collected from the department's closed project records indicating whether disincentives were assessed based on calculations in the applicable standard specifications.

(3) Pf liquidated damages data will be documented on the compass form and will be collected from the department's closed project records indicating whether liquidated damages were assessed.

(4) Pf non-conformance data will be documented on the compass form and will be collected from the department's closed project records indicating whether non-conformances were assessed.

(5) Pf safety data will be the contractor's

experience modifier rating as reported on its prequalification packet.

B. The performance factors are assigned percentage values within the yearly prequalification factor calculation.

(1) The percentage associated with claims is fifteen percent.

(2) The percentage associated with disincentives is thirty percent.

(3) The percentage associated with the liquidated damages is thirty percent.

(4) The percentage associated with non-conformances is twenty percent.

(5) The percentage associated with safety is five percent.

C. Pf claim or Pfc is calculated in the following manner:

(1) Claims that are not pursued subsequent to the cabinet secretary administrative remedy level or to a public works mediation held pursuant to the public works mediation act, section 13-4C-1 NMSA 1978, will not be included in the calculation for Pf claim.

(2) For claims that a contractor pursues beyond the cabinet secretary administrative remedy level, and for which the department receives service of process of a summons and complaint or a request for arbitration, a binary system will be used to assign a value of zero or one to evaluate claims.

(a) Claims resolved for more than the value offered by the department at the cabinet secretary administrative remedy level will be assigned a value of zero.

(b) Claims resolved for less than or equal to the value offered by the department at cabinet secretary administrative remedy level will be assigned a value of one.

(3) Pf claim is calculated by adding the number one to the outcome of the sum of the claim value divided by the sum of closed projects.

(4) Pf claim resulting in a value of one will be assigned a bonus value for Pf claim equal to 0.9.

(5) Pf claim will then be multiplied by the percentage associated with Pf claim. The resulting value will be incorporated into Pqfyr.

D. Pf disincentive or Pfd is calculated in the following manner:

(1) For each closed project:

(a) Sum paid and accepted applicable contract items.

(b) Sum paid and accepted applicable contract items less applicable contract disincentives.

(c) Divide the total of Subparagraph (a) by the total of Subparagraph (b).

(d) If Subparagraph (a) is equal to zero, Subparagraph (c) will be assigned a value of one.

(e) If the result of Subparagraph (c) is exactly one with paid and accepted applicable contract items, Subparagraph (c) will be assigned a value equal to 0.9.

(2) Sum all closed projects of Subparagraph (c) in a given year and divide by the count of closed projects resulting in Pfd.

(3) Pf disincentive will then be multiplied by the percentage associated with Pf disincentive. The resulting value will be incorporated into Pqfyr.

E. Pf liquidated damages or Pfd has two separate methods of calculation one for mandatory completion date projects and one for calendar or working day projects:

(1) For mandatory completion date projects liquidated damages equivalence is calculated:

(a) Subtract the mandatory completion date including any awarded time from the notice to proceed date to equate to a whole number.

(b) Subtract the actual completion date from the notice to proceed date to equate to a whole number.

(c) Divide the total of Subparagraph (b) by the total of Subparagraph (a) of Paragraph (1) of Subsection E of this section.

(d) A resulting value less than or equal to one from Subparagraph (c) of Paragraph (1) of Subsection E of this section will be assigned a bonus value equal to 0.9.

(2) For calendar or working day projects liquidated damages equivalence is calculated:

(a) Sum of the total days charged.

(b) Sum of the total days contracted.

(c) Divide the total of Subparagraph (a) by Subparagraph (b).

(d) A resulting value less than or equal to one from Subparagraph (c) will be assigned a bonus value equal to 0.9.

(3) Pf liquidated damages for a given year is calculated from all project liquidated damages. Pf liquidated damages is the sum of liquidated damages equivalence for mandatory completion date, calendar or working day projects divided by the count of closed projects resulting in Pfd.

(4) Pf liquidated damages will then be multiplied by the percentage associated with Pfd. The resulting value will be incorporated into Pqfyr.

F. Pf non-conformance or Pfn is calculated in the following manner:

(1) Sum the number of progress payments per project.

(2) Sum the number of progress payments without non-conformance.

(3) Divide Paragraph (1) by Paragraph (2).

(4) A resulting value of one for Paragraph (3) will be assigned a bonus value equal to 0.9.

(5) Sum all closed projects of Paragraph (4) in a given year and divide by the count of closed projects resulting in Pfn.

(6) Pf non-conformance for a given year will then be multiplied by the percentage associated with Pfn. The resulting value will be incorporated into Pqfyr.

G. The performance factor for safety or Pfs is the contractor's experience modifier rate supplied annually by the contractor at the time of submission of the prequalification packet.

(1) Pfs for a given year is the numerical value of the contractor's experience modifier rate.

(2) If the experience modifier is equal to or less than one the Pfs is assigned a value of 0.9.

(3) The experience modifier rate is multiplied by the percentage associated with Pfs. The resulting value will be incorporated into Pqfyr.

H. The contractor's yearly performance factor or Pqfyr is the sum of the individual performance factors multiplied by their associated percentages.

I. The equation is $Pqfyr = Pfc * \text{fifteen percent} + Pfd * \text{thirty percent} + Pfd * \text{thirty percent} + Pfn * \text{twenty percent} + Pfs * \text{five percent}$.

J. The contractor's prequalification factor rolling average will be denoted as Pqfra, which will be calculated through the use of a rolling average covering a period of three years. Each rolling average year will be assigned a weighting factor and will be multiplied by the appropriate weighting factor starting with the most recent year.

(1) The equation for Pqfra = $((Pqfyr 1 * 0.9) + (Pqfyr 2 * 0.6) + (Pqfyr 3 * 0.3)) / (0.9 + 0.6 + 0.3)$. A contractor's overall Pqfra is the sum of Pqfyr 1 through Pqfyr 3, each multiplied by the appropriate weighting factor, is divided by the sum of all weighting factors to result in the contractor's overall Pqfra.

(a) Pqfyr 1, the most recent year, will be multiplied by the weighting factor of 0.9.

(b) Pqfyr 2, the first preceding year, will be multiplied by the weighting factor of 0.6.

(c) Pqfyr 3, the second preceding year, will be multiplied by the weighting factor of 0.3.

(d) In the absence of data for any given year, a contractor's Pqfyr will be assigned a value of one.

(2) All equations and calculations whether interim or final will be rounded to the thousandths place.

(3) After all rounding has occurred any Pqfra that has an assigned value of less than or equal to 0.94 will, then, be assigned a value of 0.94, for the purposes of calculating the modified bid amount.

K. The resulting Pqfra calculation will be the final department determination of a contractor's most recent Pqfyr and Pqfra calculations.

L. The department may reset the Pqfra calculation for all contractors in the event the Pqfyr equation is amended.

(1) Upon reset all contractor scores will be set to one.

(2) The department may implement the reset by setting Pqfyr 1 to cover a period of performance not to exceed two years.

(3) The new calculation will apply to those prequalification projects let after the effective date of the amendment.

[18.27.5.11 NMAC - Rp, 18.27.5.11 NMAC, 6/8/2021]

18.27.5.12 POSTING, REVIEW AND APPLICATION OF PREQUALIFICATION FACTOR:

The following procedures will apply to the posting, review and application of the prequalification factor:

A. The Pqfra will be calculated once a year on prequalification projects closed between March first of the previous

year and the last calendar day in February of the current year.

B. The Pqfra will be posted on the department's website, in the office of inspector general document titled prequalified contractors and subcontractors list, by the second Friday in March.

C. The Pqfra will be applied to a prime contractor's bid(s) for prequalification projects in accordance with the invitation for bids beginning with the May bid opening until superseded by an updated Pqfra

D. The Pqfra may be used to determine the modified bid amount.

E. A Pqfra may be recalculated and reposted at times other than the second Friday in March in order to implement the decision of a hearing officer, a court order or a required correction.

[18.27.5.12 NMAC - Rp, 18.27.5.12 NMAC, 6/8/2021]

18.27.5.13

ADMINISTRATIVE REVIEW:

This section governs the exclusive administrative review procedure and remedy to address prequalification calculations performed under 18.27.11 NMAC.

A. To protest the department's application of a prequalification score to a bid, the contractor must follow the bidding dispute resolution procedures in the current edition of the *New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction*, section 103.3.

B. Administrative review of a prequalification calculation is available only for a contractor seeking reconsideration of its own score. The department shall reject a request for administrative review of another contractor's score.

C. To be considered by the department, a request for administrative review shall strictly conform in timing form and service of filing as provided in this section. Any request for administrative review that does not comply with these directives may be rejected and deemed denied.

(1) Form: the request shall be in writing. The request shall include a plain statement of the issue, grounds for reconsideration, and requested relief.

(2) Timing: The request for review shall be served within 10 days of the date the office of inspector general posts the prequalified contractors and subcontractors list.

(3) Service: A request shall be served on the department cabinet secretary with a contemporaneous copy provided to the office of inspector general and the office of general counsel at the respective address for each.

(a) A request may be served in person, by certified mail, return receipt requested, or by delivery by a nationally recognized courier. Service cannot be perfected and the department shall not consider requests made by electronic mail or facsimile.

(b) Service shall be made during the department's normal business hours. Any service made after business hours will be considered effective the next business day.

D. The department cabinet secretary shall, within 10 days of receipt of a conforming request, provide written notice to the contractor of the department's decision resolving the matter or submitting the matter to an informal hearing.

(1) Notice of the election to refer the matter for an informal hearing shall designate a neutral person or the cabinet secretary as the hearing officer.

(2) Notice of the election submitting the matter to an informal hearing shall stay application of the contractor's Pqfra pending completion of the administrative remedy.

E. The designated hearing officer shall, within 10 days of the notice of appointment, provide written notice of the scheduled informal hearing date, time and location.

(1) The notice of hearing will be provided to the parties no later than seven calendar days before the chosen hearing date.

(2) The hearing officer has the discretion to determine the location of the hearing and whether telephonic or video appearance will be allowed.

(3) No continuances of the hearing will be granted except as determined by the hearing officer.

(4) The hearing officer shall set the deadlines and method for pre-hearing submittals no later than three business days before the hearing.

F. The informal hearing shall be a hearing on the record. The hearing officer will conduct the hearing as informally as is practicable to facilitate fact-finding. The formal rules of civil procedure, formal discovery processes and the formal rules of evidence shall not apply to the conduct of the informal hearing.

(1) The hearing officer shall determine the degree of formality of the hearing, the total time allotted for the informal hearing and how the time will be apportioned between the parties.

(2) Legal representation is not required but any party may choose to have legal counsel present. Legal counsel is prohibited from testifying but may offer opening or closing statements.

(3) The contractor has the burden of proof to show by substantial evidence the department incorrectly performed the prequalification factor calculation.

(4) A party may call its own witnesses to provide relevant testimony but may not subpoena or cross-examine witnesses. The hearing officer shall have the exclusive authority to question any party or witness.

(5) A party may provide written documents to the hearing officer, including relevant laws, rules, regulations, specifications to support the party's position, at least three business days prior to the

hearing date. Presentation of such evidence shall be made electronically to the hearing officer and opposing party, whenever practicable. During a hearing, a party may offer additional written evidence to the hearing officer with copy to opposing party. Such evidence may be added to the record at the hearing officer's discretion.

(6) Before concluding the hearing, the hearing officer may hold the proceeding open for three days after the hearing date for receipt of supplemental evidence, material or closing statements.

When directed, parties may timely supplement the record after the hearing by providing such materials to the informal hearing officer and the opposing party.

G. The hearing officer's final written decision concludes the administrative remedy and constitutes the department's final agency action on the matter.

(1) The hearing officer shall issue the written decision within seven calendar days of the conclusion of the administrative hearing proceedings unless the deadline is otherwise extended by the hearing officer. The deadline for issuing the determination shall not exceed twenty-one calendar days from the conclusion of the hearing proceedings or April 30, whichever occurs first.

(a) To reach a decision, the hearing officer may use any reliable information, no matter the source. If the hearing officer uses information not provided by either party that information shall be entered into the record and the use of that information will be documented in the written decision.

(b) In the written decision, the hearing officer will make findings concerning the credibility of witness testimony and the reliability, significance and sufficiency afforded the evidence on the record.

(2) The hearing officer shall be responsible for maintaining a record of the evidence and proceeding during the administrative review. After

completion of the decision, the hearing officer shall provide the department with a certified copy of the record. The administrative record shall be maintained by the department for seven years after the date of the decision on the matter.

H. The department shall implement the hearing officer's decision for the May bid openings.

(1) If a party remains aggrieved by the hearing officer's decision that party may seek judicial review.

(2) Judicial review shall be an appellate, record review and must be brought in the first judicial district court.

(3) If the matter is submitted to judicial review, each party shall bear its own costs and attorney fees.

[18.27.5.13 NMAC - Rp, 18.27.5.13 NMAC, 6/8/2021]

18.27.5.14 PREQUALIFICATION

COMMITTEE: Members of the prequalification committee will be designated by the department's cabinet secretary and shall meet annually to review the prequalification process. Any information reported by a prime contractor or subcontractor during the prequalification process may be reviewed by the prequalification committee to determine responsibility. The cabinet secretary has the exclusive authority to determine the department threshold applicable to project lettings. The committee may make recommendations to the cabinet secretary for adjusting the department threshold for application of Pqfra to project bid lettings.

[18.27.5.14 NMAC - Rp, 18.27.5.14 NMAC, 6/8/2021]

18.27.5.15 PREQUALIFICATION FOR CONSOLIDATED

CORPORATIONS, MERGED CORPORATIONS, AND JOINT VENTURES: The following prequalification packet procedure and Pqfra will apply to consolidated corporations, merged corporations and joint ventures:

A. For a consolidated or merged corporation pursuant to Section 53-14-6 NMSA 1978, or a similar statutory provision, the new corporation must be prequalified no later than seven calendar days before the opening of any bid. The Pqfra score of the surviving corporation will be the highest Pqfra of the individual corporations.

B. Each prime contractor participating in the joint venture must be individually prequalified seven calendar days before bid opening to join forces as a joint venture for bidding and performing work related to a single project. The joint venture itself need not prequalify.

(1) The joint venture shall file with the office of inspector general at least seven calendar days before the opening of any bid a completed statement of joint venture form. The most current version of the statement of joint venture form must be obtained from the New Mexico department of transportation website.

(2) For joint ventures the higher value of all joint venture applicant's Pqfra will be used for the modified bid amount.

(3) Each prime contractor participating in the joint venture will receive a compass form for the project to be used in calculating the prime contractor's individual prequalification factor.
[18.27.5.15 NMAC - Rp, 18.27.5.15 NMAC, 6/8/2021]

18.27.5.16 ADOPTION OF THE NEW MEXICO STATE DEPARTMENT OF TRANSPORTATION CURRENT EDITION OF THE STANDARD SPECIFICATIONS FOR HIGHWAY AND BRIDGE

CONSTRUCTION: This rule adopts by reference the current edition of the New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction, as amended by this rule.

[18.27.5.16 NMAC - Rp, 18.27.5.16 NMAC, 6/8/2021]

HISTORY OF 18.27.5 NMAC:

Pre-NMAC History: None

History of the Repealed Material: 18 NMAC 27.5, Highway Construction General Provisions- Contractor Prequalifications, filed 11/13/1998. This was a temporary rule expiring 120 days from effective date of 11/30/1998. 18.27.5 NMAC, Contractor Prequalification Rule, (filed 12/07/2000) repealed and replaced by 18.27.5 NMAC, Contractor Prequalification Rule, effective 01/01/2015. 18.27.5 NMAC, Contractor Prequalification Rule, (filed 12/16/2014) repealed and replaced effective 6/8/2021.

Other History:

18.27.5 NMAC, Contractor Prequalification Rule (filed 12/16/2014) replaced by 18.27.5 NMAC, Contractor Prequalification Rule effective 6/8/2021.

End of Adopted Rules

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Other Material Related to Administrative Law

**GOVERNOR,
OFFICE OF THE
EXECUTIVE ORDER 2021-011**

**RENEWING THE STATE
OF PUBLIC HEALTH
EMERGENCY INITIALLY
DECLARED IN EXECUTIVE
ORDER 2020-004, OTHER
POWERS INVOKED IN
THAT ORDER, AND ALL
OTHER ORDERS AND
DIRECTIVES CONTAINED IN
EXECUTIVE ORDERS TIED
TO THE ONGOING PUBLIC
HEALTH EMERGENCY**

On December 31, 2019, several cases of pneumonia with an unknown cause were detected in Wuhan City, Hubei Province, China, and reported to the World Health Organization (“WHO”). The underlying virus giving rise to those reported instances of respiratory illness was later identified as a novel coronavirus disease which has been referred to as “COVID-19.”

By the time the first COVID-19 cases had been confirmed in New Mexico, on March 11, 2020, COVID-19 had already spread globally and throughout the United States. At that time, more than 100,000 people had been infected globally and there were more than 1,000 cases in the United States, spread out over 39 states. The President of the United States declared a national state of emergency for COVID-19 on March 13, 2020. As of May 27, 2021 the Centers for Disease Control and Prevention (“CDC”) reported over 33 million people have been infected in the United States, with over 580,000 related deaths, and the New Mexico Department of Health has reported 202,698 positive COVID-19 cases and 4,259 related deaths in New Mexico.

Public health organizations have implemented emergency measures intended to slow the

spread of COVID-19. For example, on January 20, 2020, the CDC activated its Emergency Operations Center in response to the COVID-19 outbreak. The WHO declared a Public Health Emergency of International Concern shortly thereafter. All of our sister states have declared a state of emergency and implemented significant measures and deployed substantial resources to fight the spread of COVID-19; many, if not most, have kept such states of emergency in place.

New Mexico has taken aggressive measures to reduce the spread of COVID-19 and to mitigate its impacts. I have been in frequent contact with federal and state agencies and officials who are coordinating their efforts and resources to fight COVID-19. Various state agencies have been at the forefront of our State’s response to COVID-19, particularly the New Mexico Department of Health. The hard work of a variety of state employees has made a difference in our fight against COVID-19. Due to the continued spread of COVID-19, it is necessary for all branches of State government to continue taking actions to minimize transmission of COVID-19 and to reduce its attendant physical and economic harms.

Therefore, for the reasons above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and laws of the State of New Mexico, hereby ORDER and DIRECT:

1. In consultation with the New Mexico Department of Health, I have determined that the statewide public health emergency proclaimed in Executive Order 2020-004, and renewed in Executive Orders 2020-022, 2020-026, 2020-030, 2020-036, 2020-053, 2020-55, 2020-059, 2020-064, 2020-073, 2020-080, 2020-085, 2021-001, 2021-004, 2021-010, 2021-011,

and 2021-012 shall be renewed and extended through June 25, 2021.

2. All other powers, directives, and orders invoked in Executive Order 2020-004 remain in effect.

3. All other Executive Orders with a duration that was tied to the COVID-19 public health emergency or that was not explicitly stated shall continue with the same effect, including any orders appropriating emergency funding as well as Executive Orders 2020-016, 2020-020, 2020-021, 2020-025, and 2020-039.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Order shall take effect on May 28, 2021 and shall remain in effect until June 25, 2021 unless renewed, modified, or until the Governor rescinds it.

**DONE AT THE EXECUTIVE
OFFICE THIS 28TH DAY OF
MAY 2021**

**ATTEST:
/S/MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE**

**WITNESS MY HAND AND THE
GREAT SEAL OF THE STATE OF
NEW MEXICO**

**/S/MICHELLE LUJAN
GRISHAM
GOVERNOR**

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

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Submittal Deadlines and Publication Dates

Volume XXXII, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 12
Issue 2	January 14	January 26
Issue 3	January 28	February 9
Issue 4	February 11	February 23
Issue 5	February 25	March 9
Issue 6	March 11	March 23
Issue 7	March 25	April 6
Issue 8	April 8	April 20
Issue 9	April 22	May 4
Issue 10	May 6	May 25
Issue 11	May 27	June 8
Issue 12	June 10	June 22
Issue 13	June 24	July 7
Issue 14	July 8	July 20
Issue 15	July 22	August 10
Issue 16	August 12	August 24
Issue 17	August 26	September 14
Issue 18	September 12	September 28
Issue 19	September 30	October 13
Issue 20	October 14	October 26
Issue 21	October 28	November 9
Issue 22	November 15	November 30
Issue 23	December 2	December 14
Issue 24	December 16	December 28

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