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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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Volume XXXIV, Issue 12

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Notices of Rulemaking and Proposed Rules

DEVELOPMENTAL DISABILITIES COUNCIL OFFICE OF GUARDIANSHIP

AMENDMENT TO NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Developmental Disabilities Council Office of Guardianship's (NMDDC OOG) public rule hearing on **July 31, 2023**, and public comment period remain the same. This notice is to add the correct web address to "**Details for Obtaining a Copy of Proposed Rules.**" The hearing will begin at 10:00 a.m. and will be held at the NMDDC OOG at 625 Silver Avenue SW, Suite 100, Albuquerque, NM 87102-3185, and via Zoom (<https://us02web.zoom.us/j/82414945939?pwd=dGtOS05rdWVrTXZYzaG5UM0ZTMlN1QT09>, Meeting ID: 824 1494 5939, Passcode: 090711, One tap mobile +17193594580,,824149 45939#,,,,*090711# US). Following the public rule hearing, the NMDDC OOG will convene an executive leadership meeting to adopt the rules. The proposed rule was published in the Notice of Proposed Rulemaking on June 13, 2023.

Statutory Authority: Legal authority for this rulemaking may be found in the Office of Guardianship Act, Section 28-16B-3 NMSA 1978, among other provisions which specifically authorize the NMDDC OOG to "promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to carry out the provisions of the Office of Guardianship Act."

Purpose: The purpose of the public rule hearing is to take public comments regarding the proposed repeal and replacement of **9.4.21 NMAC – GUARDIANSHIP SERVICES**. Every person attending the public rule hearing will be given the opportunity to present their comments. **Interested**

persons may submit their written comments to the NMDDC OOG at 625 Silver Avenue SW, Suite 100, Albuquerque, NM 87102-3185, or DDC.OOG-Rulemaking@ddc.nm.gov. 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. **Written comments must be received no later than 5:00 p.m. on July 30, 2023.** Any written comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public.

Special Needs: Any person with a disability who needs a reader, amplifier, qualified signed language interpreter, auxiliary aid, or service to attend or participate in the public rule hearing should contact the NMDDC OOG at DDC.OOG-Rulemaking@ddc.nm.gov or (505) 526-0551 at least ten (10) business days prior to the hearing.

Details for Obtaining a Copy of Proposed Rules: The proposed rules are available at the NMDDC OOG located at 625 Silver Avenue SW, Suite 100, Albuquerque, NM 87102-3185, and are posted on the NMDDC OOG's website at <https://www.nmddpc.com/>. To request that a copy of the proposed rules be sent to you by mail or email, please contact the NMDDC OOG at DDC.OOG-Rulemaking@ddc.nm.gov or (505) 526-0551.

Summary of Proposed Repeal and Replacement: The NMDDC OOG proposes to repeal and replace 9.4.21 NMAC – Guardianship Services as follows:

9.4.21.7 Definitions.

Revising the definition of "complaint"; defining "comprehensive service review", "corrective action plan", and "service provider"; and deleting the definitions of "complaint against the office of guardianship", "comprehensive evaluation", "contracted guardianship provider",

"contractor", and "designated entity".

9.4.21.8 Eligibility.

Repealing language that is unclear and outdated and replacing it with language that uses defined terms and comports with the United States Department of Health and Human Services' guidelines on poverty.

9.4.21.9 Prioritization of Service. Repealing language that uses the terms "high need guardianships" and "low need guardianships" and replacing it with the NMDDC OOG's criteria that are used when prioritizing applications.

9.4.21.10 Designation of Service Area. Repealing language that specifies the area within which the NMDDC OOG provides services, and adding language that states services are provided within the jurisdiction of New Mexico courts.

9.4.21.11 Services to Be Provided by the NMDDPC Office of Guardianship. Repealing section.

9.4.21.12 Requirements of Contracted Guardianship Providers. Repealing section.

9.4.21.13 Referral Process. Repealing section.

9.4.21.14 Complaints Against a Contracted Provider with the NMDDPC Office of Guardianship. Repealing language that describes outdated processes and that limits the scope of the complaint process and replacing it with language that clearly communicates how the NMDDC OOG responsibly, promptly, and impartially handles and investigates complaints.

9.4.21.15 Complaints Against the NMDDPC Office of Guardianship. Repealing section.

9.4.21.16 Transfer of Protected Person from a Private Pay Guardianship to a Program Funded Through the NMDDPC Office of Guardianship. Repealing section.

9.4.21.17 Requests for Information. Repealing section.

9.4.21.18 Comprehensive Evaluations. Repealing section.

9.4.21.19 Comprehensive Service Reviews. Adding a new section with the minimum

requirements of personnel that conduct comprehensive service reviews (CSR), the components of a CSR, and the provision of a CSR report.

9.4.21.20 Corrective Action

Plans. Adding a new section to outline when the NMDDC OOG may require a service provider to complete a corrective action plan upon failure to provide services in accordance with the service agreement or within the scope of the order granted by the court.

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 31, 2023. The hearing will begin at 9:00 a.m. and will be held via Microsoft Teams. The purpose of the hearing is to take public comment regarding proposed amendments to **5.7.3 NMAC, NEW MEXICO HEALTH PROFESSIONAL LOAN REPAYMENT PROGRAM (HPLRP)**. The proposed amendments to 5.7.3 NMAC would be included in a repeal and replacement of the rule. The Commission of Public Records requests the repeal and replacement to conform to updated formatting requirements.

Join via Microsoft Teams:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_N2QyYjAyOTQtOTg5YS00NGZkLWE5ZTMtMmUyMDVjZDgzMTJm%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: 300 665 606#

Purpose:

The purpose of the proposed amendment is to remove language that limited physician eligibility to primary care physicians. The change expands eligibility to all physicians and is in alignment with criteria established in H.B.209, 56th Leg., 1st Sess. (N.M. 2023). In addition, the amendment extends the service obligation for loan repayment from two years to three years to be in alignment with the obligation term established by H.B.209, 56th Leg., 1st Sess. (N.M. 2023). In the definition for “Eligible participant” the term “pediatrists” is corrected to “podiatrists”. Language is changed to clarify the authority of the committee to approve specialties. A definition for “Commission” is added to clarify references throughout the rule and definitions are reordered.

Summary of proposed rule:

Amendments to Sections 5.7.3.6 NMAC, 5.7.3.9 NMAC, 5.7.3.11 NMAC and 5.7.12 NMAC change the service obligation term from two to three years. The amendment to Section 5.7.3.7 NMAC updates the “Eligible participant” definition to include all physicians rather than only primary care physicians. Language is changed to clarify the authority of the committee to approve specialties. In the definition of “Eligible participant” the term “pediatrists” is corrected to “podiatrists”. The defined term “Primary care physician” is changed to “Physician” to align with the expansion of eligible participants. The amendment to the definition for “Physician” clarifies the authority of the committee to approve specialties. A definition for “Commission” is added to clarify references throughout the rule. The definition of department is moved to the correct location alphabetically and subsequent definitions are renumbered.

Details for Obtaining a Copy, Public Hearing and Comments:

The proposed rule is also posted on the NMHED website and may be accessed at <http://www.hed.nm.gov> under the “Events” section. To

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

A public hearing will be held on July 31, 2023 from 9:00 a.m. until 9:30 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@hed.nm.gov. Written comments must be received no later than 4:00 p.m. on July 28, 2023. Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Sections 21-1-26 and 21-22D NMSA 1978.

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

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public video/telephonic rulemaking hearing on July 31, 2023. The hearing will begin at 9:30 a.m. and will be held via Microsoft Teams. The purpose of the hearing is to take

public comment regarding proposed amendments to 5.7.34 NMAC, **TEACHER PREPARATION AFFORDABILITY SCHOLARSHIP PROGRAM.**

Join via Microsoft Teams:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_YWU0ZTk3ZTUtNWQxMy00NDdiLWJlY2MtOGFmMGY1Y2Q5YTNh%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22c327f958-5970-4536-8fb-03d48b60d29e%22%7d

Or call in (audio only)
 +1 (505) 312-4308
 Phone Conference ID: 132 646 448#

Purpose:

The purpose of the proposed amendment is to remove language that required half-time enrollment. The change is in alignment with updated eligibility criteria established by S.B.307, 56th Leg., 1st Sess. (N.M. 2023). In addition, the amendment expands eligibility to include licensed teachers who are enrolled or enrolling at an eligible institution in a graduate program in education or a degree related to their teaching specialty. This change is also in alignment with criteria established by S.B.307, 56th Leg., 1st Sess. (N.M. 2023).

Summary of proposed rule:

The amendment to Section 5.7.34.7 NMAC removes the definition of “Half-time”. Subsequent definitions are renumbered and references to “Half-time” are removed from 5.7.34.8 NMAC and 5.7.34.11 NMAC. The amendments to 5.7.34.6 and 5.7.34.8 NMAC add language regarding eligibility for licensed teachers. In addition, amendments to 5.7.34.8 reorganize the eligibility requirements. The purpose of the reorganization is to clarify differing requirements for licensed teachers and individuals who have not yet earned appropriate educational credentials to be licensed as a teacher by the New Mexico Public Education Department.

Details for Obtaining a Copy, Public Hearing and Comments:

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

A public hearing will be held on July 31, 2023 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@hed.nm.gov. Written comments must be received no later than 4:00 p.m. on July 28, 2023. Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978 and Chapter 193, 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@hed.nm.gov ten (10) business days prior to the hearing.

**HUMAN SERVICES
 DEPARTMENT
 INCOME SUPPORT DIVISION
 AMENDED NOTICE OF PUBLIC
 HEARING**

Amended Notice of Public Hearing:

The Human Services Department through Income Support Division (ISD) is amending the notice of public hearing and Human Services Register (HSR) Vol. XXVI NO. 1, published on May 16, 2023, in Volume XXXIV Issue 9. The amendment is made to include a hearing in hybrid setting for the proposed rule will be held in a Hybrid setting pursuant to Section 14-4-5.6 NMSA 1978, will be held on August 18, 2023, at 11:00 a.m-12:00 p.m.

You may join from your computer, tablets or smartphone <https://meet.goto.com/292123245> You can also dial in using your phone: United States: [+1 \(224\) 501-3412](tel:+1(224)501-3412) Access Code: 292-123-245 Get the app now and be ready when your first meeting starts: <https://meet.goto.com/install>. You may also attend in person in the Large Conference room at the HSD Sandoval County Field Office, 4363 Jager Dr., Rio Rancho, NM 87144.

Notice of Hearing Published 5/16/2023:

The Human Services Department through Income Support Division (ISD) is proposing Amend/ Repeal/Replace to rules 8.102.100 NMAC Definitions and Acronyms, 8.102.520.9 NMAC Eligibility Policy-Income, 8.106.100 NMAC Definitions and Acronyms, 8.106.520 NMAC Eligibility Policy-Income, 8.139.100 NMAC General Provisions for the Food Stamp Program, 8.139.520 NMAC Eligibility Policy/ Income and Deductions, 8.139.527 NMAC Income and Resources Excluded by Federal Law. Changes in the rule are to update language, incorporate standardized rule language, correcting citation format.

Specifically, the changes include:

8.102.100 NMAC

Repeal/replace to comply with federal regulations as well as NMAC rule requirements. (Specifically, section 7 & 8).

8.102.520 NMAC

Repeal/replace to comply with federal regulations as well as NMAC rule requirements. (Specifically, section 9).

8.106.100 NMAC

Repeal/replace to comply with federal regulations as well as NMAC rule requirements. (Specifically, section 7 & 8).

8.106.520 NMAC

Repeal/replace to comply with federal regulations as well as NMAC rule requirements. (Specifically, section 9).

8.139.100 NMAC

Repeal/replace to comply with federal regulations as well as NMAC rule requirements. (Specifically, section 7 & 8).

8.139.520 NMAC

Repeal/replace to comply with federal regulations as well as NMAC rule requirements.

8.139.527 NMAC

Repeal/replace to comply with federal regulations as well as NMAC rule requirements.

Regulations issued pursuant to the act are contained in 7 CFR 270-282 and 45 CFR Parts 200-299. State Authority for administering the food stamp program is contained in Chapter 27 NMSA, 1978.

Administration of the Human Services Department (HSD), including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983).

A public hearing to receive testimony on this proposed rule will be held virtually, pursuant to Section 14-4-5.6 NMSA 1978, will be held on June 20, 2023, 11:00 a.m.-12:00 p.m. Please join my meeting from your computer, tablet or smartphone <https://meet.goto.com/292123245>

You can also dial in using your phone: United States: +1 (224) 501-3412 Access Code: 292-123-245 Get the app now and be ready when your first meeting starts: <https://meet.goto.com/install>.

All Written comment may be dropped off by 5:00 pm, June 20, 2023 at the HSD Sandoval County Field Office, 4363 Jager Dr., Rio Rancho, NM 87144.

Individuals wishing to testify may contact the Income Support Division (ISD), P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling 505-396-0313. This register and the proposed changes are available on the HSD website at [Income Support Division Registers | New Mexico Human Services Department state.nm.us](https://www.incomesupportdivision.org/).

If you do not have internet access, a copy of the proposed rules may be requested by contacting the Income Support Department P.O. Box 2348, Santa Fe, New Mexico 87504-2348 or by calling (505) 396-0313.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at Office-505-709-5468, Fax-505-827-6286 or through the New Mexico Relay system, toll free at #711. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing, June 20, 2023. Please send comments to: Human Services Department, P.O. Box 2348, Santa Fe, NM 87504-2348.

Recorded comments may be left at (505) 396-0313. You may send comments electronically to: HSD-isdrules@hds.nm.gov. Written and

recorded comments will be posted to the agency's website within 3 days of receipt. All comments will be given the same consideration as oral testimony made at the public 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 for the following proposed rulemaking on Monday, July 31, 2023, from 1:30 p.m. to 2:30 p.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501:

Amendment to 6.10.7 NMAC, Standardized Testing Procedures and Requirements

The PED will give a verbal summary statement, on record, at the hearing.

The purpose of the public hearing is to receive public input on the proposed rulemaking. Attendees who wish to provide public comment on record will be given three minutes to make a statement concerning the proposed rulemaking. To submit written comment, please see the Public Comment section of this notice.

Explanation of Purpose of Rulemaking, Summary of Text, and Statutory Authority, by Proposed Rule

6.10.7 NMAC, Standardized Testing Procedures and Requirements

Explanation: The purpose of the proposed rulemaking is to include standardized testing requirements for virtual programs and update requirements for District Test Coordinators.

Summary: The proposed amendment requires virtual programs to test

students in person and requires District Test Coordinators to follow department guidance to assign appropriate tests and accommodations for English learners and students with disabilities.

Statutory Authority: Sections 9-24-8, 22-2-1, 22-2-2, and 22-13-6.1 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 or e-mail.

Mailing Address

Policy and Legislative Affairs
Division
New Mexico Public Education
Department
300 Don Gaspar Avenue, Room 121
Santa Fe, New Mexico 87501

E-Mail Address

Rule.Feedback@ped.nm.gov

Written comments must be received no later than 5 p.m. (MDT) on Monday, July 31, 2023. The PED encourages the early submission of written comments.

Public Comment Period

The public comment period is from Tuesday, June 27, 2023, to Monday, July 31, 2023, 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 of the proposed rulemaking at a later date.

Copies of the proposed rules may be obtained from Denise Terrazas at (505) 470-5303 during regular business hours or may be accessed through the PED Policy and Legislative Affairs webpage titled, "Proposed Rules," at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>.

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 Denise Terrazas at (505) 470-5303 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.

REGULATION AND LICENSING DEPARTMENT BARBERS AND COSMETOLOGISTS, BOARD OF

NOTICE OF RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Board of Barbers and Cosmetologists will hold a rule hearing and regular board meeting to consider the adoption of proposed rules on Monday, August 7th, 2023, at 9:00 a.m. The board meeting will be held at the Regulation and Licensing Department, Toney Anaya, located at 2550 Cerrillos Road, Santa Fe, New Mexico, 87505.

The meeting will also be held via Cisco Webex Meetings for those desiring to attend virtually.
<https://nmrld.webex.com/nmrld/j.php?MTID=m4c418a3a2b4a9ac9ea0b3636e4ae9b1e>

Meeting (Access) Code: 2483 346 5891

Webinar password: qZHxDgts373 (79493487 from phones and video systems)

Join by phone: 1-415-655-0002

The purpose of the rule hearing is to consider the initiation of rulemaking for the following rules:

16.34.1 NMAC – General Provisions
16.34.4 NMAC – Special Licenses
16.34.5 NMAC – Regular Licenses

16.34.6 NMAC – Expedited Licensure

16.34.7 NMAC – Establishments and Enterprises

16.34.8 NMAC – Schools

16.34.9 NMAC – Continuing Education

16.34.14 NMAC – Fees

On Wednesday, July 5, 2023, copies of the proposed rules may be obtained through the Board of Barbers and Cosmetologists website at <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/barbers-and-cosmetologists/barbers-and-cosmetologists-statute-rules-and-rule-hearings/> or by contacting the Executive Director, Pauline M. Varela at (505) 476-4690.

The Board of Barbers and Cosmetologists will begin accepting written public comment regarding the proposed rule changes beginning Wednesday, July 5, 2023, and ending Friday, August 4, 2023, 5:00 p.m. Please submit written comments on the proposed changes to Pauline M. Varela, Executive Director, via electronic mail to barber.cosmoboard@rld.nm.gov, or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Thursday, August 3, 2023.

Written comments received during the public comment period (July 5, 2023 – August 4, 2023) will be posted to the website page linked above. Public comment will also be accepted during the rule hearing and may be submitted in writing or presented orally by those attending both in-person and virtually. The members of the Board of Barbers and Cosmetologists will not enter into substantive discussion of public comments during the rule hearing but will consider and deliberate any public comment during the regular board meeting immediately following the conclusion of the rule hearing.

The agenda for the board meeting will be posted and available at least 72 hours before the meeting on the Board

website at <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/barbers-and-cosmetologists-overview/bc-board-information/bc-board-meetings/>. Copies of the agenda may also be obtained by contacting the Executive Director.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or the regular advisory board meeting, please contact the Executive Director, Pauline Varela at (505) 476-4690 at least 7 days prior to the rule hearing and regular board meeting. Public documents, including the proposed rules, meeting agenda and minutes, can be provided in various accessible formats.

Statutory Authority: Subsection A (1) of Section 61-17A-7 NMSA 1978 of the Barbers and Cosmetologists Act, Sections 61-17A-1 to -25 NMSA 1978, specifically authorizes the Board to “adopt and file, in accordance with the State Rules Act, rules necessary to carry out the provisions of the Barbers and Cosmetologists Act.”

Purpose of the Proposed Rules:

The proposed rules are intended to provide greater clarity in existing regulatory and statutory requirements, and to ensure continued high levels of professionalism among licensees and certificate holders. In addition, several of the proposed rule changes are intended to address recent statutory changes to the Uniform Licensing Act that were adopted in House Bill 384 during the 2023 Regular Legislative Session.

Summary of Proposed Changes:

The Board summarizes its proposed changes to its administrative rules as follows: The proposed changes to Section 16.34.1 NMAC remove definitions that are defined House Bill 384, which was passed during the 2023 Regular Legislative Session, for compliance with the State Rules

Act, Section 14-4-5.7(B), NMSA 1978. The definition of “eyelash extensions” was also added to Section 16.34.1 NMAC, to provide clarity to individuals licensed in accordance with the Barbers and Cosmetologists Act, 61-17A-1 to -25, NMSA 1978. Eyelash extensions have been added under the scope of practice for barbers, cosmetologists, barbers/cosmetologists, estheticians, and manicurists/estheticians under Sections 16.34.4 and 16.34.5 NMAC. The definition of “booth establishment” was removed from Section 16.34.1 NMAC, due to the Board of Barbers and Cosmetologists discontinuation of booth establishments, effective November 18, 2021. The proposed changes to Section 16.34.4 include the addition of crossover licenses for barbers/cosmetologists and manicurists/estheticians, as these are considered “special licenses” that the Board has the authority to issue, pursuant to 61-17A-7(A) (8), NMSA 1978. The proposed changes to Section 16.34.5 NMAC include an extension of time that an applicant must apply for licensure after completion of the required course of study from 12 months to 24 months to provide a longer time frame for applicants to become licensed. The proposed changes to Section 16.34.6 remove definitions already defined in statute in accordance with the State Rules Act, Section 14-4-5.7(B), NMSA 1978. Language from Section 16.34.5 NMAC was removed and replaced under Section 16.34.6, as it is guidance for those licensed under expedited licensure. Section 16.34.7 NMAC strikes the language regarding booth establishments, due to the Board’s discontinuation of booth establishments, effective November 18, 2021. The proposed changes to Section 16.34.8 NMAC includes language that was removed from Section 16.34.9 NMAC, as it pertains to advanced training that must be conducted in a licensed school. The proposed changes to Section 16.34.9 NMAC remove the provision permitting the licensure of continuing education providers, due to

the Board’s lack of statutory authority to issue such licenses. The proposed changes to Section 16.34.14 NMAC include the addition of a fee for the barbers/cosmetologist, as no fee was provided in the fee schedule for this license type.

**SECRETARY OF STATE,
OFFICE OF THE**

**NOTICE OF PROPOSED
RULEMAKING**

The Office of the New Mexico Secretary of State (“Office”) hereby gives notice that the Office will conduct a public hearing on the described rules below.

A public hearing will be held on August 4, 2023, from 9:00 am to 1:00 pm, at the State Land Office, 310 Old Santa Fe Trail, Santa Fe NM 87504. Attendees cannot park in the State Land Office parking lot, but must park at the PERA lot, one block east of the State Land Office.

The purpose of this hearing is to allow members of the public the opportunity to provide public input in person on the amendment of an existing rule, Absentee Voting, 1.10.12 NMAC. All comments will be recorded by a court reporter and/or audio recording.

Authority: Election Code, Section 1-2-1; Section 1-6-5.6; Section 1-6-16.1; and Section 1-9-7.1; and Section 1-21A-8 NMSA 1978.

1.10.12 NMAC Absentee Voting

Purpose: Amendments conform with statutory changes made during the first session of the 56th Legislature of New Mexico. Further amendments update the rule to match existing language in the state’s Election Code.

Summary of Full Text: Section 1.10.12.1 is amended to remove the Secretary of State’s address, and section 1.10.12.3 is amended to update statutory references. In Section 1.10.12.6, the objective of

the rule is amended to utilize the term “mailed ballot” instead of “absentee ballot,” and the section is expanded to encompass new statutory provisions for the designation of government or tribal buildings by an Indian Nation, tribe or pueblo. Definitions in Section 1.10.12.7 are amended to align with new and previous language in the Election Code, and a definition for “mailed ballot” is added to the section. Sections 1.10.12.8 and 1.10.12.9 are amended to utilize the term “mailed ballot,” implement changes passed by the legislature regarding replacement ballots and align with the Election Code. Section 1.10.12.11 is amended to include a new process for documenting challenger, watcher or observer violations by an election board and county clerk. Sections 1.10.12.12 and 1.10.12.13 include minor language changes that better align with existing statutes in the Election Code and new provisions for tabulation passed by the legislature in 2023. Section 1.10.12.16 is amended to include procedures for the clerk verification process of required voter information and includes a notification requirement regarding the curing process of mailed ballots during an election. A new section, Section 1.10.12.17, outlines procedures for the curing of mailed ballots as provided for in Section 1-6-10 NMSA 1978. A second new section, Section 1.10.12.20, outlines procedures for the designation of government or tribal buildings by an Indian Nation, tribe or pueblo.

Details for Obtaining a Copy of Rule and Submitting Oral or Written Comments: Copies of the proposed rules are available on the Office’s website at www.sos.nm.gov or can be obtained from the Bureau of Elections by calling (505) 827-3600 or emailing lindsey.bachman@sos.nm.gov. The proposed rule is also available on the New Mexico Sunshine Portal. Interested individuals may provide comments at the public hearing. Before the public hearing, written comments may be sent to Lindsey Bachman, Director of Legislative and Executive Affairs,

via email at lindsey.bachman@sos.nm.gov, fax 505-827-8403, or by regular mail at Attn: Lindsey Bachman – proposed rule, The Office of the New Mexico Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501. The deadline to receive written comment is August 3, 2023. All written public comments will be posted on the website throughout the written comment period at: www.sos.nm.gov.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 827-3600 or email lindsey.bachman@sos.nm.gov (5) business days prior to the hearing.

SECRETARY OF STATE, OFFICE OF THE

NOTICE OF PROPOSED RULEMAKING

The Office of the New Mexico Secretary of State (“Office”) hereby gives notice that the Office will conduct a public hearing on the described rules below.

The purpose of these hearings is to obtain public input on the repeal of an existing rule, Secured Containers, 1.10.19 NMAC.

A public hearing will be held on August 4, 2023, from 9:00 am to 1:00 pm, at the State Land Office, 310 Old Santa Fe Trail, Santa Fe NM 87504. Attendees cannot park in the State Land Office parking lot, but must park at the PERA lot, one block east of the State Land Office. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments in person on the proposed rule changes detailed below. All comments will be recorded by a court reporter and/or audio recording.

Authority: Election Code, Section 1-2-1 and Section 1-6-9 NMSA 1978

1.10.19 NMAC Secured Containers

Purpose: Amendments conform with statutory changes made during the first session of the 56th Legislature of New Mexico. Further amendments update the rule to match existing language in the state’s Election Code and align with existing security procedures.

Summary of Full Text: Section 1.10.19.3 is amended to include additional statutory references. Section 1.10.9.7 is amended to include needed definitions related to the security of monitored secured containers. Section 1.10.19.9 is amended to include security procedures related to the vetting, installation and monitoring of secured containers. Section 1.10.19.10 is amended to clarify that the county clerk shall contact the secretary of state for required training. Amendments in Section 1.10.19.13 conform with changes passed by the state legislature in 2023. Section 1.10.19.4 is amended to align with 1.10.36 NMAC, Election Fund Grants, Reimbursements, and Reporting.

Details for Obtaining a Copy of Rule and Submitting Oral or Written Comments: Copies of the proposed rules are available on the Office’s website at www.sos.nm.gov or can be obtained from the Bureau of Elections by calling (505) 827-3600 or emailing lindsey.bachman@sos.nm.gov. The proposed rule is also available on the New Mexico Sunshine Portal. Interested individuals may provide comments at the public hearing. Before the public hearing, written comments may be sent to Lindsey Bachman, Director of Legislative and Executive Affairs, via email at lindsey.bachman@sos.nm.gov, fax 505-827-8403, or by regular mail at Attn: Lindsey Bachman – proposed rule, The Office of the New Mexico Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501. The deadline to receive written comment is August 3, 2023. All written public comments will be

posted on the website throughout the written comment period at: www.sos.nm.gov.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 827-3600 or email lindsey.bachman@sos.nm.gov (5) business days prior to the hearing.

SECRETARY OF STATE, OFFICE OF THE

NOTICE OF PROPOSED RULEMAKING

The Office of the New Mexico Secretary of State (“Office”) hereby gives notice that the Office will conduct a public hearing on the described rules below.

The purpose of these hearings is to obtain public input on the repeal of an existing rule, Provisional Voting, 1.10.22 NMAC.

A public hearing will be held on August 4, 2023, from 9:00 am to 1:00 pm, at the State Land Office, 310 Old Santa Fe Trail, Santa Fe NM 87504. Attendees cannot park in the State Land Office parking lot, but must park at the PERA lot, one block east of the State Land Office. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments in person on the proposed rule changes detailed below. All comments will be recorded by a court reporter and/or audio recording.

Authority: Election Code, Section 1-2-1; Section 1-6-5; Section 1-6-16; Section 1-6-16.1; 1-12-25.2; Section 1-12-25.3; Section 1-12-25.4; 1-12-27.1 NMSA 1978 and Public Law 107-252, The Help America Vote Act of 2002.

1.10.22 NMAC Provisional Voting

Purpose: Amendments conform with statutory changes made during the

first session of the 56th Legislature of New Mexico. Further amendments update the rule to match existing language in the state’s Election Code.

Summary of Full Text: Definitions in 1.10.22.7 are amended to align with existing statute and changes passed by the Legislature of New Mexico in 2023. Section 1.10.22.10 is amended to include the term “mailed ballot” instead of “absentee-by-mail ballot.” Section 1.10.22.11 is amended to include a process for the provision of documentation or information to satisfy the reason a ballot has been rejected.

Details for Obtaining a Copy of Rule and Submitting Oral or Written Comments:

Copies of the proposed rules are available on the Office’s website at www.sos.nm.gov or can be obtained from the Bureau of Elections by calling (505) 827-3600 or emailing lindsey.bachman@sos.nm.gov. The proposed rule is also available on the New Mexico Sunshine Portal. Interested individuals may provide comments at the public hearing. Before the public hearing, written comments may be sent to Lindsey Bachman, Director of Legislative and Executive Affairs, via email at lindsey.bachman@sos.nm.gov, fax 505-827-8403, or by regular mail at Attn: Lindsey Bachman – proposed rule, The Office of the New Mexico Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501. The deadline to receive written comment is August 3, 2023. All written public comments will be posted on the website throughout the written comment period at: www.sos.nm.gov.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 827-3600 or email lindsey.bachman@sos.nm.gov (5) business days prior to the hearing.

SECRETARY OF STATE, OFFICE OF THE

NOTICE OF PROPOSED RULEMAKING

The Office of the New Mexico Secretary of State (“Office”) hereby gives notice that the Office will conduct a public hearing on the described rules below.

The purpose of these hearings is to obtain public input on the amendment of an existing rule, Referendum Petition Procedures, 1.10.24 NMAC.

A public hearing will be held on August 4, 2023, from 9:00 am to 1:00 pm, at the State Land Office, 310 Old Santa Fe Trail, Santa Fe NM 87504. Attendees cannot park in the State Land Office parking lot, but must park at the PERA lot, one block east of the State Land Office. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments in person on the proposed rule changes detailed below. All comments will be recorded by a court reporter and/or audio recording.

Authority: Section 1-2-1 NMSA 1978

1.10.24 NMAC Referendum Petition Procedures

Purpose: In 2004, 1.10.24 NMAC was adopted to establish administrative procedures for the review of signatures for referendum petitions. During its regular session in 2005, the state legislature passed Senate Bill 678 which amended Section 1-5-3 NMSA 1978 of the Voter Records System Act to require that the secretary of state maintain “the official state voter file based on county registers and shall provide access to the file to the county clerk.” The same provisions of Section 1-5-3 NMSA 1978 remain today, and the secretary of state continues to maintain a statewide voter database in which the county clerks process voter registrations for New Mexico’s counties. Amendments to the existing

rule align with these existing statutes in that they require the secretary of state to provide the certified list required by Subsection C of Section 1-17-5 NMSA 1978. Further amendments address a technical issue with qualified electors, who are not registered voters, signing petitions.

Summary of Full Text: The rule's objective and sections are amended throughout to clarify that its contents pertain to both petitions submitted prior to circulation as well as completed referendum petitions. Amendments are made to require the secretary of state to provide certified voter lists to designated agents and to require a qualified elector to identify themselves as such when signing a petition. The definition of qualified elector is updated to align with existing state statute. Further amendments outline the process for requesting certified lists of voters from the secretary of state. A new section is added to outline the review process of draft petition submissions.

Details for Obtaining a Copy of Rule and Submitting Oral or Written Comments: Copies of the proposed rules are available on the Office's website at www.sos.nm.gov or can be obtained from the Bureau of Elections by calling (505) 827-3600 or emailing lindsey.bachman@sos.nm.gov. The proposed rule is also available on the New Mexico Sunshine Portal. Interested individuals may provide comments at the public hearing. Before the public hearing, written comments may be sent to Lindsey Bachman, Director of Legislative and Executive Affairs, via email at lindsey.bachman@sos.nm.gov, fax 505-827-8403, or by regular mail at Attn: Lindsey Bachman – proposed rule, The Office of the New Mexico Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501. The deadline to receive written comment is July 27, 2023. All written public comments will be posted on the website throughout the written comment period at: www.sos.nm.gov.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 827-3600 or email lindsey.bachman@sos.nm.gov (5) business days prior to the hearing.

SECRETARY OF STATE, OFFICE OF THE NOTICE OF PROPOSED RULEMAKING

The Office of the New Mexico Secretary of State ("Office") hereby gives notice that the Office will conduct a public hearing on the described rules below.

The purpose of these hearings is to obtain public input on the repeal of an existing rule, Secured Containers, 1.10.35 NMAC Voter Records System.

A public hearing will be held on August 4, 2023, from 9:00 am to 1:00 pm, at the State Land Office, 310 Old Santa Fe Trail, Santa Fe NM 87504. Attendees cannot park in the State Land Office parking lot, but must park at the PERA lot, one block east of the State Land Office. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments in person on the proposed rule changes detailed below. All comments will be recorded by a court reporter and/or audio recording.

Authority: The Election Code, Sections 1-2-1, 1-4-18.1 and Subsection C of 1-5-31 NMSA 1978, Public Law 103-31, The National Voter Registration Act of 1993; Public Law 107-252, The Help America Vote Act of 2002.

1.10.35 NMAC Voter Records System

Purpose: Amendments conform with statutory changes made during the first session of the 56th Legislature of New Mexico. Further amendments

update the rule to match previously existing language in the state's Election Code and align with existing security procedures.

Summary of Full Text: Section 1.10.35.6 is amended to be inclusive of all statutes in the Election Code. Section 1.10.35.7 is amended to align the rule's definitions with statutory changes made in 2023 by the state legislature. Sections 1.10.35.8 and Section 1.10.35.9 are amended to align with new rules in 1.10.37 NMAC and statutory changes made in 2023 by the state legislature for the confidential designation of public officials' home addresses and for the voter registration of voters formerly incarcerated for a felony. A new section, 1.10.35.12, contemplates the process of designation and utilization of government and official buildings for the purpose of election mail.

Details for Obtaining a Copy of Rule and Submitting Oral or Written Comments: Copies of the proposed rules are available on the Office's website at www.sos.nm.gov or can be obtained from the Bureau of Elections by calling (505) 827-3600 or emailing lindsey.bachman@sos.nm.gov. The proposed rule is also available on the New Mexico Sunshine Portal. Interested individuals may provide comments at the public hearing. Before the public hearing, written comments may be sent to Lindsey Bachman, Director of Legislative and Executive Affairs, via email at lindsey.bachman@sos.nm.gov, fax 505-827-8403, or by regular mail at Attn: Lindsey Bachman – proposed rule, The Office of the New Mexico Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501. The deadline to receive written comment is August 3, 2023. All written public comments will be posted on the website throughout the written comment period at: www.sos.nm.gov.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate

in the hearing should contact (505) 827-3600 or email lindsey.bachman@sos.nm.gov (5) business days prior to the hearing.

**SUPERINTENDENT OF
INSURANCE, OFFICE OF

NOTICE OF TERMINATION OF
PUBLIC HEARING**

The Office of Superintendent of Insurance (OSI) is providing notice to terminate the public rule hearing scheduled on June 30, 2023, in accordance with Subsection C of Section 14-4-5 NMSA 1978. The proposed rules to THE NEW MEXICO TITLE INSURANCE RULES, TITLE 13, CHAPTER 14 NMAC, TO ADOPT MODERN TITLE INSURANCE FORMS; are being terminated at this time and a rule hearing shall be held at a later date.

**SUPERINTENDENT OF
INSURANCE, OFFICE OF

NOTICE OF PROPOSED
RULEMAKING**

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance (“OSI” or “Superintendent”) will hold a public hearing regarding amendments to THE NEW MEXICO TITLE INSURANCE RULES, TITLE 13, CHAPTER 14 NMAC, TO ADOPT MODERN TITLE INSURANCE FORMS. This hearing will commence on July 27, 2023, at 9:30 A.M. MST.

PURPOSE OF THE PROPOSED RULE: The purpose of this rulemaking is to promulgate forms and endorsements in accordance with the New Mexico Title Insurance Law, Chapter 59A, Article 30, New Mexico Statutes Annotated (“NMSA”) 1978. “No title insurer or title insurance agent shall use any form of title insurance policy other than the uniform forms promulgated by the superintendent under the New Mexico

Title Insurance Law.” Section 59A-30-5 NMSA 1978 (1985).

This rulemaking will involve amendments to Parts 1, 8, and 18 of the Title Insurance Rules (New Mexico Administrative Code, Title 13, Chapter 14), and it will involve consideration of the title insurance forms published by the American Land Title Association (ALTA), with certain changes thereto, as the title insurance forms to be promulgated by the Superintendent.

STATUTORY AUTHORITY:
Section 59A-30-5 NMSA 1978 (1985).

TO ATTEND THE HEARING:
This hearing will be held in-person at:
Office of Superintendent of Insurance
1120 Paseo de Peralta, 4th Floor
Hearing Room
Santa Fe, NM 87501

The Superintendent designates Alfred Walker as the hearing officer for this rulemaking. Oral comments will be accepted at the public hearing from members of the public and other interested parties. Any updates concerning the hearing date, time, or location will be available by subscribing to the “Rulemaking and Ratemaking” newsletter at: <http://newsletter.osi.state.nm.us/>.

Copies of the Notice of Proposed Rulemaking and proposed new rules are available by electronic download from the OSI eDocket <https://edocket.osi.state.nm.us/guest/case-view/5852> or by requesting a copy by calling (505) 490-7103.

Written comments will be accepted through 4:00 p.m. on July 27, 2023. Responses to written comments or oral comments will be accepted through 4:00 p.m. on August 7, 2023. All comments shall be filed electronically through the OSI eDocket <https://edocket.osi.state.nm.us/guest/case-view/5852> or mailed to:

**OSI Records and Docketing
NM Office of Superintendent of
Insurance
P.O. Box 1689, Santa Fe, NM
87504-1689**

All filings must be received between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. The Superintendent will consider all oral comments and will review all timely submitted written comments and responses. For help submitting a filing, please contact osi-docketfiling@state.nm.us. The below docket number must be indicated on filed comments.

**Docket No. 2023-0028
IN THE MATTER OF
AMENDMENTS TO THE NEW
MEXICO TITLE INSURANCE
RULES, TITLE 13, CHAPTER
14 NMAC, TO ADOPT MODERN
TITLE INSURANCE FORMS**

SPECIAL NEEDS: Any person with a disability requiring special assistance to participate in the hearing should contact Louella Pacheco at (505) 490-7103 no later than ten (10) business days prior to the hearing.

DONE AND ORDERED this June 8, 2023
/S/ JENNIFER A. CATECHIS
SUPERINTENDENT OF
INSURANCE

**TRANSPORTATION,
DEPARTMENT OF**

**NOTICE OF PROPOSED
RULEMAKING**

The Aviation Division of the New Mexico Department of Transportation is proposing to amend Rule 18.11.10. NMAC, Rural Air Service Enhancement Grant Program.

Approval of the initial rulemaking action for the proposed amendment was granted to the Aviation Division by the New Mexico State Transportation Commission on May 18th, 2023, pursuant to Sections 9-1-5,

67-3-8, 67-3-11, 67-3-14, and 67-3-28 NMSA 1978. The legal authority authorizing this rulemaking is Section 64-1-13 NMSA 1978 and Section 64-6-3 NMSA 1978.

Purpose: The purpose of this rule is to amend the rule governing the Rural Air Service Enhancement grant program to reflect changes to the program made by House Bill 433 as passed during the 2023 regular session of the New Mexico Legislature and signed by the Governor.

Summary of Full Text: 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 proposed amended rule implements provisions of the Act necessary for the Aviation Division to administer the grant program.

Full Text of the Proposed Rule: Copy of the full text of the proposed amendment rule may be found on the NMDOT website at the following internet link, under the *Public Notices* tab: <https://www.dot.nm.gov/public-legal-notice/>. A copy of the proposed rule may also be requested by contacting Daniel R. Moran at: Telephone (505) 699-5462 or Email: dan.moran@dot.nm.gov. A reasonable fee may be charged for printed copies.

Rulemaking Hearing: NMDOT will hold a public hearing for the purpose of receiving oral and written public comment from interested parties on the proposed amendment rule, 18.11.10 NMAC. The hearing is scheduled on July 27th, 2023 from 1:00 p.m. to 2:30 p.m. at New Mexico Department of Transportation, district three auditorium, 7500 Pan American Fwy. NE, Albuquerque, New Mexico.

Written Comments: To submit written comments on or before July 27th, 2023 please send to: Daniel R Moran, Aviation Division, New Mexico Department of Transportation, 3501 Access Rd C., Albuquerque, New Mexico 87106, Telephone (505)

699-5462; Email: dan.moran@dot.nm.gov. Written comments will be accepted from the date this notice is published in the New Mexico Register and until the close of the hearing scheduled in this rulemaking, July 27th, 2023. 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. Oral comments will only be accepted at the public hearing, and may be subject to time limitations. After the close of the hearing scheduled in this rulemaking, the rulemaking record will be closed, and no other comments will be accepted. All written comments will be posted on the department's website within three days of receipt.

Accommodations: Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule revisions in an accessible form may contact: Daniel R. Moran at (505) 699-5462 or dan.moran@dot.nm.gov at least ten days before the hearing.

End of Notices of Rulemaking and Proposed Rules

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Adopted Rules

Effective Date and Validity of Rule Filings

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

ECONOMIC DEVELOPMENT DEPARTMENT

TITLE 2 PUBLIC FINANCE CHAPTER 94 LOCAL ECONOMIC DEVELOPMENT ACT (LEDA) PART 1 GENERAL PROVISIONS

2.94.1.1 ISSUING
AGENCY: Economic Development
Department.
[2.94.1.1 NMAC – N, 06/27/2023]

2.94.1.2 SCOPE: All
persons or entities applying for Local
Economic Development Act funds
through the Economic Development
Department.
[2.94.1.2 NMAC - N, 06/27/2023]

2.94.1.3 STATUTORY
AUTHORITY: The general
management of the Local Economic
Development Act (LEDA) program
shall be the responsibility of the
economic development department as
prescribed by governing legislation,
Section 5-10-1 NMSA 1978.
[2.94.1.3 NMAC - N, 06/27/2023]

2.94.1.4 DURATION:
Permanent.
[2.94.1.4 NMAC - N, 06/27/2023]

2.94.1.5 EFFECTIVE
DATE: June 27, 2023 unless a later
date is cited at the end of the section.
[2.94.1.5 NMAC - N, 06/27/2023]

2.94.1.6 OBJECTIVE:
Under the Local Economic
Development Act, Section 5-10-
1 NMSA 1978, the New Mexico
economic development department is
granted authority to administer grants
to local governments (municipality

or county) to assist expanding
or relocating companies that are
qualified entities that will stimulate
economic development and produce
public benefits pursuant to LEDA.
[2.94.1.6 NMAC - N, 06/27/2023]

2.94.1.7 DEFINITIONS:
A. “Qualifying entity”
is a corporation, limited liability
company, partnership, joint venture,
syndicate, or association that is
an economic-base employer, also
referred to as “company” as defined
in Subsection L of Section 5-10-3
NMSA 1978.

**B. “Economic-base
employer”** is an employer who is a
manufacturer of a product, or a non-
retail service provide who derives
over fifty percent of their revenue
outside of the borders of New
Mexico.

C. “Fiscal agent” is a
local or regional government entity
who serves as the agent for receipt
of initial investment and subsequent
disbursement/reimbursement of
funds based on the approval of the
economic development department.

D. “Security” is a
tradable financial asset, or collateral,
pledged by the qualifying entity to
guarantee the LEDA investment,
and may be, but is not limited to, in
the form of letter of credit, surety
bond, mortgage security, security
agreement-escrow or lien, security
interest-equipment or lien, or uniform
commercial code filing.

**E. “Project
participation agreement (PPA)”**
is the agreed upon scope of work
between the fiscal agent and the
qualifying entity.

**F. “Intergovernmental agreement
(IGA)”** is the agreed upon scope of
work between the fiscal agent and the
economic development department.

**G. “Economic impact
analysis (EIA)”** is an analysis that
addresses the economic impact to
the local and state tax base using the
project information provided by the
qualifying entity.

**H. “Project term
sheet”** is a document which identifies
security interest that is equal to
the approved amount of LEDA
investment, performance metrics,
claw back provisions, expected
project leverage (private investment
versus public funds requested), a job
creation timeline and a project starting
head count.

I. “LEDA summary”
is a document outlining the overall
scope and terms of the LEDA project.

**J. “Project
ordinance”** is legislation enacted
by a local or regional government
authority that outlines the project
scope and includes a PPA and IGA.
[2.94.1.7 NMAC - N, 06/27/2023]

2.94.1.8 QUALIFICATIONS AND REQUIREMENTS:

**A. Company
eligibility:** Companies that increase
the economic base of New Mexico
are eligible to be considered for
LEDA funds. The company must
manufacture a product in New
Mexico or provide a non-retail service
with at least fifty percent of total
revenues generated from a client base
outside of New Mexico. Eligible
companies must also reside in New
Mexico either through ownership
or lease of a facility and be in
good standing with the economic
development department and all other
state entities. The intent is to support
companies expanding in or relocating
to New Mexico.

B. Project eligibility:
The project must have significant
investment into permanent capital
infrastructure (buildings, roads,

utilities) and be an expansion or relocation that results in the creation of permanent full-time direct employment. The project must be sufficiently funded and ready to proceed. All projects funded are statutorily required to provide security equal to the LEDA public investment.

C. Reimbursable

costs: Eligible costs may include, but are not limited to, the purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance of land, buildings or other infrastructure and public works improvements essential to the location or expansion of a company.

D. LEDA investment/

funding: The level of public investment into any LEDA project is at the discretion of the executive branch and varies based on project quality and location. The main criterion of the evaluation includes total significant capital investment, total number of new job creation, and quality of new job wages. Additional consideration is given to projects that demonstrate location in rural and underserved areas of New Mexico, significant community impact and support, and environmentally sustainable outcomes. All funding decisions are made by the executive branch based upon recommendations by the secretary of the economic development department and are a formal offer to apply, go through due diligence and formal public process. All LEDA investments are funded on a strictly reimbursable basis after the company has incurred LEDA eligible expenses and met benchmarks provided in the PPA.

[2.94.1.8 NMAC - N, 06/27/2023]

2.94.1.9 PROCEDURAL OVERVIEW:

A. Economic

development department role: The economic development department determines company and project eligibility through initial project data intake and vetting prior to invitation to formally apply for LEDA investment funds. Due diligence is conducted throughout the application process. The economic development

department works with the executive branch to determine an appropriate LEDA project investment based on capital expenditures, job creation, location of relocating or expanding company and other factors related to the public good.

(1) It is the responsibility of the economic development department to conduct due diligence, including a commercial credit check and fiscal analysis to determine the benefit of the LEDA project and potential investment of state funds to the local government and state.

(a)

The Economic development department will collect qualifying entity and project information necessary to complete the economic impact analysis (EIA) and an incentive analysis of all applicable incentives within New Mexico.

(b)

The economic development department will confirm local government support for the project and identify any additional local incentives.

(c)

The economic development department will prepare a LEDA summary which is provided to the executive branch for its consideration of LEDA investment funds.

(2) Upon the executive branch's provisional determination of the level of LEDA investment funding, the economic development department will issue an offer of LEDA investment and an invitation to formally apply for a LEDA grant to the qualifying entity. The provisional offer is subject to the formal application, additional due diligence, and local approval.

(3) The economic development department will provide access to the online application to the company representative designated to complete the LEDA application. Information collected in a LEDA application includes, but is not limited to, the following elements: company information and structure, project description, total capital

investment, land, building, equipment, infrastructure, total number, and types of jobs to be created as well as projected job ramp, wages and benefits, up to three years of financial statements, proformas, and sources and uses of all funding. The economic development department reviews all LEDA applications and approves when deemed complete and ready for the public process.

B. Community

role: The local government acts as the fiscal agent for the receipt of initial LEDA investment funds and subsequent disbursements/reimbursement of funds to the qualifying entity based on the economic development department's approval. The fiscal agent will keep all project funds in a separate account and obtain prior approval from the economic development department for all disbursements to the qualifying entity to ensure that all reimbursable expenses are eligible. The economic development department will work with the fiscal agent and the qualifying entity to ensure the qualifying entity maintains the performance benchmarks for the term of the PPA. The fiscal agent is responsible for tracking any outstanding LEDA project balances. Any unused LEDA funds revert to the economic development department at the close of a project.

C. Public process:

All LEDA projects are required to have a public hearing and the adoption of an ordinance by the fiscal agent's governing body. The project ordinance passed by the local community includes a PPA outlining the agreed upon scope of work between the fiscal agent and the qualifying entity, an IGA between the fiscal agent and the economic development department for the transfer and disbursement of public funds. The PPA will include job creation requirements, public investment distribution milestones (determined by established performance benchmarks) and claw back requirements.

(1) Upon adoption of the ordinance the

economic development department will work with the qualifying entity and the fiscal agent to execute the PPA, IGA and security agreement.

(2) Once all LEDA project documents have been fully executed the economic development department will work with the fiscal agent to transfer LEDA investment money to the fiscal agent.

D. Reporting: All LEDA projects are required to submit quarterly job reports and annual economic impact data per the terms outlined in the PPA.

(1) The economic development department will work with the fiscal agent and the qualifying entity to ensure all reports are accurate and timely.

(2) The economic development department will provide the qualifying entity access to the online reporting system to create and submit quarterly job reports and actual annual economic impact data.

(3) The economic development department will create an annual EIA using the actual economic impact data provided by the qualifying entity to demonstrate return on investment.

E. LEDA project closeout: A LEDA project shall be closed out by passage by the fiscal agent governing body of a repealing ordinance unless the enabling ordinance includes a sunset provision.

(1) The economic development department will collect actual economic impact data from the qualifying entity to prepare a final EIA and demonstrate return on investment.

(2) The economic development department will assist the fiscal agent in closing out the LEDA project fund, returning any unexpended funds to the economic development department, and the release of any instrument of security for the LEDA project to the company.

(3) The fiscal agent is responsible for enacting an ordinance to repeal the enabling ordinance when the project is

complete or all clawbacks have been received unless the enabling ordinance includes a sunset provision. [2.94.1.9 NMAC - N, 06/27/2023]

ECONOMIC DEVELOPMENT DEPARTMENT

This is an amendment to 5.5.50 NMAC, Sections 6, 8, 9, 10, 12, and 15 effective 06/27/2023

5.5.50.6 OBJECTIVE: The job training incentive program (JTIP) supports economic development in New Mexico by reimbursing qualified companies for a significant portion of training costs associated with newly created jobs. Eligibility for JTIP funds depends on the company's business, the role of the newly created positions in that business, and the trainees themselves.

A. Company eligibility: Companies that increase the economic base of New Mexico are eligible to be considered for JTIP funds. They are broken out into two broad categories: manufacturers and companies that provide services that are non-retail in nature and export at least fifty percent of the services to a customer base outside New Mexico. The company must be creating new jobs as a result of expansion, startup, or relocation to the State of New Mexico. Companies are required to have a physical presence (real estate either purchased or leased) in New Mexico. Companies that have been funded previously by JTIP must have at least as many total employees as when they **last** expanded under JTIP.

B. Job eligibility: Jobs eligible for funding through JTIP must be newly created, full-time (minimum of 32 hours/week), and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of the training program. Eligible positions must directly support the primary mission of the business and include those directly related to the creation of the product or service provided by the company

to its customers. Other newly created jobs not directly related to production may be eligible. The number of these jobs is limited to twenty percent of the total number of jobs applied for in the proposal. Companies with fewer than 20 employees may include production-related jobs claimed on previous JTIP projects in the calculation when applying for non-production jobs on subsequent applications within two years of the most recent board approval date. Jobs must also meet a wage requirement to be eligible for funding. The entry level wage requirements for JTIP eligibility are specified in the "Reimbursable Expenses" section of this policy manual. To attract the best candidates and reduce turnover, companies are encouraged to set wages at levels eligible for the high wage job tax credit, and utilize the WorkKeys® program as part of the hiring process. In urban areas, companies with more than 20 employees must offer health insurance coverage to employees and their dependents and pay at least fifty percent of the premium for employees who elect coverage.

C. Trainee eligibility: To be eligible for JTIP, trainees must be new hires to the company, must have been residents of the state of New Mexico for at least one continuous year at any time prior to employment in an eligible position, must be domiciled in New Mexico (domicile is your permanent home; it is a place to which a person returns after a temporary absence) during employment, and must be of legal status for employment. Trainees must not have left a public school program in the three months prior to employment, unless they graduated or completed a HSE (high-school equivalency). The one-year residency requirement may not apply to a trainee hired into an approved high-wage position provided the trainee meets all other JTIP eligibility requirements and moved to New Mexico with the intent of making New Mexico his/her permanent place of residence prior to beginning work with the participating company.

Companies are reimbursed at a reduced, flat reimbursement rate for trainees that meet these criteria.

D. Reimbursable training costs: Training funded through JTIP can be custom classroom training at a New Mexico post-secondary public educational institution, structured on-the-job training at the company (OJT), or a combination of the two. Training should be customized to the specific needs of the company and provide “quick response” training for employees.

(1) The following expenses are eligible for reimbursement through JTIP:

(a) A portion of trainee wages up to seventy-five percent for up to six months of initial training.

(b) A portion of the cost of providing customized classroom training at a New Mexico post-secondary public educational institution.

(2) Positions that meet the JTIP requirements with starting wages at levels eligible for the high wage job tax credit may be eligible for an additional five percent wage reimbursement above the standard rates if the approved entry wage is at least the minimum rate for the job zone as outlined in the JTIP wage chart on Paragraph (2) of Subsection D. of 5.5.50.10 NMAC.

(3) Companies that hire trainees who have graduated within the past 12 months from a post-secondary training or academic program at a New Mexico institution of higher education may be eligible for an additional five percent wage reimbursement above the standard rates.

(4) Companies that hire trainees who are U.S. veterans may be eligible for an additional five percent wage reimbursement above the standard rates.

(5) Companies that hire trainees who have graduated out of the NM foster care system may be eligible for an additional five percent reimbursement above the standard rates.

(6) Companies may combine the additional five percent wage reimbursement for high-wage jobs with any one of the conditions described in Paragraphs (3), (4) or (5) above, for a total additional wage reimbursement not to exceed ten percent above the standard rates.

(7) If a company is participating in other job reimbursement training programs, the combined reimbursement to the company may not exceed one hundred percent.

(8) For companies that hire remote workers, the reimbursement percentage for the remote employee shall be linked to the location of the employee. Urban companies must also offer the remote workers that reside in a rural or frontier location a wage that is consistent with the urban location. Conversely, a rural or frontier company that hires a remote worker from an urban location, the reimbursement percentage will be linked to the urban location and must also meet the minimum entry wage requirement respective to the O*NET job zone for an urban location in order to qualify for the hours of training assigned to that job zone.

(a) Rural – sixty-five percent.

(b) Frontier, tribal and federally designated Colonias – seventy-five percent.

(9) JTIP approved employers that utilize business support services through the recognized New Mexico workforce connection offices across the state or through other independent human resource support service providers that help small businesses develop successful recruitment strategies to grow and retain their workforce may be eligible for an additional five percent wage reimbursement above the standard rates.

E. Program management and administration: General management of the job training incentive program is the responsibility of the industrial training

board as prescribed by governing legislation (Section 21-19-7, NMSA 1978 and subsequent amendments). The board is responsible for establishing policies and guidelines related to the program’s management and operation. The board shall provide review and oversight to assure that funds expended will generate business activity and give measurable growth to the economic base of New Mexico throughout the year. The board has the authority to make funding decisions based on the availability of funds, sufficient appropriations, and the board’s determination of the qualifications of the business. The board may elect to implement measures to conserve funds when available funds become limited.

[5.5.50.6 NMAC - Rp, 5.5.50.6 NMAC, 6/26/2018; A, 7/14/2020; A, 7/7/2021; A, 06/27/2023]

5.5.50.8 QUALIFICATIONS AND REQUIREMENTS:

A. Company qualifications and requirements: The following requirements have been instituted to ensure that companies applying for JTIP funds meet the qualifications established by legislation.

(1) Two categories of companies are eligible to be considered for JTIP funds: companies that manufacture a product in New Mexico and certain non-retail service providers. Manufacturing businesses are typically included in sectors 31-33 of the North American industry classification system (NAICS). Manufacturing includes all intermediate processes required for the production and integration of a product’s components. Industrial production, in which raw materials are transformed into finished goods on a large scale, is one example. Assembly and installation on the customer premises is excluded, unless the company and jobs exist for the sole purpose of producing or installing environmentally sustainable products (see green industries definition). A company whose employees are compensated solely on

piecework is not eligible. Other types of companies that may be eligible under the manufacturing category are listed below:

(a) Manufacturers that perform research and development and engineering functions for their own products in New Mexico but manufacture elsewhere. Start-ups and early-stage manufacturing companies. The company must be adequately capitalized to reach first production and be able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board.

(b) Renewable power generators.

(c) Film post-production companies, and film digital production companies (such as animation and video game production companies).

(d) Non-traditional agricultural entities may be eligible under the manufacturing category provided that the operation is a year-round, value-added production facility in a controlled and enclosed environment. Such operations may have mechanized processes, require a specialized workforce or may be involved with research and development or technology transfer.

(e) Manufacturers that perform research and development and engineering functions for their own products in New Mexico but manufacture elsewhere are eligible.

(f) Start-ups and early-stage manufacturing companies may be eligible. The company must be adequately capitalized to reach first production and able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board.

(2) Non-retail service businesses provide a specialized service that may be sold to another business and used by the business to develop products or deliver services. Non-retail service is not offered to the general public.

Eligible non-retail service businesses must demonstrate that at least fifty percent of their revenues come from a customer base outside New Mexico. Businesses that may be eligible as non-retail service providers may include:

(a) Companies that exist for the sole purpose of producing, installing, or integrating environmentally sustainable products (see definition of green industries in glossary). Companies that meet the green industry criteria are not required to generate out-of-state revenues.

(b) Service companies that provide a non-retail service to government agencies may be eligible provided at least fifty percent of revenue is from a customer base outside New Mexico. Revenue derived from contracts with national research laboratories or military bases located in New Mexico is not considered out-of-state. National research laboratories in New Mexico or companies that operate national research laboratories in New Mexico are not eligible.

(c) Logistics companies that provide inbound and outbound transportation management, fleet management, warehousing, materials handling, order fulfillment, logistics network design, inventory management, supply and demand planning, third-party logistics management, and other support services. Logistics services are involved at all levels in the planning and execution of the movement of goods and information from point of origin to point of consumption for the purpose of conforming to customer requirements. Distribution and transloading services are included within the logistics category.

(d) Aviation maintenance, repair and overhaul (MRO) operations may be eligible. MRO's provide airframe, engine and component services to the aviation industry, including aircraft such as planes, jets and helicopters in need of regular maintenance, repair and adjustments to keep in working

order according to federal regulations. A contracted third-party or the owner of the aircraft may bring the aircraft to New Mexico for service.

(e) Start-ups and early-stage companies may be eligible. The company must be adequately capitalized to reach first production and able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board.

(f) Business operations that do not generate gross receipts within New Mexico may be eligible if at least fifty percent of the customer-base is outside New Mexico and service is provided to customers who are not physically present at the New Mexico facility. Companies in this category may be part of a multi-state entity or corporation that have a location in New Mexico and whose revenues flow to the New Mexico business operation, which in turn pay the wages of the New Mexico employees and contribute to the New Mexico tax base in the form of corporate and payroll taxes. Businesses that may be eligible under this category may include:

(i) Headquarters operations: The center of operations of a business where corporate staff employees are physically employed; centralized functions are performed, including administrative, planning, managerial, human resources, purchasing, information technology and accounting, but not including operating a call center; the function and purpose of which is to manage and direct most aspects and functions of the business operations within a subdivided area of the United States; from which final authority over regional or sub-regional offices, operating facilities and any other offices of the business are issued; and including national and regional headquarters if the national headquarters is subordinate only to the ownership of the business or its representatives and the regional headquarters is subordinate to the national headquarters.

(ii) Shared services centers: The entity within a corporation responsible for the execution and the handling of specific operational tasks, such as accounting, human resources, payroll, IT, legal, compliance, purchasing, for a regional or national division.

(iii) Customer support centers. Customer support centers must service a customer who is not physically present at the facility. The customer support center must have a facility separate from other business operations (for example, a retail store). Positions that require outbound sales, solicitation, collections, or telemarketing are not eligible for JTIP funds, unless they are in response to inbound requests and existing clients, or business to business. Contract-based customer support centers must meet special requirements. Contract-based customer support centers are outsourcing vendors that provide information to customers of their clients on behalf of those clients. Contract-based customer support centers do not have a core expertise; rather they communicate information provided to them by their clients. Contract-based customer support centers must provide evidence of a minimum five-year lease or purchase of a facility in New Mexico; offer employees and their dependents health insurance coverage; and contribute at least fifty percent of the premium for healthcare insurance for those employees who choose to enroll. Eligibility as an expanding company is determined by peak employment over the four prior years. For first-time applicants, peak employment is based on the employment average from four previous years or the present employment level, whichever is higher. The company must meet or exceed the average employment level for the past four years in order to be considered an expanding company and eligible for JTIP. Contract-based customer support centers that have been funded in the past four years must be expanding beyond the peak

employment count achieved with previous JTIP funds.

(3) The company must be creating new jobs, whether due to expansion in New Mexico or relocation to the state of New Mexico. An expanding company is defined as an existing business that requires additional employees or workforce due to a market or product expansion. Eligibility as an expanding company is determined by peak employment over the two prior years. For first-time applicants, peak employment is based on the employment average from two previous years or the present employment level, whichever is higher. The company must meet or exceed the average employment level for the past two years in order to be considered an expanding company and eligible for JTIP. For companies that have been funded by the program within the past two years, the number of employees at the time of previous funding application and the number funded by JTIP are also taken into consideration. The company must be expanding beyond the peak employment count achieved with previous JTIP funds. New Mexico unemployment insurance (UI) reports are used to determine employment levels. A company may be allowed to exclude JTIP intern positions and apprentices when calculating the two-year average headcount.

(4) If a company hires twenty or more trainees in a municipality with a population of more than 40,000 according to the most recent decennial census or in a class H county (Los Alamos), the company must offer its employees and their dependents health insurance coverage that is in compliance with the NM insurance code (Chapter 59 A). In addition, the company must contribute at least fifty percent of the premium for health insurance for those employees who choose to enroll. The fifty percent employer contribution is not a requirement for dependent coverage.

(5) Companies are required to submit three years of financial statements (profit and

loss, balance sheets, statements of cash flow, and financing term sheets) as part of the application process. Year-to-date financials may also be requested. Start-ups and early-stage companies that do not have three years of financials are required to submit financials for the period for which they are available. Other documentation that may be requested may include but is not limited to tax returns, evidence of operating capital and investment funding, a business plan, evidence of signed contracts, pro forma financial statements and sales projections which would substantiate their business expansion. Start-ups and early stage manufacturing companies may be eligible. The company must be adequately capitalized to reach first production and able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board.

(6) Training programs for the production of Native American crafts or imitation Native American crafts are only eligible when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

(7) If a facility that received JTIP funds closes or if lay-offs of JTIP trainees occur within one year of the completion of training, the JTIP board will require the refund of the funds associated with any JTIP trainee(s) that were claimed and subsequently laid-off. The board will require a refund of funds from companies whose JTIP reimbursement exceeds \$100,000. The board will require a refund of funds within 90 days of notification.

(8) Layoff is defined as a strategic and organized event of separation of employees

from an establishment that is initiated by the employer as a result of market forces or other factors not related to employee performance.

(9) If a JTIP eligible trainee is laid-off during the training period and is subsequently rehired, within four months by the same employer, the trainee can be treated as a new hire and thus remains eligible for the remaining training hours.

(10) Businesses that are not eligible include but are not limited to retail, construction, traditional agriculture and farming, mining and extractive industries, health care, casinos, and tourism-based businesses (hotels, restaurants, etc.). The board uses the North American industry classification system (NAICS) as a general guideline to establish industry classification and eligibility.

(11) Companies must be in good standing with the Economic Development Department in order to be considered for participation in JTIP.

B. Position qualifications and requirements:

The following qualifications have been established to ensure that the positions for which funding is requested meet legislative requirements.

(1) Positions must be full-time (at least 32 hours/week) and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of training. Contract positions are not eligible for JTIP funds.

(2) Trainer wages are not eligible for JTIP funds.

(3) To attract the best candidates and reduce turnover, companies are encouraged to set wages at a level which may be eligible for the high wage job tax credit. These levels are \$60,000 in a municipality with a population of 40,000 or more as of the last decennial census and \$40,000 in other locations. Communities defined as urban for JTIP include Albuquerque, Las Cruces, Rio Rancho, and Santa

Fe. Los Alamos is also treated as an urban community.

(4) Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. Positions eligible under JTIP must directly support the primary mission of the business. In addition, other newly created positions may be funded up to a maximum of twenty percent of the total number of jobs for which funding is requested, and may include non-executive, professional support positions. Rural companies with fewer than 20 employees may include production-related jobs claimed on previous JTIP projects in the calculation when applying for non-production jobs on subsequent applications. For headquarter facilities as described under Paragraph (1) of Subsection A above, eligible positions may only include professional support, non-executive positions.

(5) Intern positions may be eligible provided the trainee is enrolled in, or has graduated within the past 12 months from, a training or academic program and meets JTIP eligibility requirements. Intern positions may be part-time (less than 32 hours per week). The intern position must be relevant to the post-secondary training or academic program in which the trainee is enrolled, or from which the trainee has graduated, but is not required to be production or service related. Companies will be reimbursed upon evidence of direct full-time employment offered within 90 days of completion of the internship and graduation from the training or education program, or within 90 days of completion of the internship by a recent graduate.

(6) Remote worker trainees may be eligible if all of the trainee qualifications and requirements as defined in policy under trainee eligibility.

C. Trainee qualifications and requirements:

The company has the exclusive decision in the selection of trainees.

Trainees are expected to meet company standards on attendance, performance, and other personnel policies. All trainees must be hired within six months of the contract start date. The following qualifications have been established to ensure that the trainees for which funding is requested meet legislative requirements.

(1) Trainees must be new hires. No retraining of current company employees is allowed under the JTIP program. Individuals who have been previously employed by or have worked as contractors to the company are not eligible to be hired under JTIP in the same or similar position as the one previously occupied or contracted. JTIP staff determines eligibility of these positions and trainees on a case by case basis, and if deemed eligible, training hours may be reduced. The vacancy left by an existing employee moving in to a JTIP position must be filled by the end of the project period. Individuals who have been employed temporarily in a position classified as intern or apprentice in order to gain practical training that connects an academic pathway into work based or relevant business experience may be eligible. Current company employees may be eligible for training under the New Mexico enhanced skills training program, STEP UP.

(2) Trainees must have resided in the state of New Mexico for a minimum of one continuous year at any time before beginning training. The one-year residency requirement may not apply to a trainee hired in to an approved high-wage position provided the trainee meets all other JTIP eligibility requirements and moved to New Mexico with the intent of making New Mexico his/her permanent place of residence prior to beginning work with the participating company. All trainees must currently be domiciled in New Mexico.

(3) Trainees must be of legal status for employment.

(4) Trainees shall not have terminated a public

school program except by graduation or HSE (high-school equivalency) certification within the three months prior to beginning training.

(5) Trainees who have participated in a previous JTIP or industrial development training program are not eligible to participate again with the same company, unless the trainee has participated in the JTIP internship program.

(6) Trainees who are majority owners or relatives of majority owners of the company are not eligible to participate in JTIP.

(7) Trainee job classifications should remain fixed during the program. However, promotions may be allowed during the training period to another position in the contract as long as the pay remains at least equal to the previous job. JTIP staff should be notified within 15 days of the promotion if the company wishes to be reimbursed for the employee's training.

(8) Trainees' start dates must occur after the actual contract date.

(9) Employees hired through a temporary agency may be eligible for funding provided the following conditions are met.

(a) The trainee must be hired by the company as a regular/permanent full-time employee [~~before the end of the JTIP contract period;~~] following the temporary agency's contract agreement that stipulates the number of consecutive work hours the assigned trainee must meet, not to exceed "520" hours.

~~(b) The trainee must receive the same wages and major medical benefits while working as a temporary employee that permanent employees of the company receive.~~

~~(c) The staffing agency must disclose wages paid to the temporary employee to the company.~~

~~(d) The amount of reimbursement during the temporary period will be the actual wage paid to the employee and~~

~~will not include extra fees paid to the staffing agency.]~~

~~(b) JTIP training hours will begin when the trainee has been converted to a regular/permanent full-time position of the JTIP company.~~

~~(c) Companies are reimbursed for wages as each trainee completes the approved training hours and after s/he has been converted to a regular/permanent full-time employee of the JTIP contracted company.~~

~~(f) (c) The trainee must not have worked at the company in a temporary position through a staffing agency prior to the board approval date.~~

(10) Employees hired by a company through a professional employer organization (PEO) may be eligible for funding provided the PEO agrees to comply with all JTIP requirements for the compliance and final auditor's reviews as outlined in Subsection K of 5.5.50.12 NMAC and in the JTIP project closeout guide.

(11) Companies are reimbursed for wages as each trainee completes the approved training hours.

(12) If a trainee leaves the company before completing training, the company is not eligible for any reimbursement for that employee. If another trainee can be hired in that position within the six month hiring period and complete training before the contract end date, a claim can be submitted for the successful trainee.

(13) Remote worker trainees may be eligible if all of the trainee qualifications and requirements as defined in policy under trainee eligibility. [5.5.50.8 NMAC - Rp, 5.5.50.8 NMAC, 6/26/2018; A, 7/7/2021; A, 06/27/2023]

5.5.50.9 ELIGIBLE TRAINING PROGRAMS:

A. The authorizing legislation establishes the following criteria for training.

(1) Training projects shall, to the extent possible, be customized to meet the company's specific needs.

(2) Training projects shall provide quick-response classroom and on the job training.

(3) Training shall provide New Mexico residents with improved economic status through employment.

(4) Training shall provide measurable growth to the economic base of New Mexico.

B. The types of training projects eligible under the job training incentive program are:

(1) structured on-the-job training (OJT) and "hands on" skill development at the company's facility;

(2) custom classroom training provided by a New Mexico post-secondary public educational institution;

(3) a combination of classroom and OJT as described above.

C. **On-the-job training:** Training is conducted at the participating company's facility and generally involves structured on-the-job training (OJT) or "hands-on" skill development. Although certain modules may be conducted in a classroom setting at the company location, the training is still considered OJT. The training must be customized to develop essential skills particular to the company's needs.

(1) A comprehensive training plan is required as part of the proposal for funding. The training plan must include the company job description, O*NET job description, and training units. Each unit will include core content or objectives, methods and materials, methods of evaluation and requested hours. The training plan must cover the entire period for which reimbursement is requested. A more detailed description of the training plan requirements is included in the JTIP online application and proposal guide.

(2) The participating company is responsible

for providing the necessary facilities, equipment, materials and training staff. Trainer’s wages are not eligible for funding through JTIP.

(3) The executed contract will comply with governing legislation.

D. Custom training provided by a New Mexico post-secondary public educational institution: Training is conducted by a New Mexico post-secondary public educational institution in a classroom setting either on campus or at the work site. This type of training is typically coordinated through the institution’s workforce training center. At least three trainees must participate in classroom training, which should be customized to meet the specific needs of the company. Only JTIP trainees are eligible to attend the training at JTIP’s expense. If appropriate training opportunities are not available through public institutions, private institutions may be considered. The educational institution must provide a separate proposal to the JTIP board. The custom training outlined in this proposal must be integrated with the proposal submitted by the company for trainee wages.

(1) The contracted institution or the participating company will work with the economic development department to establish the contract, its content, scope, and training standards to ensure that the program meets or exceeds the company’s requirements.

(2) The contracted custom training will be integrated into the training plans submitted by the company in the coordinating JTIP proposal.

(3) The contracted custom training will be conducted within the initial training period approved by the JTIP board.

(4) Payment for classroom training services shall be made only for a qualified and approved program. [Reimbursement for classroom training will be at a maximum rate of \$35 per hour of training per trainee with a cap

of \$1,000 per employee. Tuition reimbursement and industry certification programs are not eligible for JTIP funding.] Reimbursement for classroom training is consistent with JTIP policy and range from fifty percent to seventy-five percent based on company location. If the employer’s in-kind contribution to the training (employee wages paid to JTIP trainee while attending classroom training exceed the cost of the training, then the reimbursement will be one hundred percent. Industry recognized certification programs are eligible for JTIP funding. The training may be provided through public or private educational institutions in New Mexico, private training organizations, national training trainers or a combination of training providers. The training may be conducted at the business’s own facility, at the training provider’s facility or virtually. Reimbursement for classroom training will have a cap of \$6,000 per trainee.

(5) Facilities rental outside a public educational institution and equipment rental or purchase are not eligible for JTIP funds unless facilities are not available at the company or the educational institution.

(6) The executed contract shall comply with the governing legislation. [5.5.50.9 NMAC - Rp, 5.5.50.9 NMAC, 6/26/2018; A, 06/27//2023]

5.5.50.10 REIMBURSABLE EXPENSES:

A. The following expenses may be eligible for reimbursement through JTIP

(1) A percentage of trainee wages for up to six months of initial training.

(2) Cost of providing custom classroom training at a New Mexico post-secondary public educational institution [at a maximum of \$35 per hour of training per trainee and] with a cap of [\$1,000] \$6,000 per [employee] trainee. Reimbursement for classroom training is consistent with JTIP policy and

ranges from fifty percent to seventy-five percent based on company location.

(3) A percentage of intern wages for up to 640 training hours.

B. Standard reimbursement rates for wages range up to seventy-five percent. Positions that meet the JTIP requirements with starting wages at levels eligible for the high wage job tax credit may be also eligible for an additional five percent wage reimbursement. Positions filled by trainees who meet any of the three following criteria may be eligible for an additional five percent wage reimbursement above the standard rates if the approved entry wage is at least the minimum rate for the Job Zone as outlined in the JTIP wage chart on Paragraph (2) of Subsection D. of 5.5.50.10 NMAC for Zones 1, 2, 3 and 4:

(1) Trainee has graduated out of the New Mexico Foster Care System.

(2) Trainee has graduated within the past 12 months from a post-secondary training or academic program at a New Mexico institution of higher education.

(3) Trainee is a U.S. veteran.

Companies may combine any one of the three conditions above with the additional five percent wage reimbursement for high-wage positions, for a total additional wage reimbursement not to exceed ten percent above the standard rates. If a company is participating in other job reimbursement training programs such as the Workforce Innovation and Opportunity Act (WIOA), the combined reimbursement to the company may not exceed one hundred percent.

C. JTIP approved employers that utilize business support services through the recognized New Mexico workforce connection offices across the state or through other independent human resource support service providers that help small businesses develop successful recruitment strategies to grow and retain their workforce may

be eligible for an additional five percent reimbursement above the standard rates.

~~(C.)~~ **D.** The job training incentive program allows for reimbursement only at the completion of training. If an employee does not complete the training period, no funds can be claimed for that employee. If another trainee can be hired in that position within the six month hiring period and complete training before the contract end date, a claim can be submitted for the successful trainee.

~~(D.)~~ **E. Wage reimbursement:**

(1) Trainee wages are generally the largest expense associated with training. JTIP reimburses the company for a significant portion of trainee wages during the initial training period. The percentage of standard reimbursement ranges up to seventy-five percent, depending on the business location.

(2) The number of hours eligible for reimbursement varies by position, up to 1,040 hours (six months). The number of hours eligible for reimbursement for each position is based on the O*NET (occupational information network) job zone classification for the O*NET position which most closely matches the company's job description and the wage paid the trainee at the point of hire. The O*NET system, sponsored by the US department of labor, is available at <http://onetonline.org>. Each job in the O*NET system is assigned to one of five job zones, with recommended training hours for each zone. For fiscal [~~years 2023-~~] year 2024, the JTIP board may maintain wage requirements effective in the first year of JTIP approval for the length of the job ramp within the project participation agreement (PPA) for companies that are also engaged in a LEDA agreement with the economic development department provided the company meets job creation requirements within the period and wages do not fall below the statewide minimum wage.

The number of recommended hours for fiscal [~~years 2023 and~~] year 2024 are outlined in the [~~tables~~] table below.

General Guideline for Duration of Reimbursable Training Time/Wages for FY2023 (July 1, 2022-June 30, 2023)							
Job-Zone	Definitions	SVP-Range/ Conversions	Hours	Min.- Wage @ Hiring - Urban	Min.-Wage @ Hiring - Rural	Days	Weeks
1	Little or no preparation needed	Below 4.0	320	15.00	12.75	40	8
2a	Some preparation needed	4.0 to < 6.0	480	16.50	13.25	60	12
2	Some preparation needed	4.0 to < 6.0	640	18.00	13.75	80	16
3a	Medium preparation needed	6.0 to < 7.0	800	19.50	15.25	100	20
3	Medium preparation needed	6.0 to < 7.0	960	21.00	16.68	120	24
4	Considerable preparation needed	7.0 to < 8.0	1,040	24.00	17.68	130	26
	Align with HWJTC	Additional five percent		28.85	19.23		

General Guideline for Duration of Reimbursable Training Time/Wages for FY2024 (July 1, 2023-June 30, 2024)							
Job Zone	Definitions	SVP Range/ Conversions	Hours	Min. Wage @ Hiring - Urban	Min. Wage @ Hiring - Rural	Days	Weeks
1	Little or no preparation needed	Below 4.0	320	15.50	13.18	40	8
2a	Some preparation needed	4.0 to < 6.0	480	17.00	13.68	60	12
2	Some preparation needed	4.0 to < 6.0	640	18.50	14.18	80	16
3a	Medium preparation needed	6.0 to < 7.0	800	20.00	15.68	100	20
3	Medium preparation needed	6.0 to < 7.0	960	21.50	16.68	120	24
4	Considerable preparation needed	7.0 to < 8.0	1,040	24.50	17.68	130	26
	Align with HWJTC	Additional five percent		28.85	19.23		

(3) The JTIP staff will ensure that the O*NET occupations match the company job description for the requested position and that training hours requested do not exceed the O*NET guideline. The board will also review the company’s educational and experience requirements of the applicants to determine the degree of match with the company’s job descriptions. The JTIP board may award training hours based on the O*NET guideline unless the company clearly substantiates that additional hours are required. In determining the appropriate number of training hours, the board considers the training plan, the training objectives, and the hourly wage at point of hire associated with the position.

(4) The board has also adopted a wage requirement for JTIP participation. The wage requirement varies by job zone and company location (rural/urban). These requirements are listed in the tables above. If a company

establishes a wage range which includes wages below the minimum wage recommended for that position and job zone, the number of hours eligible for reimbursement may be reduced from the O*NET recommended hours as per criteria and procedures set forth by and at the discretion of the JTIP board, which may include consideration of the company benefits package. Generally, the hours are reduced to the hours allowed for the next lower job zone. The reimbursement percentages may be adjusted at the discretion of the board based on availability of funds or sufficient appropriations.

(5) The percentage of wages reimbursed depends primarily on the business location. The categories for location are urban, rural, frontier, economically distressed, and Native American land.

(a) Companies located in urban areas (cities with population above 60,000

in the most recent federal decennial census) and Class H counties (i.e., Los Alamos) are reimbursed at up to fifty percent for all eligible training hours. Urban communities are: Albuquerque 562,599, Las Cruces 112,914, Rio Rancho 105,834, and Santa Fe 88,193.

(b) Companies located in rural areas, outside those listed above are reimbursed at up to sixty-five percent for all eligible training hours.

(c) Companies located in frontier areas (communities with a population of 15,000 or fewer and outside an MSA) are reimbursed at up to seventy-five percent for all eligible training hours.

(d) Companies located in an economically distressed area in New Mexico are eligible for up to seventy-five percent reimbursement. To receive up to seventy-five percent reimbursement, a company must be located in a county with an unemployment rate significantly

higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or down-sizing, a decline in population, loss of gross receipts or other factors.

(e)

Companies located on Native American reservations are eligible for up to seventy-five percent reimbursement.

(f)

Companies located in federally designated colonias in New Mexico are eligible for up to seventy-five percent reimbursement for all eligible training hours.

(6) JTIP

eligible positions with starting wages eligible for the high wage job tax credit may be eligible for an additional five percent reimbursement. These requirements are a hiring salary of \$60,000 or higher in an urban or class H county and a hiring salary of \$40,000 or higher in a rural location or economically disadvantaged area. Trainee requirements are still factors for JTIP eligibility. The percentage of wages reimbursed for high-wage positions filled by trainees who do not meet the one-year residency requirement is unique and not subject to any additional wage reimbursement above the standard rate. Companies located in urban areas and Class H counties are reimbursed up to thirty percent for all eligible training hours. Companies located in rural areas are reimbursed up to forty percent for all eligible training hours. Companies located in frontier areas are reimbursed up to fifty percent for all eligible training hours.

(7) JTIP

eligible positions filled by trainees who have graduated within the past 12 months from a post-secondary training or academic program at a New Mexico institution of higher education may be eligible for an additional five percent reimbursement.

(8) JTIP

eligible positions filled by U.S.

veterans may be eligible for an additional five percent reimbursement.

(9) Trainee

has graduated out of the NM Foster Care System may be eligible for an additional five percent reimbursement.

(10) Additional

guidelines for wage reimbursement:

(a)

Eligible trainee hours shall not exceed 1,040 hours per trainee (six months) based on the company's scheduled workweek, not to exceed 40 hours per week.

(b)

Reimbursement is calculated on base pay only. Bonus pay, overtime, commission and stock options are not eligible for reimbursement.

(c)

If the company compensates the trainee for annual, holiday or sick leave during the approved training period, those hours are included in the approved training hours at the base rate.

(d)

Any training hours that exceed the contracted amount are the responsibility of the company.

(e)

If a company is participating in other job reimbursement training programs such as WIOA, the combined reimbursement to the company may not exceed one hundred percent.

(f)

Additional wage reimbursement may not exceed ten percent above the standard rates. Companies may combine the additional five percent wage reimbursement for high-wage jobs with one of the three following conditions for an additional five percent wage reimbursement provided the entry wage is at least the minimum rate for the job zone as outlined in the JTIP wage chart on Paragraph (2) of Subsection D of 5.5.50.10 NMAC for Zones 1, 2, 3 and 4:

(i)

the trainee has graduated out of the New Mexico foster care system;

(ii)

the trainee has graduated within the past 12 months from a post-secondary training or academic program at a

New Mexico institution of higher education;

(iii)

the trainee is a U.S. veteran. High-wage positions filled by trainees who do not meet the one-year residency requirement are not eligible for additional wage reimbursement above the standard rate.

[E-] E. Reimbursement for custom classroom training:

Payment for custom classroom training services provided by public post-secondary educational institutions is restricted to instructional costs. The rate of reimbursement to the institution is at a maximum of [~~\$35 per hour per trainee with a cap~~] of [~~\$1,000~~] \$6,000 per trainee. Instructional costs for classroom training conducted by an educational institution may include course development, instructional salaries, relevant supplies and materials, expendable tools, accounting services, and other costs associated with conducting the training program. No training equipment may be purchased or rented using JTIP funds.

[5.5.50.10 NMAC - Rp, 5.5.50.10 NMAC, 6/26/2018; A, 1/1/2020; A, 7/14/2020; A, 7/7/2021; A, 7/12/2022; A, 06/27/2023]

5.5.50.12 PROCEDURAL OVERVIEW:

The procedures for completing a funding proposal and the administration of a project are explained in detail in the JTIP online application and proposal guide and the JTIP policy and procedures manual.

A. Proposals

and contract amendments must be submitted to the economic development department, JTIP, no less than four weeks before the JTIP board meeting at which the proposal will be considered for funding.

B. The contract start date is the date of the board meeting at which funding was approved.

C. Eligible job openings must be registered with the New Mexico workforce connection.

D. The company must hire trainees within six months of the contract start date.

E. The company must submit an online hiring report at the end of the six month hiring period.

F. Claims for reimbursement should be submitted as trainees complete training.

G. Each project is subject to compliance reviews throughout the term of the contract.

H. The company must arrange for an agreed upon procedure in accordance with generally accepted standards and the general requirements included in the statements on standards for attestation engagements, as issued by the American institute of certified public accountants upon completion of the training.

I. The final claim for reimbursement should be submitted with the completed agreed upon procedures report.

J. Yearly follow-ups may be conducted to show effectiveness of the program, including surveys to address company retention, wage rates of program trainees and business and industry needs for industry recognized certifications and credentials by the economic development department, the department of workforce solutions and the public education department.

K. Companies that fail to comply with all established operating requirements, closeout procedures, and follow-up studies are not eligible to apply for future participation in JTIP.

L. Companies that are not in good standing with other Economic Development Department programs may not be eligible for JTIP.

~~**M.** EDD and JTIP are taking steps to address setbacks that JTIP companies may encounter due to a public health emergency. The board has elected to adopt the following procedural adjustments through FY2023 in order to support companies during this time and into recovery.~~

~~**(1)** JTIP companies that are still within the 6-month hiring period and have suspended their hiring plans, may be allowed to extend the hiring by~~

~~two months. If the company deems it necessary to postpone hiring for a longer period, JTIP staff will work with the company on a re-application at the appropriate time.~~

~~**(2)** If a JTIP company has to temporarily reduce hours of operation the public health emergency was in place, part-time hours worked by JTIP trainees may be eligible for reimbursement provided the trainees have returned to full-time employment.]~~

[5.5.50.12 NMAC - Rp, 5.5.50.12 NMAC, 6/26/2018; A, 7/14/2020; A, 7/7/2021; A, 7/12/2022; A, 06/27/2023]

5.5.50.15 GLOSSARY:

A. Apprentice:

Individual who has participated in a work-based training program through the NM Department of Workforce Solutions with the JTIP company.

B. Agriculture (traditional)/mining/extractive industries: Companies classified in agriculture, mining, and extractive by the North American industry classification system (NAICS) are not eligible for JTIP.

C. Company: A company is a corporation, or less commonly, an association partnership or union that carries on a commercial or industrial enterprise. Generally, a company may be a corporation, partnership, association, joint-stock company, or organized group of persons, whether incorporated or not, and (in an official capacity), legally recognized organizational entity designed to provide goods or services to consumers or corporate entities such as governments, charities, or other businesses.

D. Distribution: A distributor is the middleman between the manufacturer and the retailers. After a product is manufactured, it may be warehoused or shipped to the next echelon in the supply chain, typically either a distributor, retailer or customer.

E. Economically distressed areas: Companies located in an economically distressed area in New Mexico are eligible for

seventy-five percent reimbursement. To receive a seventy-five percent reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or down-sizing, a decline in population, loss of gross receipts or other factors.

F. Expanding company: An expanding company is an existing business which requires additional employees or workforce due to a market or product expansion. A company which buys out an existing company is not considered a new company. Eligibility as an expanding company is determined by average employment over the two prior years. (Refer to "peak employment.")

G. Film and multimedia post production: Film digital production and post-production companies are considered manufacturing provided the company operates year round and is primarily engaged in any of the following: animation, editing, foley recording, automatic dialogue replacement, sound editing, special effects (including computer generated imagery or other effects), scoring, and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling, or addition of sound or visual effects. Production jobs must be full-time and qualifying trainees must be employed year-round. Position must not require trainee to complete product on filming location. Trainee may not be directly employed by the client company at any time.

H. Frontier: A frontier area is any community with a population of less than 15,000 based on the most recent decennial census and outside a designated MSA.

I. Green industries: Those that exist for the sole purpose

of contributing directly to preserving or enhancing environmental quality by reducing waste and pollution or by producing sustainable products using sustainable processes and materials. Green industries may include: energy system retrofits to increase energy efficiency and conservation; production and distribution of biofuels and vehicle retrofits for biofuels; building design and construction that meet the equivalent of best available technology in energy and environmental design standards; organic and community food production; manufacture of products from non-toxic, environmentally certified or recycled materials; manufacture and production of sustainable technologies, including solar panels, wind turbines and fuel cells; solar technology installation and maintenance; recycling, green composting and large-scale reuse of construction and demolition materials and debris; and water system retrofits to increase water efficiency and conservation.

J. High wage job tax credit: The high wage job tax credit provides a tax credit of ten percent of the wages and benefits paid for each new economic-based job created on or after July 1, 2015, not to exceed \$12,000 per year per job. Qualified jobs must pay at least \$40,000 per year in a community with a population of less than 60,000 and \$60,000 per year in a community with a population of 60,000 or more. Eligible jobs must also be occupied for at least 48 weeks by the employee.

K. Independent Human Resource Support Services: Are third-party services other than staffing agencies and professional employment agencies (PEO's), used by businesses to compliment existing HR processes or to fill the gap when business completely lacks HR personnel or capabilities. HR support services include recruiting and retention strategies, interviewing effectiveness training, job description and training plan development, skills assessment tools, salary benchmarking, fostering company culture as well as organizational

and employee data management, and activities in learning and development.

L. Intern: A student or recent graduate (within one year) of an academic or training program who works at a trade or occupation in order to gain work experience.

[K-] M. Manufacturing: Manufacturing includes all intermediate processes required for the production and integration of a product's components. Industrial production in which raw materials are transformed into finished goods on a large scale is one example. Assembly and installation on the premises of the customer is not included as manufacturing. Manufacturing businesses are typically included in Sectors 31-33 of NAICS. Manufacturing is defined in Subsection E of Section 7-4-10 NMSA 1978 as "combining or processing components or materials to increase their value for sale in the ordinary course of business but does not include:

(1) construction;
 (2) farming;
 (3) power generation, except for electricity generation at a facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act and the Electric Utility Industry Restructuring Act of 1999; or
 (4) processing natural resources, including hydrocarbons."

[E-] N. NAICS: North American industry classification system (NAICS) is an industry classification system that groups establishments into industries based on the activities in which they are primarily engaged. This comprehensive system covers the entire field of economic activities, producing and non-producing. The NAICS system replaced the standard industrial classification (SIC) system. NAICS information is available at

www.census.gov/cgi-bin/sssd/naics/naicsrch.

[M-] O. Native American crafts: Contracts may be awarded for training programs involved in the production of Native American crafts or imitation Native American crafts only when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

[N-] P. New company: A new company is defined as a company not currently in operation in the state which shows evidence of intent to establish operations in New Mexico. The company must have a New Mexico tax ID when applying for JTIP funds.

[O-] Q. Non-retail service sector business: To be considered for JTIP funding, the company must provide services which are not retail in nature and must export fifty percent of the services outside of New Mexico. To be considered for JTIP participation, non-retail service companies provide a specialized service that may be sold to another business and used by the business to develop products or deliver services. Non-retail service is not offered to the general public and is provided to customers who are not physically present at the New Mexico facility. Non-retail service businesses which meet the JTIP criteria for green industry are exceptions to the requirement that at least fifty percent of the customer base be located outside New Mexico.

[P-] R. O*NET: The occupational information network - O*NET database takes the place of the dictionary of occupational titles (DOT) as the nation's primary source of occupational information. The number of training hours for

which a position is eligible for reimbursement through JTIP is based on the number of hours recommended for the position in O*NET. The O*NET database is available at <http://onetonline.org>.

[Q]-S. Peak employment: First time JTIP applicants: Peak employment will be based on the employment average from two previous years or the present employment level, whichever is higher. The board will utilize the state of New Mexico unemployment insurance (UI) reports to determine peak employment at the time of application to ensure an expansion is indeed occurring.

[R]-I. Peak employment: Previous JTIP participants: Peak employment for previous participants will be based on the employment level at the time of the award of the last JTIP contract plus the number of employees funded through that contract. In cases in which a number of years have passed since prior funding, the board may utilize the state of New Mexico unemployment insurance (UI) report for the last two years to determine peak employment at the time of reapplication to ensure an expansion is indeed occurring.

[S]-U. Remote Worker: A person who is working partially or entirely at a remote work site. Remote work site is any location where a worker performs work duties that is separate from the physical location of the company.

[F]-V. Retail trade: Retail establishments are those which are engaged in retailing merchandise and rendering services incidental to the sale of merchandise, such as installation. Retailers may operate fixed point-of-sale locations, located and designed to attract a high volume of walk-in customers, or use other forms of sales techniques, including the sale of goods through the internet, online catalogs, portable stalls, and infomercials. Retail trade is usually the final step in the production and distribution of goods and usually sells small amounts of a product to individuals.

[U]-W. Renewable energy: is a source of power generated from resources which are naturally replenished, including but not limited to electricity or heat derived from solar, wind, tidal power, hydropower, biomass, geothermal resources and biofuels or hydrogen produced from renewable resources.

[V]-X. Southwestern arts and crafts: Refer to department of interior Indian arts and crafts board; Indian arts and crafts association; council of better business bureau; federal trade commission.

[W]-Y. Transloading services: The process of transferring a shipment from one mode of transportation to another in order to have goods reach their final destination. It is most commonly employed when it is physically impossible or is not economically efficient to transport goods to a final destination using only one mode of transportation. Companies that ship goods internationally are likely to use multiple methods of transport, especially if both the shipping point and the destination are located inland.

[X]-Z Urban communities: An urban community is defined as a municipality with a population of sixty thousand or more according to the most recent federal decennial census. Those communities are: Albuquerque (545,852), Las Cruces (97,618), Rio Rancho (87,521), and Santa Fe (67,947). Class H counties (i.e., Los Alamos) fall under the same guidelines for reimbursement as urban communities.

[Y]-AA. Metropolitan statistical area: An MSA is a statistical standard designated and defined by the U.S. department of commerce, office of federal statistical policy and standards (OFSPS). MSA's are designated so that governmental agencies will use a common geographical classification in the production of data on metropolitan areas in the nation. The general concept of an MSA is one of a large population nucleus, together with any adjacent communities which have a high degree of economic and social integration with that nucleus.

In New Mexico there are four MSA's. Albuquerque MSA includes Bernalillo, Sandoval, Valencia, and Tarrant counties. Santa Fe MSA includes Santa Fe county. Las Cruces MSA includes Dona Ana county and Farmington MSA includes San Juan county.

[Z]-AB. Rural: Any area located outside communities defined as urban in the JTIP policy.

[AA]-AC. Veteran: A New Mexico resident who is registered with the New Mexico workforce connection, and who served in the active military, naval or air service and who was discharged or released under conditions other than dishonorable.

[AB]-Intern: ~~A student or recent graduate (within one year) of an academic or training program who works at a trade or occupation in order to gain work experience.]~~
[5.5.50.15 NMAC - Rp, 5.5.50.15 NMAC, 6/26/2018; A, 7/14/2020; A, 7/7/2021; A, 06/27/2023]

ETHICS COMMISSION

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 8 STATE ETHICS COMMISSION PART 5 COMPLAINTS AGAINST NOTARIES

1.8.5.1 ISSUING AGENCY: State Ethics Commission, 800 Bradbury Dr. SE, Ste. 215, Albuquerque, New Mexico 87106. [1.8.5.1 NMAC-N, 7/1/2023]

1.8.5.2 SCOPE: This part applies to proceedings to revoke, suspend, or impose a condition on a notarial officer pursuant to Subsection A of Section 14-14A-22 NMSA 1978. [1.8.5.2 NMAC-N, 7/1/2023]

1.8.5.3 STATUTORY AUTHORITY: Subsection C of Section 14-14A-26 NMSA 1978. [1.8.5.3 NMAC-N, 7/1/2023]

1.8.5.4 DURATION:

Permanent.

[1.8.5.4 NMAC-N, 7/1/2023]

1.8.5.5 EFFECTIVE

DATE: July 1, 2023, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1.8.5.5 NMAC-N, 7/1/2023]

1.8.5.6 OBJECTIVE:

The objective of this part is the fair, efficient, and uniform handling and disposition of complaints alleging violations of the Revised Uniform Law on Notarial Acts by a notarial officer.

[1.8.5.6 NMAC-N, 7/1/2023]

1.8.5.7 DEFINITIONS:

The following terms apply to these rules unless their context clearly indicates otherwise:

A. "Adverse action"

means the denial of, revocation of, suspension of, or imposition of a condition on a notarial officer's authority to perform notarial acts.

B. "Commission"

means the State Ethics Commission.

C. "Complaint"

means an allegation of a violation of the Revised Uniform Law on Notarial Acts by a notarial officer.

D. "Complainant"

means a person who files a complaint with the commission.

E. "Director"

means the executive director of the commission or the executive director's designee.

F. "Notarial act"

has the same meaning as that term is defined in Subsection F of Section 14-14A-2 NMSA 1978.

G. "Notarial officer"

means a notary public or other individual authorized to perform a notarial act.

H. "Respondent"

means a notarial officer alleged in a complaint to have violated the Revised Uniform Law on Notarial Acts.

I. "Person"

means any individual or legal entity.

[1.8.5.7 NMAC-N, 7/1/2023]

1.8.5.8 COMPLAINTS:

A. Any person may submit a complaint against a notarial officer alleging an act or omission that, if proven, would justify denial, revocation, suspension, or the imposition of a condition on the notarial officer's authority to perform notarial acts. The complaint shall:

(1) provide the name and the address of the respondent who is the subject of the complaint;

(2) attach any supporting documentation related to the complaint's allegations;

(3) be submitted on a form provided by the commission or on a substantially equivalent form; and

(4) be submitted by electronic mail to ethics.commission@sec.nm.gov or by U.S. mail to the commission's mailing address.

B. Upon receiving a properly submitted complaint, the director may share the complaint with the office of the secretary of state and request the SOS to provide records related to the respondent; provided that, if the complaint names a respondent who is a judicial officer, the director shall refer the complaint to the judicial standards commission and take no further action on the complaint.

C. After receiving the respondent's file from the secretary of state, the director shall:

(1) send the complainant a notification of receipt of the complaint;

(2) send the complaint to the respondent at every address and electronic mail address that either the complainant provided to the commission or the respondent provided to the secretary of state; and

(3) request that the respondent submit a response in writing within 30 days of the director's sending a copy of the complaint pursuant to Paragraph (2) of this subsection.

D. If the respondent fails to provide a response to the complaint, then the respondent's

failure to provide a response will be construed as the respondent's failure to maintain address information with the Secretary of State, as required by Subsection E of 12.9.3.8 NMAC, and the commission may take adverse action, up to and including revocation of the respondent's authority to perform notarial acts, on that basis.

E. After receiving the respondent's response, the director shall conduct an investigation and review the complaint, the response, and any other relevant documents or material that the director may obtain pursuant to an investigation. As part of an investigation, the director may interview witnesses, request documents, and obtain and review any other evidence reasonably related to the complaint.

F. Failure by a complainant or a respondent to participate in the investigation in good faith is a basis for the Commission to draw an adverse inference.

[1.8.5.8 NMAC-N, 7/1/2023]

1.8.5.9 NOTICE OF CONTEMPLATED ACTION; HEARINGS; ADVERSE ACTIONS:

A. After investigating the complaint pursuant to 1.8.5.8 NMAC, the director shall determine whether the facts and the law support taking an adverse action against the respondent.

(1) If the director determines that an adverse action against the respondent is not supported by the facts or the law, the director shall issue a notice to the complainant and the respondent that, subject to the Commission's approval, the Commission will dismiss the complaint.

(2) If the director determines that an adverse action against the respondent is supported by the facts and the law, the director shall send the respondent a notice of contemplated action. The notice of contemplated action gives formal notice that the commission may take an adverse action against the respondent. That notice shall inform the respondent that the respondent

may defend against the contemplated action at a hearing before a hearing officer. The notice shall detail the process and rights afforded in an administrative hearing and shall be sent to the respondent in the manner provided by Paragraph (2) of Subsection C of 1.8.5.8 NMAC.

B. If the respondent does not respond to a notice of contemplated action within 30 days, the respondent's failure to respond amounts to a waiver of the respondent's right to a hearing, and the commission may take an adverse action against the respondent's authority to perform notarial acts. The commission's adverse action, if any, shall take place at an open meeting.

C. If the respondent exercises their right to a hearing, a hearing officer shall hold a hearing to determine whether, under a preponderance of the evidence presented, the adverse action specified in the notice of contemplated action should be adopted, modified, or set aside.

D. At any hearing conducted pursuant to these rules, the director and the respondent may call witnesses, present objections, and submit evidence relevant to the hearing officer's disposition of the notice of contemplated action. The hearing need not be conducted according to the rules of evidence, and any relevant evidence, including hearsay of probative value, is admissible. Oral evidence shall be taken only on oath or affirmation. Evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs may be admitted and given probative value. The rules of privilege shall be given effect, and incompetent, immaterial, and unduly repetitious evidence may be excluded. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

E. If, after a hearing, the hearing officer finds the respondent committed an action that supports the notice of contemplated action or other adverse action,

the hearing officer shall produce for the commission a report and recommendation, recommending any adverse action available under the Revised Uniform Law on Notarial Acts.

F. Upon receiving the hearing officer's report and recommendation, the commission may take any adverse action against the respondent permitted under the Revised Uniform Law on Notarial Acts, including denial of, suspension of, revocation of, or the imposition of a condition on a notarial officer's authority to perform notarial acts.

G. At any time, the director may enter into a settlement agreement with the respondent. All settlement agreements are subject to approval by the commission.

H. Any decision to take an adverse action against a respondent by the commission will take place at an open meeting. If the commission takes an adverse action against a respondent, the director shall provide the Secretary of State with the order and accompanying case file. [1.8.5.9 NMAC-N, 7/1/2023]

1.8.5.10 APPEALS OF COMMISSION DECISIONS: A final decision by the commission on a complaint may be appealed pursuant to Rule 1-075 NMRA. [1.8.5.10 NMAC-N, 7/1/2023]

History of 1.8.5 NMAC:
[RESERVED]

ETHICS COMMISSION

This is an amendment to 1.8.1 NMAC, Section 7, adding new Sections 10 through 13, and renumbering old Sections 10 through 16 to Sections 14 through 20 (with no changes), effective 7/1/2023.

1.8.1.7 DEFINITIONS:

A. "Administrative complaint" means an allegation of an actual or potential violation of ethics laws in a sworn complaint, as fully

described in Subsection D of Section 10-16G-2 NMSA 1978.

[A] B. "Advisory opinions" are opinions written by the commission responding to questions presented by persons authorized under Paragraph (1) of Subsection A of Section 10-16G-8 NMSA 1978 about how laws within the commission's jurisdiction apply to specific fact situations.

C. "Commission" means the state ethics commission.

D. "Ethics laws" means Article IX, Section 14 of the New Mexico Constitution and the statutes set out in Subsection A of Section 10-16G-9 NMSA 1978.

E. "Government agency" means an instrumentality of the United States or an agency of a state, county, or municipal government.

F. "Informal complaint" means an allegation of an actual or potential violation of ethics laws from a person, which is not an administrative complaint.

[B] G. "Interagency agreement" means an agreement between the commission and another state or federal agency, including memoranda of understanding, joint powers agreements, and services agreements.

[C] H. "Joint powers agreement" as used in this part, has the same meaning as it does in the Joint Powers Agreements Act, Section 1-11-1 NMSA 1978.

I. "Person" means any natural person or organization that is not a government agency.

J. "Referral" means any allegation of an actual or potential violation of ethics laws received by the commission or its staff from a government agency that is not an administrative complaint.

[D] K. Other words and phrases used in this part have the same meaning as found in 1.8.3.7 NMAC or the State Ethics Commission Act, Sections 10-16G-1 to -16 NMSA 1978. [1.8.1.7 NMAC-N, 1/1/2020; A, 10/27/2020; A, 7/1/2023]

1.8.1.10 INFORMAL COMPLAINTS; ASSESSMENTS:

A. Upon receipt of an informal complaint or a referral, the director shall assess whether the informal complaint alleges a violation of the ethics laws and is supported by sufficient evidence for a reasonable person to conclude that a violation has occurred.

B. To complete the assessment provided in Subsection A of this section, the director may seek information, proactively or in response to investigative leads, relating to activities that constitute violations of the ethics laws. In making an assessment, the director may seek and review information that is available to the public. For example, the director may review public social media accounts, make written requests for records under the Inspection of Public Records Act, and interview witnesses. Assessments may result in:

(1) An investigation pursuant to 1.8.1.11 NMAC;

(2) A request for the commission's approval to commence a civil action pursuant to 1.8.1.12 NMAC; or

(3) A determination of no further action pursuant to 1.8.1.13 NMAC.

C. Before initiating an assessment, the director must determine whether the proposed assessment is based on factors other than activities protected by the First Amendment of the United States Constitution or the race, ethnicity, national origin, religion, political affiliation, or other protected status of the assessment's subject.

[1.8.1.10 NMAC-N, 7/1/2023]

1.8.1.11 INVESTIGATIONS; SUBPOENAS:

A. The director may initiate an investigation if there is an articulable factual basis that reasonably indicates that the subject of the investigation has violated or in the immediate future will violate the ethics laws and the investigation is a reasonable use of

commission resources and personnel. Investigations may result in:

(1) a request for the commission's approval to commence a civil action pursuant to 1.8.1.12 NMAC; or

(2) a determination of no further action pursuant to 1.8.1.13 NMAC.

B. In performing an investigation, the director may take any action available to the director when making an assessment, interview witnesses, and petition a district court for leave to issue and serve subpoenas for evidence pursuant to Paragraph (2) of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection D of this Section.

C. Upon approval of the commission, the director may file an action in district court for the issuance, service, and enforcement of subpoenas requiring the attendance of witnesses and the production of books, records, documents or other evidence relevant or material to the investigation. The civil action provided for in this paragraph shall be filed under seal in the district court in the county where a witness resides. If a witness neglects or refuses to comply with a subpoena, the director may apply to the district court for an order enforcing the subpoena and compelling compliance. The district court may impose sanctions or other relief permitted by law, including contempt, if a person neglects or refuses to comply with an order enforcing the subpoena and compelling compliance.

[1.8.1.11 NMAC-N, 7/1/2023]

1.8.1.12 CIVIL ACTIONS:

A. If, after an assessment pursuant to 1.8.1.10 NMAC or an investigation pursuant to 1.8.1.11 NMAC, the director concludes that the subject of the investigation has violated or will violate the ethics laws, the director shall ask the commission to approve the initiation of a civil action under Subsection F of Section 10-16G-9 NMSA 1978 and any other applicable statutory authority or a referral to the house of representatives for

impeachment proceedings under Subsection C of Section 10-16-14 NMSA 1978.

B. The approval of the commission is required to initiate a civil action or to refer a matter to the house of representatives for impeachment proceedings.

C. In seeking approval from the commission to initiate a civil action or refer a matter for impeachment proceedings, the director shall provide a written explanation of the factual basis for the proposed civil action and the list of remedies sought. In seeking approval from the commission to refer a matter to the house of representatives for impeachment proceedings, the director shall provide a written explanation of the factual basis for the proposed referral and explain why a referral under Subsection C of Section 10-16-14 NMSA 1978 is appropriate. [1.8.1.12 NMAC-N, 7/1/2023]

1.8.1.13 NO FURTHER ACTION ON INFORMAL COMPLAINT:

If the director determines that an informal complaint is unsubstantiated, does not imply a violation of the ethics laws, or that the assessment or investigation is not a reasonable use of commission resources and personnel, the director may decide to take no further action on the informal complaint and close the matter. [1.8.1.13 NMAC-N, 7/1/2023]

~~[1.8.1.10]~~ **1.8.1.14 REFERENCE TO OTHER DOCUMENTS:** When a rule issued by the commission refers to another rule, regulation or statute, or other document, the reference, unless stated specifically to the contrary, is continuous and intended to refer to all amendments of the rule, regulation, statute or document. [1.8.1.14 NMAC - Rn, 1.8.1.10 NMAC, 7/1/2023]

~~[1.8.1.11]~~ **1.8.1.15 INTERPRETATION OF TERMS:** Unless the context otherwise requires:

A. Singular/plural. Words used in the singular include

the plural; words used in the plural include the singular.

B. Gender. Words used in the neuter gender include the masculine and feminine. The personal pronoun in either gender may be used in these rules to refer to any person, firm or corporation.

C. Permissive/mandatory. May is permissive; shall and must are mandatory.
[1.8.1.15 NMAC - Rn, 1.8.1.11 NMAC, 7/1/2023]

~~[1.8.1.12]~~ **1.8.1.16 USE OF PRESCRIBED FORMS:** The director may prescribe forms to carry out specified requirements of these rules or the state ethics commission act. Prescribed forms, or their substantial equivalent, must be used when available, unless these rules state otherwise or the director waives this requirement in writing. The director shall accept filings made on legible copies of prescribed forms.
[1.8.1.16 NMAC - Rn, 1.8.12 NMAC, 7/1/2023]

~~[1.8.1.13]~~ **1.8.1.17 ADDRESS:**

A. By mail:
Director, State Ethics Commission,
800 Bradbury Dr. SE, Ste. 215,
Albuquerque, NM 87106.

B. In person: State Ethics Commission, 800 Bradbury Dr. SE, Ste. 215, Albuquerque, NM 87106.

C. By email: ethics.commission@sec.nm.gov.
[1.8.1.17 NMAC - Rn, 1.8.1.13 NMAC, 7/1/2023]

~~[1.8.1.14]~~ **1.8.1.18 COMMISSION MEETINGS:** The time, location, and format of commission meetings is determined in accordance with this section.

A. Time, place, and duration. The commission chair, in consultation with the director, shall determine the time, place, format, and duration of commission meetings necessary to conduct the commission's business.

B. Executive Session.

Upon motion and vote of a quorum, the commission may enter into a closed, executive session to discuss matters that are confidential under the State Ethics Commission Act, Section 10-16G-1 NMSA 1978, and as otherwise permitted by the Open Meetings Act, Section 10-15-1 NMSA 1978.

C. Virtual meetings.

With the consent of the commission chair, the commission may meet virtually via web or teleconference. In the event the commission meets virtually, the meeting should occur on a platform that allows members of the public to observe and participate. At a virtual or telephonic meeting, each commissioner participating shall be identified when speaking and all meeting participants and members of the public attending must be able to hear every person who speaks during the meeting. The commission staff shall record virtual meetings and make the recordings (except for recordings of closed executive sessions) available for public inspection.

D. Attendance by individual commissioners. An individual commissioner may attend a physical commission meeting virtually, through telephone phone or web conference provided that each commissioner participating by conference telephone can be identified when speaking, and those attending may hear every person who speaks during the meeting.
[1.8.1.18 NMAC - Rn 1.8.1.14 NMAC, 7/1/2023]

~~[1.8.1.15]~~ **1.8.1.19 COMPUTATION OF TIME:**

In computing any period of time prescribed or allowed by these rules, the day from which the period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation, unless it is a Saturday, Sunday or a day on which the state observes a legal holiday or emergency closure. In case of any such closure, the period of time runs to the close of business on the next regular workday.

If the period is less than 11 days, a Saturday, Sunday, legal holiday or emergency closure day is excluded from the computation.

[1.8.1.19 NMAC - Rn 1.8.1.15 NMAC, 7/1/2023]

~~[1.8.1.16]~~ **1.8.1.20**

SEVERABILITY: If any provision of Chapter 8 of these rules, or the application or enforcement thereof, is held invalid, such invalidity shall not affect other provisions or applications of Chapter 8 of these rules which can be given effect without the invalidated provisions or applications, and to this end the several provisions of Chapter 8 of these rules are hereby declared severable.

[1.8.1.20 NMAC - Rn, 1.8.1.16 NMAC, 7/1/2023]

ETHICS COMMISSION

This is an amendment to 1.8.3 NMAC, Section 7, 9 through 11, 13 through 15, effective 7/1/2023.

1.8.3.7 DEFINITIONS:
The following terms apply to these rules unless their context clearly indicates otherwise:

A. "Appellant"
is a party who requests that the commission review and change the decision of the hearing officer.

B. "Appellee" is a party to an appeal arguing that the hearing officer's decision is correct and should stand.

C. "Blackout period"
means the period beginning 60 days before a primary or general election in which a person against whom a complaint is filed is a candidate, and ending on the day after that election.

D. "Brief" is a document summarizing the facts and points of law of a party's case. It may be offered to or requested by a hearing officer or filed in an appeal to the commission. For example, a "brief in chief" is filed with the commission by the appellant. An "answer brief" is filed by the appellee in response to the brief-in-chief.

E. “Candidate” as used in this part, has the same meaning as it does in Subsection G of Section 1-19-26 NMSA 1978 of the Campaign Reporting Act, Section 1-19-25 NMSA 1978.

F. “Case management system” is the commission’s electronic filing and notification system for complaints, which may be accessed at [<https://proceedings.sec.state.nm.us>] <https://sec.nm.gov/proceedings>.

G. “Claim” is a complainant’s allegation that a respondent violated a particular provision of law.

H. “Designated district court judge” is an active or pro tempore district judge who has been appointed by the chief justice of the supreme court to consider the issuance and enforcement of subpoenas applied for by the commission.

I. “Discriminatory practice,” as used in this part, has the same meaning as it does in Subsection L of Section 28-1-2 of the Human Rights Act, Section 28-1-1 NMSA 1978.

J. “Lobbyist’s employer” as used in this part, has the same meaning as it does in Subsection F of Section 2-11-2 of the Lobbyist Regulation Act, Section 2-11-1 NMSA 1978.

K. “Meeting” means a meeting of the commission duly noticed and conducted in compliance with the requirements of the Open Meetings Act, Section 10-15-1 NMSA 1978.

L. “Party” and “Parties” means the named persons in a proceeding before the commission or a hearing officer.

M. “Person” means any individual or entity.

N. “Pleading” means any written request, motion, or proposed action filed by a party with the hearing officer or commission.

O. “Qualified hearing officer” means an official appointed by the director in accordance with these rules to conduct an administrative hearing to enable the

commission to exercise its statutory powers.

P. “Records” means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, whether or not the records are required by law to be created or maintained.

[1.8.3.7 NMAC-N, 01/01/2020; A, 09/14/2021; A, 7/1/2023]

1.8.3.9 COMPLAINTS: FILING REQUIREMENTS AND LIMITATIONS; AMENDMENTS; NOTICE; TIME LIMITATIONS; CONSOLIDATION; COMMISSION-INITIATED COMPLAINTS:

A. The commission shall investigate allegations of violations of any statutes or constitutional provisions over which the legislature gives it jurisdiction. [Such] Complaints concerning such violations may be filed against any public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist, lobbyist’s employer, or a restricted donor subject to the Gift Act.

(1) The commission may initiate a proceeding before the commission concerning an alleged violation:

(a) through the filing of a complaint with the commission by any person which alleges that the complainant has actual knowledge of the alleged violation of such statutes or constitutional provisions;

(b) by initiating its own complaint alleging a violation of any statute or constitutional provision over which the commission has jurisdiction against a person subject to the jurisdiction of the commission, pursuant to Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978; or

(c) by accepting a complaint filed with another public agency or legislative body and forwarded by that agency

or legislative body to the commission pursuant to Subsection B or E of Section 10-16G-9 NMSA 1978.

(2)

A complaint filed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC, shall:

(a)

be filed electronically on the commission’s case management system, or on a form prescribed by the commission and provided at no cost to the complainant or in a substantially equivalent form, which the director or the director’s designee shall record electronically on the commission’s case management system;

(b)

state the name and, to the extent known to the complainant, the respondent’s mailing address, email address, telephone number, and public office or other position;

(c)

set forth in detail the specific claims against the respondent and the supporting factual allegations, including, if known to the complainant, any law that the respondent has allegedly violated;

(d)

include any evidence that the complainant has that supports the complaint, which may include documents, records and names of witnesses; and

(e)

be signed and sworn to by the complainant, under penalty of false statement.

(3) The

director shall reject any complaint filed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC that fails to state either the respondent’s mailing address or email address, or is not signed and sworn to by the complainant, under penalty of false statement and the complainant will have the opportunity to refile the complaint.

(4)

A complaint filed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC may be amended once as a matter of course at any time before a responsive pleading is served. Otherwise,

the complainant may amend the complaint by leave of the director. An amended complaint must be filed within seven days of the director’s determination under Paragraph (3) of Subsection [A] C of 1.8.3.10 NMAC that the commission has jurisdiction over the complaint.

(5) Unless the director grants the complainant leave, the commission shall not accept a complaint filed by a complainant who, within the previous calendar year, filed two complaints that were subsequently dismissed. In applying for leave to file a third or subsequent complaint within the same calendar year, the complainant shall explain how, as compared to the dismissed complaints, the proposed complaint concerns different facts, asserts different claims, or asserts claims against different respondents.

(6) By registering and filing a complaint through the commission’s case management system, a party agrees to accept electronic service of subpoenas, notices, and other filings as a condition of submitting filings with the commission.

(7) Any party may represent themselves or may be represented by a licensed attorney. Corporations and other non-natural persons must be represented by counsel.

(a) Any attorney representing party shall enter an appearance with the commission and register on the commission’s case management system. Upon receipt of the appearance, the commission shall direct all official notices and correspondence to the attorney named in the written appearance, at the address or location stated therein. Any official notice received by any named attorney shall be deemed to have been received by the represented party. An attorney may withdraw from representing a party before the commission only with leave of the director and for a reason provided for by Section B of Rule 16-116 NMRA.

(b) If the respondent is a public official

or state public employee subject to a complaint alleging a violation made in the performance of the respondent’s duties, the respondent is entitled to representation by the risk management division of the general services department. “Respondent’s duties,” within the meaning of Subsection K of Section 10-16G-10 NMSA 1978 and this rule, excludes:

(i) conduct undertaken by an elected public official in furtherance of his or her campaign for election or reelection; and

(ii) any duty or obligation that by law is personal, rather than official, in nature.

(8) The commission may proceed with any complaint that is forwarded to the commission by another public agency, or by the legislature or a legislative committee pursuant to Subparagraph (c) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC, according to the terms of any agreement for shared jurisdiction between the commission and the referring agency or the legislative body, pursuant to Subsection E of Section 10-16G-9 NMSA 1978.

(9) No complaint may be accepted or considered by the commission unless the date on which the complaint is received by the commission, or the date on which the commission votes to initiate a complaint, falls within the later of two years from the date:

(a) on which the alleged conduct occurred; or
(b) the alleged conduct could reasonably have been discovered.

(10) For the purpose of applying the two-year statute of limitations established in Subsection A of Section 10-16G-15 NMSA 1978, the date on which a complaint is filed with a public agency that refers the complaint to the commission under the law, or under an agreement for shared jurisdiction, shall be deemed the date of filing with the commission.

B. The commission shall not adjudicate a complaint filed against a candidate, except under the Campaign Reporting Act or Voter Action Act, fewer than 60 days before a primary or general election.

(1) This paragraph does not preclude during the blackout period:

(a) the dismissal of frivolous or unsubstantiated complaints, or dismissal or referral of complaints outside the jurisdiction of the commission, as provided by these rules; [or]

(b) assigning to a hearing officer and making public a complaint that is found to be supported by probable cause pursuant to Subsection B of Section 1.8.3.13 NMAC before the blackout period begins; or

~~(b)~~ (c) an investigation related to the commission’s discretion to file a court action to enforce the civil compliance provisions of any statute or constitutional provision over which the commission has jurisdiction.

(2) For complaints filed during and subject to the blackout period, the director, or the director’s designee, shall notify the complainant:

(a) of the provisions of this section regarding the blackout period;

(b) that the complainant may refer allegations of criminal conduct to the attorney general or appropriate district attorney at any time; and

(c) of the deferral of commission action on the complaint for the duration of the blackout period.

(3) The director, or the director’s designee, shall within five days notify a candidate named as a respondent in a complaint filed during the 60-day pre-election blackout period of:

(a) the filing of the complaint;

(b) the specific allegations and violations charged in the complaint; and

(c) the deferral of commission action on the complaint for the duration of the blackout period.

C. The commission shall not adjudicate a complaint that alleges conduct occurring only before July 1, 2019. Any complaint filed with the commission or referred to the commission that alleges conduct occurring only before July 1, 2019 shall be dismissed and, if applicable, returned to the referring entity.

D. The director may consolidate a complaint with any other pending complaint involving related questions of fact or laws; provided that the consolidation will not unduly delay resolution of an earlier-filed complaint, unduly prejudice any complainant, or compromise the right of any complainant or respondent to confidentiality under these rules.

E. The Commission may initiate a complaint alleging a violation of any statute or constitutional provision over which the commission has jurisdiction against a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist, lobbyist's employer, or a restricted donor subject to the Gift Act, if:

(1) any commissioner or the director presents to the commission information or documents showing a violation of any statute or constitutional provision over which the commission has jurisdiction;

(2) the director determines that the complaint would be within the commission's jurisdiction; and

(3) five commissioners vote to initiate the complaint.

(4) A commissioner's vote to initiate a complaint pursuant to this Subsection E is not grounds for recusal pursuant to Subsection A of 1.8.2.8 NMAC.

F. If the commission initiates any complaint under Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978 and

Subsection E of 1.8.3.9 NMAC, then the director shall:

(1) provide the respondent with notice of the complaint in accordance with Subsection A of 1.8.3.10 NMAC; and

(2) forward the complaint to the general counsel to initiate an investigation in accordance with 1.8.3.11 NMAC.

G. If the director determines that the complaint, either in whole or in part, is subject to referral to another state or federal agency in accordance with Subsection D of Section 10-16G-9 NMSA 1978, the terms of an agreement entered into pursuant to the terms of Subsection E of Section 10-16G-9 NMSA 1978, Subsection D of Section 10-16-14 NMSA 1978, Subsection C of Section 1-19-34.4 NMSA 1978, or Subsection B of Section 2-11-8.2 NMSA 1978, the director shall refer some or all claims within the complaint to the appropriate agency and, within ten days of the referral, provide notice to the respondent of the referral.

H. When the commission initiates its own administrative complaint, the commission may serve in an appellate role after a hearing officer decision, and the commission will be limited to reviewing the record developed at the hearing. As such, except as provided in Subsection E of 1.8.3.9 NMAC, Subsections I & J of Section 10-16G-10 NMSA 1978, Subsection A of Section 10-16G-11 NMSA 1978, Subsection A of 1.8.3.12 NMAC, or Subsection J of 1.8.3.14 NMAC, the commission shall not receive any information related to a complaint filed pursuant to Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection E of 1.8.3.9 NMAC until an appeal is made pursuant to 1.8.3.15 NMAC. [1.8.3.9 NMAC-N, 01/01/2020; A, 09/14/2021; A, 7/1/2023]

1.8.3.10 DIRECTOR'S RESPONSIBILITIES UPON RECEIVING A COMPLAINT; RESPONDENT'S OPPORTUNITY TO RESPOND; JURISDICTIONAL REVIEW;

REFERRALS; NOTIFICATION TO PARTIES:

A. Within seven days of receiving a complaint, the director shall notify the respondent of the filing of the complaint; provided that, for any complaint filed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC, the director shall ensure that the complaint satisfies the filing requirements set forth in Paragraph (1) of Subsection A of 1.8.3.9 NMAC before notifying the respondent of the filing of the complaint.

B. Upon receiving a complaint pursuant to Subparagraph (a) or (c) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC, the director shall, within 10 days, review the complaint to determine whether it is within the commission's jurisdiction.

C. If the director determines that a complaint [~~is wholly or in part~~] is within the jurisdiction of the commission, unless otherwise provided in Subsection D of this section [below], the director shall:

(1) provide the complainant with notice that the commission has jurisdiction for the complaint;

(2) provide the respondent with notice of the complaint and inform the respondent that the respondent may file with the commission a responsive pleading answering the complaint's assertion of facts and presenting arguments that the complaint is frivolous, unsubstantiated or not supported by probable cause within 15 days from the date of receiving the director's notification and serve the same upon the complainant; and

(3) forward the complaint to the general counsel to initiate an investigation. Upon receiving the respondent's responsive pleading, the general counsel may request the complainant to file [~~a response, which, if requested, is due within 15 days from the date of the respondent's responsive pleading. The response may answer the complaint's assertion of facts and present arguments that the complaint~~

is frivolous, unsubstantiated or not supported by probable cause] a reply by a date set out in the request.

D. If the director determines that the complaint, [either in whole or in part,] is subject to referral to another state or federal agency, pursuant to Subsection D of Section 10-16G-9, the terms of an agreement entered into pursuant to the terms of Subsection E of Section 10-16G-9 NMSA 1978, Subsection D of Section 10-16-14 NMSA 1978, Subsection C of Section 1-19-34.4 NMSA 1978, or Subsection B of Section 2-11-8.2 NMSA 1978, the director shall refer some or all claims within the complaint to the appropriate agency and, unless a determination is made under Subsection H of Section 10-16G-10 NMSA 1978 to delay notification, within 10 days of the referral, shall provide notices to the complainant and the respondent of the referral.

E. If the director determines that the complaint is within the jurisdiction of the commission and recommends that the commission should not act on some or all aspects of the complaint, then the commission shall decide whether to dismiss some or all aspects of the complaint under Subsection C of Section 10-16G-9 NMSA 1978.

F. If the director determines that the complaint is neither within the jurisdiction of the commission nor subject to referral to another agency, the commission shall dismiss the complaint.

G. Subject to Subsection E of Section 1.8.3.15 NMAC, the director shall notify the complainant and respondent in writing of any action taken under Subsections [B] C through [E] F of 1.8.3.10 NMAC, unless notification has been delayed by the commission pursuant to Subsection H of Section 10-16G-10 NMSA 1978 and Subsection E of 1.8.3.15 NMAC. Neither the complaint nor the action taken on the complaint shall be made public by the commission or any staff member or contractor of the commission, but the complainant or respondent shall not be prevented from making public the

complaint or any action taken on the complaint.

H. With respect to any complaint filed with or under investigation by the commission, the director shall consult with the attorney general, an appropriate district attorney or the United States attorney if:

(1) when reviewing a complaint for jurisdiction, the director determines that the complaint alleges conduct on the part of the respondent or another that appears reasonably likely to amount to a criminal violation; or

(2) the commission, any commission staff member, or any commission hearing officer finds at any time that a respondent's conduct appears reasonably likely to amount to a criminal violation.

(3) Nothing in Section 10-16G-14 NMSA 1978 or in this section prevents the commission from taking any action authorized by the State Ethics Commission Act or deciding to suspend an investigation pending resolution of any criminal charges.

[1.8.3.10 NMAC-N, 01/01/2020; A, 09/14/2021; A, 7/1/2023]

1.8.3.11 GENERAL COUNSEL'S INVESTIGATION:

A. Upon receiving notice of the director's determination that the commission has [full or partial] jurisdiction over the complaint, the general counsel shall determine whether the complaint is frivolous or unsubstantiated, or supported by probable cause.

B. To perform the investigation into whether probable cause supports the complaint, the general counsel, or the general counsel's designee, may administer oaths, interview witnesses under oath, and examine books, records, documents and other evidence reasonably related to the complaint. The general counsel, or the general counsel's designee, may:

(1) Request to inspect books, records, documents and other evidence reasonably related to

a complaint; request the complainant or respondent to admit certain facts; and serve written interrogatories, to be responded to under oath at a time therein specified;

(2) Interview a witness under oath and outside the presence of the parties; and

(3) Notice and take the deposition of any person, including any party, subject to the following provisions:

(a) The general counsel, or the general counsel's designee, may put the witness on oath or affirmation and shall personally, or by someone acting at the general counsel's direction, record the testimony of the witness.

(b) Any objection during a deposition shall be stated concisely in a non-argumentative and non-suggestive manner. Objections to form or foundation may only be made by stating "objection—form" or "objection—foundation". When a question is pending, or a document has been presented to the witness, no one may interrupt the deposition until the answer is given, except when necessary to preserve a privilege.

(c) All objections shall be noted by the general counsel or the general counsel's designee upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections, except where the objection is based on an assertion of privilege made in good faith.

(d) The general counsel, or the general counsel's designee, shall certify on the deposition that the witness was duly sworn by the general counsel or the general counsel's designee and that the deposition is a true record of the testimony given by the witness.

(e) A witness who appears at a deposition may receive one day's expenses provided by Subsection A of Section 10-8-4 NMSA 1978 as per diem for nonsalaried public officers attending a board or committee meeting and the mileage provided by Subsection D

of Section 10-8-4 NMSA 1978. The commission is not required to tender expenses and mileage before the witness appears at a deposition, and may require the witness to provide information needed to facilitate payment of expenses and mileage (such as IRS form W9) as a condition of payment.

C. It is not grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. If a party refuses to respond to the general counsel's request for information or discovery requests, to attend a deposition, or to answer questions at a deposition noticed under this subsection, unless the party's refusal is based on an assertion of privilege made in good faith, the general counsel, when deciding whether a complaint is supported by probable cause, may draw an adverse inference against the party refusing to testify. If a party fails to provide information or identify a witness in response to a request by the general counsel, the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or on appeal, unless either a hearing officer or the commission determines the failure was substantially justified or is harmless.

[1.8.3.11 NMAC-N, 01/01/2020; A, 09/14/2021; A, 7/1/2023]

1.8.3.13 [GENERAL COUNSEL'S] PROBABLE CAUSE DETERMINATIONS AND CONSEQUENCES; INVESTIGATION REPORTS AND RECOMMENDATIONS TO COMMISSION; DISPOSITION BY AGREEMENT; NOTICE TO PARTIES:

[A. — If the general counsel finds probable cause to support the allegations of the complaint, the general counsel shall report promptly the general counsel's findings and recommendations to the director, and the director shall:

(1) promptly notify both the complainant and the respondent:

(a) of the specific claims and allegations in the complaint that were the subject of the general counsel's investigation;

(b) of the finding of probable cause as to specific claims; and

(c) that a public hearing before a hearing officer will be set, *provided* that the notification has not been delayed by order of the commission pursuant to Subsection H of Section 10-16G-10 NMSA 1978; and

(2) designate a qualified hearing officer to conduct a hearing on the complaint if so recommended by the general counsel. Based on the report of the general counsel, the hearing officer will set a public hearing as soon as practicable.

B] A. At the conclusion of the investigation provided by 1.8.3.11 NMAC, the general counsel shall determine whether the complaint is frivolous or unsubstantiated.

(1) If [after completing the investigation,] the general counsel determines that a complaint is [not supported by probable cause] frivolous or unsubstantiated, a hearing officer must dismiss the complaint. In that event, the complainant and the respondent shall be notified in writing of the decision and the reasons for the dismissal. Neither the complaint nor the action taken on the complaint shall be made public by the commission or any staff member or contractor of the commission, but the complainant or respondent shall not be prevented from making public the complaint or any action taken on the complaint.

(2) If the general counsel determines that a complaint is not frivolous or unsubstantiated, the general counsel shall prepare a summary of the investigation and a specification setting forth all violations reasonably related to the allegations in the complaint. The general counsel shall provide the summary, the specification, and all supporting evidence to the executive director. The executive director shall designate a hearing officer meeting the

qualifications set out in Subsection A of 1.8.3.14 NMAC to determine whether the complaint is supported by probable cause.

B. Within 30 days of being appointed pursuant to Paragraph (2) of Subsection A of this Section, the hearing officer shall enter a written decision as to whether the complaint is supported by probable cause. To determine whether the complaint is supported by probable cause, the hearing officer must find that the evidence supports a finding that a violation has occurred. The degree of proof necessary to establish probable cause is more than a suspicion or possibility but less than a certainty of proof.

(1) If the hearing officer decides that the complaint is supported by probable cause, the hearing officer shall prepare a written order to that effect and provide it to the executive director. The executive director shall then promptly notify both the complainant and the respondent of the hearing officer's determination and that a public hearing will be set, *provided* that the notification has not been delayed by order of the commission pursuant to Subsection H of Section 10-16G-10 NMSA 1978.

(2) If the hearing officer decides that the complaint is not supported by probable cause, the executive director shall promptly notify both the complainant and the respondent of the hearing officer's decision and inform the complainant of their right to appeal the hearing officer's decision to the commission pursuant to 1.8.3.15 NMAC.

C. The general counsel may at any time enter into a proposed settlement agreement of the complaint with the respondent. The proposed settlement agreement shall be presented to the commission for approval. If the complaint alleges, or the general counsel has found probable cause to support, a discriminatory practice or action by the respondent against the complainant, no settlement agreement may be reached without prior

consultation with the complainant. If approved by the commission, the settlement agreement shall be subject to public disclosure.

D. At any time, the complainant may voluntarily dismiss the complaint, either in whole or in part, by filing a notice of voluntary dismissal with the commission; however, any notice of voluntary dismissal does not diminish the power of the commission to initiate a complaint under Paragraph 1 of Subsection C of Section 10-16G-5 NMSA 1978. If the general counsel has determined the complaint is supported by probable cause, the complainant may dismiss the complaint only on motion and on such terms and conditions as the hearing officer deems proper.

E. If a hearing has not been scheduled concerning the disposition of a complaint within 90 days after the complaint has been received from the complainant or after referral from another agency, whichever is later, the director shall report to the commission at a duly convened meeting on the status of the investigation. The commission and the director shall thereafter proceed in accordance with Section 10-16G-11 NMSA 1978.

F. At any time before or during a hearing, the hearing officer may, at a duly convened public meeting, approve a disposition of a complaint agreed to by the general counsel and the respondent, provided that:

(1) the complainant shall be consulted on the proposed agreement prior to its execution, and

(2) the agreement shall be effective upon approval by the commission at a public meeting.

[1.8.3.12 NMAC-N, 01/01/2020; Rn 1.8.3.13 NMAC & A, 09/14/2021; A, 7/1/2023]

1.8.3.14 HEARING OFFICERS; SUMMARY DISPOSITION; HEARINGS; INTERPRETERS; EVIDENCE:

A. The commission

shall authorize the director to contract, for reasonable hourly compensation, with qualified persons to act as hearing officers. Hearing officers shall be assigned to act on or preside over hearings on complaints. Hearing officers must be currently licensed attorneys, or retired judges of the appellate, district, or metropolitan courts of New Mexico or any federal court, who are familiar with the ethics and election laws enforced by the commission. A hearing officer shall conduct a hearing fairly and impartially. A hearing officer who determines whether a complaint is supported by probable cause pursuant to Subsection B of Section 1.8.3.13 NMAC shall not preside over a hearing on the merits of the same complaint.

B. All hearings before the hearing officer will occur in Santa Fe or Albuquerque, or at such other location within the state as may be determined by the hearing officer. In selecting the location of a hearing other than in Santa Fe or Albuquerque, the hearing officer shall consider and give weight to the location and reasonable concerns of the respective parties, witnesses, and representatives in the proceeding. Upon a showing by any party of an undue burden, the hearing officer may move the hearing to a more appropriate venue.

C. If a hearing officer has not already notified the parties of a hearing through the issuance of a scheduling order, the director will notify the parties to the hearing by mail, directed to the address provided by the parties, of the date, time, and place scheduled for the hearing, at least 15 days before the scheduled hearing.

D. The hearing shall be conducted pursuant to the rules of evidence governing proceedings in the state courts, Rule 11-101 NMRA, and these procedural rules. In the event of a conflict between these procedural rules and the rules of evidence governing proceedings in the state courts, these procedural rules control. All hearings shall be open to the public in accordance with the

Open Meetings Act, Section 10-15-1 NMSA 1978, except for hearings or portions thereof exempted from the requirements of that Act.

E. Audio recordings shall be made of all hearings conducted pursuant to this section.

F. The parties may be represented by counsel, who shall enter an appearance at the earliest opportunity, pursuant to Paragraph (7) of Subsection A of 1.8.3.9 NMAC.

G. The hearing officer shall permit the general counsel to intervene upon request. If the complaint was initiated by the commission under Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection E of 1.8.3.9 NMAC, then the [~~general~~ ~~counsel~~] executive director shall represent the commission at the hearing.

H. The hearing officer shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the proceedings and to maintain order. The hearing officer shall have the powers necessary to carry out these duties, including the following:

(1) to administer or have administered oaths and affirmations;

(2) to cause depositions to be taken;

(3) to require the production or inspection of documents and other items;

(4) to require the answering of interrogatories and requests for admissions;

(5) to rule upon offers of proof and receive evidence;

(6) to regulate the course of the hearings and the conduct of the parties and their representatives therein;

(7) to issue a scheduling order, schedule a prehearing conference for simplification of the issues, or any other proper purpose;

(8) to schedule, continue and reschedule hearings;

(9) to consider and rule upon all procedural and other motions appropriate in the proceeding;

(10) to require the filing of briefs on specific legal issues prior to or after the hearing;

(11) to cause a complete audio record of hearings to be made;

(12) to make and issue decisions and orders; and

(13) to reprimand, or with warning in extreme instances exclude from the hearing, any person for engaging in a continuing pattern of disruptive or other improper conduct that interferes with the conduct of a fair and orderly hearing or development of a complete record.

I. In the performance of these adjudicative functions, the hearing officer is prohibited from engaging in any improper *ex parte* communications about the substantive issues with any party on any matter, but may communicate with parties separately solely on scheduling issues if all parties are notified of such communications and do not object to them. An improper *ex parte* communication occurs when the hearing officer discusses the substance of a case without the opposing party being present, except that it is not an improper *ex parte* communication for the hearing officer to go on the record with only one party when the other party has failed to appear at a scheduled hearing despite having received timely notice thereof.

J. Parties who appear at the hearing may:

(1) request the director to request the commission's authority to petition a district court to compel the presence of witnesses. Subpoenas may be requested by the commission from a district court in the same manner as provided for in Subsection J of Section 10-16G-10 NMSA 1978 and Subsections C and D of 1.8.3.11 NMAC;

(2) present evidence and testimony;

(3) examine and cross-examine witnesses; and

(4) introduce evidentiary material developed by the general counsel. Before the hearing, the general counsel shall timely disclose to the parties all evidence in the possession or within the control of the general counsel, other than privileged information.

K. Evidence shall be presented by the parties at the hearing consistent with the terms agreed to in a prehearing conference or as set forth in a scheduling order entered under Subsection H of 1.8.3.14 NMAC. The hearing officer may allow a deviation from the agreed-upon process for good cause.

(1) The general counsel shall present any evidence collected in the investigation relating to the complaint that is relevant to the matters at issue as set forth in the general counsel's findings under Subsection A of 1.8.3.12 NMAC; evidence that is agreed to be relevant by the parties; or evidence that is allowed by the hearing officer. If the general counsel has intervened as a party pursuant to Section G of 1.8.3.14 NMAC, the general counsel must be afforded a reasonable opportunity to seek prehearing discovery necessary to meet any anticipated defense raised by the respondent to the claims identified in the specification of violations prepared by the general counsel pursuant to Subsection B of 1.8.3.13 NMAC.

(2) The respondent may present evidence that is relevant to the matters at issue as set forth in the general counsel's findings under Subsection A of 1.8.3.12 NMAC; evidence that is agreed to be relevant by the parties; or evidence that is otherwise allowed by the hearing officer.

(3) The general counsel or the general counsel's designee may authenticate evidence produced during an investigation if the source of the evidence declines a request to appear and testify about the evidence and the hearing officer determines that there are no other reasonable means for authenticating the evidence.

L. Any person may timely file an amicus brief, not to exceed ten pages, with the director, for consideration by the hearing officer.

M. Upon reasonable notice by the party to the director, a party needing language interpreter services for translation of one language into another, and any interpreter required to be provided under the American with Disabilities Act, shall be provided for by the commission. While the person serving as an interpreter need not be a court-certified interpreter in order to provide interpretation at a hearing, any person serving as an interpreter in a hearing before the commission must affirm the interpreter's oath applicable in courts across this state.

N. After the termination of the hearing, or in lieu of a hearing if, upon a motion by a party or the general counsel, the hearing officer concludes there is no genuine dispute as to any material facts, the hearing officer shall issue written findings and conclusions on whether the evidence establishes that the respondent's conduct as alleged in the complaint constitutes a violation of any law within the jurisdiction of the commission. The hearing officer's written decision:

(1) may
(a) impose any fines provided for by law; and

(b) recommend to the appropriate authority commensurate disciplinary action against the respondent;

(2) and must
(a) state the reasons for the hearing officer's decision; and

(b) provide the parties with notice of the right of appeal to the commission.

O. Clear and convincing evidence is required to support a finding by a hearing officer that a respondent's conduct was fraudulent or willful.

P. If the hearing officer finds by a preponderance of the evidence that the respondent's

conduct as alleged in the complaint constituted a violation of the Governmental Conduct Act and was either unintentional or for good cause, then the hearing officer shall give the respondent 10 days to correct the violation, pursuant to Subsection B of Section 10-16-13.1 NMSA 1978, before taking any action under Subsection N of 1.8.3.14 NMAC.

Q. If the hearing officer finds by a preponderance of the evidence that the respondent's conduct as alleged in the complaint does not constitute a violation of any law within the jurisdiction of the commission, the hearing officer, in a written decision, shall dismiss the complaint and inform the complainant of their right to appeal to the commission.

R. A party may request copies of evidence considered by the hearing officer or a copy of the audio recording of the hearing by submitting a written request to the director. The director may charge a reasonable fee for copies made, consistent with its fee schedule under the Inspection of Public Records Act. The director may also require the requesting party to submit a new, sealed computer storage device, such as a compact disc, dvd disc, or usb drive, or other tangible device for copying of any audio or video recording that is part of the administrative record. Every party is responsible for paying the cost of any transcription of the audio recording. [1.8.3.13 NMAC-N, 01/01/2020; Rn 1.8.3.14 NMAC & A, 09/14/2021; A, 7/1/2023]

**1.8.3.15 APPEALS;
ENFORCEMENT:**

A. The complainant or respondent may appeal the final decision of the hearing officer within 30 days of the issuance of the decision to the full commission by filing a notice stating:

- (1) each party taking the appeal and each party against whom the appeal is taken;
- (2) the name, address, telephone number and email address of counsel for the appellant;

(3) the decision or part of a decision from which the party appeals; and

(4) the specific grounds for the appeal, including specific references to any evidence or law interpreted by the hearing officer.

(5) If the hearing officer issued a final decision on a complaint that was initiated by the commission under Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection E of 1.8.3.9 NMAC, or where the general counsel has intervened under Section G of 1.8.3.14 NMAC, then the general counsel may appeal the hearing officer's decision within 30 days of the issuance by filing a notice stating the information required in subsections (1) through (4) above.

B. For the purpose of this rule, briefing time shall commence from the date the appellant files a notice of appeal to the full commission. Unless otherwise provided for by the commission,

(1) The appellant shall file and serve a brief in chief within 15 days;

(2) The appellee shall file and serve an answer brief within 15 days after service of the brief of the appellant; and

(3) Neither the brief in chief nor the answer brief shall exceed 10 pages.

C. The commission shall schedule oral arguments, if requested by either party or ordered by the commission within sixty days of the notice of appeal.

D. Any person may timely file an amicus brief, not to exceed ten pages, with the director for consideration by the commission.

E. The commission shall review the whole record of the proceeding and shall, within 180 days of receiving the notice of appeal, issue its decision upholding or reversing the decision of the hearing officer. The commission may reverse all or part of the hearing officer's decision and remand the matter to the hearing officer for further proceedings.

[F:] (1) If a hearing officer dismisses a

complaint, pursuant to Subsection B of 1.8.3.13 NMAC, following the general counsel's determination that the complaint is ~~[not supported by probable cause]~~ frivolous or unsubstantiated, then the complainant has no right to an appeal of that dismissal to the commission. If the general counsel does not determine that the complaint is frivolous or unsubstantiated but the hearing officer dismisses the complaint for lack of probable cause, the complainant may appeal that decision to the commission.

(2) If the hearing officer decides that a complaint is supported by probable cause pursuant to Subsection G of Section 10-16G-10 NMSA 1978, the respondent has no right to appeal that decision to the commission.

[G:] E. A party may seek review of the commission's final decision by filing a petition of writ of certiorari pursuant to Rule 1-075 NMRA. In any action to review a final decision by writ of certiorari, or, if no petition for writ of certiorari has been timely filed, in a court action in the judicial district where the defendant resides, the commission may move for an order enforcing the commission's final decision pursuant to Subsection F of Section 10-16G-9 NMSA 1978.

[1.8.3.14 NMAC-N, 01/01/2020; Rn 1.8.3.15 NMAC & A, 09/14/2021; A, 7/1/2023]

HEALTH, DEPARTMENT OF

**TITLE 7 HEALTH
CHAPTER 7 HOSPITALS
PART 3 REQUIREMENTS
FOR RURAL EMERGENCY
HOSPITALS**

7.7.3.1 ISSUING AGENCY: Division of Health Improvement, Department of Health. [7.7.3.1 NMAC - N/E, 06/16/2023]

7.7.3.2 SCOPE: These requirements apply to private and public hospitals that as of December

27, 2020 was designated as a critical access hospital (CAH) by the centers for medicare and medicaid services (CMS), or was licensed as a hospital with not more than 50 licensed beds and located in a county in a rural area as defined in Section 1886(d)(2)(D) or Section 1886 (d)(8)(E) of the federal social security act, and provides rural emergency hospital (REH) services in the facility 24 hours per day seven days a week by a physician, nurse practitioner, clinical nurse specialist or physician assistant with a transfer agreement in effect with a level I or II trauma center, which does not have an annual average patient length of stay over 24 hours and satisfies all CMS requirements for reimbursement as a rural emergency hospital (REH). Facilities that were enrolled as CAHs or rural hospitals with not more than 50 beds as of December 27, 2020 and then subsequently closed after that date, would also be eligible to seek REH designation if they re-enroll in medicare and meet all the conditions of participation (COP) and requirements for REH.

[7.7.3.2 NMAC - N/E, 06/16/2023]

7.7.3.3 STATUTORY

AUTHORITY: The requirements set forth herein are promulgated by the secretary of the department of health pursuant to the authority granted under Subsection E of Section 9-7-6 NMSA 1978, Subsection D of Section 24-1-2, Subsection J of Sections 24-1-3 NMSA, 24-1-5 NMSA of the Public Health Act as amended, and S.B. 245, 56th Leg., 1st Sess. (N.M.2023), <http://nmlegis.gov/Sessions/23%20Regular/final/SB0245.pdf>.

[7.7.3.3 NMAC - N/E, 06/16/2023]

7.7.3.4 DURATION:

Permanent.

[7.7.3.4 NMAC - N/E, 06/16/2023]

7.7.3.5 EFFECTIVE

DATE: June 16, 2023, unless a later date is cited at the end of a section.

[7.7.3.5 NMAC - N/E, 06/16/2023]

7.7.3.6 OBJECTIVE:

Establish standards for licensing REHs in order to ensure the provision

of emergency department services, observation care, and additional outpatient medical and health services, if elected by the REH, that promote equity in health care for those living in rural communities by facilitating access to needed services. [7.7.3.6 NMAC - N/E, 06/16/2023]

7.7.3.7 DEFINITIONS:

A. Definitions

beginning with "A":

(1) "Action

Plan" means the eligible facility's plan for conversion to an REH and the initiation of REH specific services including the provision of emergency department services, observation care and other medical and health services elected by the REH, submitted to the department for recommended approval or denial pursuant to CMS COPs.

(2)

"Amended license" means a change of administrator, name, location, capacity, classification of any units as listed in these requirements requires a new license:

(a)

the application shall be on a form provided by the licensing authority;

(b)

the application shall be accompanied by the required fee for an amended license; and

(c)

the application shall be submitted at least 10 working days prior to the change.

(3) "Annual

license" means a license issued for a one-year period to a hospital that has met all license prior to the initial state licensing survey, or when the licensing authority finds partial compliance with these requirements.

B. Definitions

beginning with "B": [RESERVED]

C. Definitions

beginning with "C": "Critical access hospital" means a hospital with special characteristics, duly certified as such by centers for medicare and medicaid services (CMS) and is in compliance with the conditions of participation for such facilities; such critical access

hospitals are deemed as meeting the intent of these requirements and may be licensed accordingly by the licensing authority.

D. Definitions

beginning with "D": "Department" means the New Mexico department of health.

E. Definitions

beginning with "E": [RESERVED]

F. Definitions

beginning with "F":

(1) "Facility"

means:

(a)

was a critical access hospital; or

(b)

was a hospital as defined in 42 U.S.C. 1395ww(d)(1)(B) with not more than 50 beds located in a county (or equivalent unit of local government) in a rural area (as defined in 42 U.S.C. 1395ww(d)(2)(D) or was a hospital as so defined in 42 U.S.C. 1395ww(d)(8) (E) with not more than 50 beds that was treated as being located in a rural area.

(2) "Financial

interest" means any equity, security, lease or debt interest in the hospital; financial interest also includes any equity, security, and lease or debt interest in any real property used by the hospital or in any entity that receives compensation arising from the use real property by the hospital.

G. Definitions

beginning with "G": [RESERVED]

H. Definitions

beginning with "H": "Hospital"

means a facility offering in-patient services, nursing, overnight care on a 24-hour basis for diagnosing, treating, and providing medical, psychological or surgical care for three or more separate individuals who have a physical or mental illness, disease, injury, a rehabilitative condition or are pregnant; use of the term "hospital" for any facility not duly licensed according to these requirements is prohibited; any acute care hospital shall have emergency services, inpatient medical and nursing care for acute illness, injury, surgery, and obstetrics; any limited services hospital shall have emergency services, inpatient medical

and nursing care for acute illness, injury and surgery; ancillary services such as pharmacy, clinical laboratory, radiology, and dietary are required for acute-care or limited service hospitals.

I. Definitions
beginning with “I”: [RESERVED]

J. Definitions
beginning with “J”: [RESERVED]

K. Definitions
beginning with “K”: [RESERVED]

L. Definitions
beginning with “L”:

(1)

“Licensee” means the person(s) who, or organization which, has an ownership, leasehold, or similar interest in the hospital and in whose name a license has been issued and who is legally responsible for compliance with these requirements.

(2)

“Licensing authority” means the agency within the department vested with the authority to enforce these requirements.

M. Definitions
beginning with “M”:
[RESERVED]

N. Definitions
beginning with “N”: [RESERVED]

O. Definitions
beginning with “O”: [RESERVED]

P. Definitions
beginning with “P”: [RESERVED]

Q. Definitions
beginning with “Q”: [RESERVED]

R. Definitions
beginning with “R”:

(1) “Rural

emergency hospital” or “REH” means a facility, as defined above, that:

(a)

is enrolled under as defined in 42 U.S.C. 1395cc(j), which relates to the enrollment process for providers of services and suppliers, submits the additional information described in paragraph as defined in 42 U.S.C. 1395x(kkk)(4)(A) related to providing an action plan, describing any outpatient services offered and the proposed use of the additional facility payment to REHs, for purposes of such enrollment, and makes the detailed transition plan described in clause (i) of such paragraph available

to the public, in a form and manner determined appropriate by the U.S. secretary of health & human services (“secretary”);

(b)

does not provide any acute care inpatient services, other than those as defined in 42 U. S. C. 1395x(kkk)(6)(A), related to a skilled nursing facility to furnish post-hospital extended care services;

(c)

has in effect a transfer agreement with a level I or level II trauma center;

(d)

meets:

(i)

licensure requirements as described in 42 U.S.C. 1395x(kkk)(5);

(ii)

the requirements of a staffed emergency department as described in 42 U.S.C. 1395x(kkk)(1)(B);

(iii)

such staff training and certification requirements as the secretary may require;

(iv)

conditions of participation applicable to critical access hospitals, with respect to emergency services under section as defined in 42 CFR 485.618 (or any successor regulation) and hospital emergency departments under this subchapter, as determined applicable by the secretary; as defined in 42 U.S.C. 1395x(kkk).

(e) is

an entity that operates for the purpose of providing emergency department services, observation care, and other outpatient medical and health services specified by the Secretary in which the annual per patient average length of stay does not exceed 24 hours. 42 CFR Part 485, § 485.502.

(2) “Rural

emergency hospital services” means the following services furnished by a rural emergency hospital that do not exceed an annual per patient average of 24 hours in such rural emergency hospital:

(a)

emergency department services and observation care; and

(b)

At the election of the rural emergency

hospital, with respect to services furnished on an outpatient basis, other medical and health services as specified by the secretary through rulemaking. 42 U.S.C. 1395x (kkk) (1).

S. Definitions
beginning with “S”: “Secretary”

means the secretary of the New Mexico department of health.

T. Definitions
beginning with “T”: [RESERVED]

U. Definitions
beginning with “U”: [RESERVED]

V. Definitions
beginning with “V”: “Variance”

means an act on the part of the licensing authority to refrain from enforcing compliance with a portion or portions of these requirements for an unspecified period of time where the granting of a variance will not create a danger to the health, safety, or welfare of patients or staff of a hospital and is at the sole discretion of the licensing authority.

W. Definitions
beginning with “W”: “Waive/

waiver” means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time where the granting of a waiver will not create a danger to the health, safety, or welfare of patients or staff of a facility, and is at the sole discretion of the licensing authority.

X. Definitions
beginning with “X”: [RESERVED]

Y. Definitions
beginning with “Y”: [RESERVED]

Z. Definitions
beginning with “Z”: [RESERVED]
[7.7.3.7 NMAC - N/E, 06/16/2023]

7.7.3.8 GENERAL REQUIREMENTS:

A. Eligibility: The following facilities that were enrolled and certified to participate in Medicare as of December 27, 2020 are eligible to be an REH:

(1) CAHs;

(2) A

subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (the Act) with not more than 50 beds located in a county (or

equivalent unit of local government) in a rural area (as defined in section 1886(d)(2)(D) of the Act) (referred to as rural hospital);

(3) A subsection (d) hospital (as so defined) with not more than 50 beds that was treated as being located in a rural area pursuant to section 1886(d)(8)(E) of the Act (referred to as rural hospital);

(4) Facilities that were enrolled as CAHs or rural hospitals with not more than 50 beds as of December 27, 2020 and then subsequently closed after that date, would also be eligible to seek REH designation if they re-enroll in Medicare and meet all the COPs and requirements for REHs.

B. Action plan: An action plan must be submitted to the department by the applicant facility to initiate REH services. The action plan outlines the facility's plan for conversion to an REH and the initiation of REH specific services including the provision of emergency department services, observation care and other medical and health services elected by the REH. This should include details regarding staffing provisions and the number and type of qualified staff for the provision of REH services, as set forth in the CMS COPs.

(1) The action plan must include a detailed transition plan that lists the following:

(a) specific services the facility will retain;

(b) specific services the facility will modify;

(c) specific services the facility will add; and

(d) specific services the facility will discontinue.

(2) The facility must include a description of services that the facility intends to furnish on an outpatient basis if elected by the REH.

(3) The facility must also include information regarding how the facility intends to

use the additional facility payment.

This includes a description of the services that the additional facility payment would be supporting such as the operation and maintenance of the facility and furnishing of services (i.e., telehealth services, ambulance services etc.).

(4) Eligible facilities may submit the action plan and additional information on letterhead or use the model template available on the CMS website. The submission should be signed by the facility's legal representative/ administrator.

(5) The department will forward the action plan and information along with its recommendation for approval or denial to the designated CMS location for review and approval of the action plan components. The CMS location will make a final determination and notify the MAC once the enrollment package is complete and has been reviewed and approved.

(6) The action plan and information must include all the required elements as specified in Paragraph (1)-(3) of Subsection B of Section 7.7.3.9 NMAC. Missing or incomplete information may delay the conversion and enrollment process for eligible facilities applying to become an REH.

(7) In accordance with section 1861(kkk)(2)(A) of the Act, action plans will be available to the public and will eventually be posted on the CMS website.

C. Transfer

Agreement: Pursuant to section 1861(kkk)(2) of the Act and 42 CFR § 485.538 Condition of Participation: Agreements, the REH is required to have a transfer agreement with at least one medicare-certified hospital that is designated as a level I or level II trauma center. The agreement is intended to ensure an appropriate referral and transfer process is in place for patients requiring emergency care and continued care services beyond the capabilities of the REH. In order to document compliance, a copy of the transfer agreement should

be submitted to the department along with the action plan.

D. Attestation:

(1) An REH is required to meet the COPs for Rural Emergency Hospitals set forth at Subpart E of 42 CFR Part 485 (§ 485.500 - § 485.546). Other than the requirement that the REH submit its agreement with a nearby trauma center, eligible facilities converting to an REH may self-attest to meeting the REH COPs and will not require an automatic on-site initial survey as eligible facilities are expected to be in full compliance with the existing CAH and hospital requirements at the time of the request for conversion.

(2) Facilities may submit the attestation for compliance with the REH COPs along with the action plan and copy of the transfer agreement to the SA. The attestation may be completed on facility letterhead or the model template provided on the CMS website may be used. The attestation should be signed by the facility's legal representative or administrator.

(3) The department will review the additional information for completeness and confirm compliance with any applicable state licensure requirements. Once complete, the department will forward the additional information to the CMS location, along with a recommendation for certification or denial.

(4) The CMS location is responsible for making the final determination for certification of the REH. The effective date will be based upon the date the application package was determined to be complete and approved by the CMS location for meeting all REH requirements. For facilities that require an on-site initial survey, the effective date will be based on current CMS policy, which is the exit day of survey if no deficiencies are cited, or in the alternative, if deficiencies are noted, the date an acceptable plan of correction was approved (see 42 CFR §489.13).

E. Types of licenses:
(1) “Annual license”: an annual license is issued for a one-year period to a hospital that has met all requirements of these requirements.

(2) “Temporary license”: the licensing authority may, at its sole discretion, issue a temporary license prior to the initial state survey, or when the licensing authority finds partial compliance with these requirements. Facilities that were eligible as of December 27, 2020, which subsequently closed and re-enrolled in Medicare would require an initial on-site survey by the department. These facilities do not have to submit an attestation, as required in Subsection D of 7.7.3.9 NMAC, as an on-site initial survey will be performed to determine the facility is operational and in compliance with the REH requirements.

(a) a temporary license shall cover a period of time, not to exceed 120 days, during which the facility must correct all specified deficiencies;

(b) in accordance with Subsection D of Section 24-1-5 NMSA 1978, no more than two consecutive temporary licenses shall be issued.

(3) “Amended license”: a licensee must apply to the licensing authority for an amended license when there is any change of administrator, name, location, capacity, classification of any unit as listed in these requirements:

(a) the application must be on a form provided by the licensing authority;

(b) application must be accompanied by the required fee for an amended license; and

(c) application must be submitted at least 30 calendar days prior to the change. [7.7.3.8 NMAC - N/E, 06/16/2023]

7.7.3.9 LICENSE RENEWAL:

A. The licensee must submit a renewal application on forms

provided by the licensing authority, along with the required fee prior to the expiration of the current license.

B. Upon receipt of the renewal application and the required fee prior to expiration of current license, the licensing authority will issue a new license effective the day following the date of expiration of the current license if the facility is in substantial compliance with these requirements. [7.7.3.9 NMAC - N/E, 06/16/2023]

7.7.3.10 POSTING: The license, or a copy thereof, shall be conspicuously posted in a location accessible to public view within the hospital. [7.7.3.10 NMAC - N/E, 06/16/2023]

7.7.3.11 NON-TRANSFERABLE REGISTRATION OF LICENSE: A license shall not be transferred by assignment or otherwise to other persons or locations. The license shall be void and must be returned to the licensing authority when any one of the following situations occur:
A. ownership of the hospital changes;
B. the facility changes location;
C. the licensee of the hospital changes; or
D. the hospital discontinues operation. [7.7.3.11 NMAC - N/E, 06/16/2023]

7.7.3.12 EXPIRATION OF LICENSE: A license will expire at midnight on the day indicated on the license as the expiration date, unless sooner renewed, suspended, or revoked, or:
A. on the day a facility discontinues operation; or
B. on the day a facility is sold, leased, otherwise changes ownership or licensee; or
C. on the day a facility changes location. [7.7.2.12 NMAC - N/E, 06/16/2023]

7.7.3.13 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: In accordance with

Subsection H of Section 24-1-5 NMSA 1978, if the licensing authority determines immediate action is required to protect human health and safety, the licensing authority may suspend a license. A hearing must be held in accordance with the regulations governing adjudicatory hearings, New Mexico department of health, 7.1.2 NMAC. [7.7.2.13 NMAC - N/E, 06/16/2023]

7.7.3.14 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES:

A. A license may be denied, revoked or suspended, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing for any of the following reasons:

(1) failure to comply with any provisions of these requirements;

(2) failure to allow survey by authorized representatives of the licensing authority;

(3) permitting any person while active in the operation of a facility licensed pursuant to these requirements to be impaired by the use of prescribed or non-prescribed drugs, including alcohol;

(4) misrepresentation or falsification of any information provided to the licensing authority;

(5) the discovery of repeat violations of these requirements during surveys; or

(6) the failure to provide the required care and services as outlined by these requirements.

B. for the purposes of calculating civil monetary penalties, penalty rates will be applied as set forth in Subparagraph (d) of Paragraph (3) of Subsection B of

7.1.8.16 NMAC.

[7.7.3.14 NMAC - N/E, 06/16/2023]

7.7.3.15 HEARING PROCEDURES:

A. An applicant or licensee subject to an adverse action may request an administrative appeal.

B. Hearing procedures for an administrative appeal of an adverse action taken by the licensing authority against the hospital as outlined in Section 14 and 15 above will be held in accordance with adjudicatory hearings, New Mexico department of health, 7.1.2. NMAC.

C. A copy of the adjudicatory hearing procedures will be furnished to the hospital at the time an adverse action is taken against the licensee by the licensing authority. A copy may be requested at any time by contacting the licensing authority.

[7.7.2.15 NMAC - N/E, 06/16/2023]

7.7.3.16 WAIVERS AND VARIANCES:

A. Applications: All applications for the grant of a waiver or variance shall be made in writing to the licensing authority, specifying the following:

(1) the rule, regulation, or code from which the waiver or variance is requested;

(2) the time period for which the waiver or variance is requested;

(3) if the request is for a variance, the specific alternative action which the facility proposes;

(4) the reasons for request; and

(5) an explanation of why the health, safety, and welfare of the residents or staff are not endangered by the condition.

B. Requests for a waiver or variance may be made at any time.

C. The licensing authority may require additional information from the hospital prior to acting on the request.

(1) Grants and denials. The licensing authority shall grant or deny each request for waiver or variance in writing.

(a)

Notice of a denial shall contain the reasons for denial.

(b)

The decisions to grant, modify, or deny a request for a waiver or variance is subject to appeal one time only.

(2) The terms

of a requested waiver or variance may be modified upon agreement between the licensing authority and the hospital.

D. The licensing authority may impose whatever conditions on the granting of a waiver or variance it considers necessary.

E. The licensing authority may limit the duration of any waiver.

[7.7.3.16 NMAC - N/E, 06/16/2023]

7.7.3.17 COMPLIANCE WITH EXISTING REQUIREMENTS:

An REH shall comply with the following:

A. 42 CFR Part 485, Subpart E (relating to conditions of participation: Rural Emergency Hospitals (REHs));

B. In addition to the conditions of participation at 42 CFR Part 485, Subpart E, the hospital shall comply with 7.7.2 NMAC to the extent it does not conflict with the conditions of participation.

[7.7.3.17 NMAC - N/E, 06/16/2023]

7.7.3.18 INCORPORATED AND RELATED CODES:

The facilities that are subject to this rule are also subject to other rules, codes and standards that may, from time to time, be amended. This includes but not limited to the following:

A. Health facility licensure fees and procedures, department of health, 7.1.7 NMAC.

B. Health facility sanctions and civil monetary penalties, department of health, 7.1.8 NMAC.

C. Adjudicatory hearings for licensed facilities, department of health, 7.1.2 NMAC.

D. Caregiver's criminal history screening requirements, 7.1.9 NMAC.

E. Employee abuse registry, 7.1.12 NMAC.

F. Incident reporting, intake processing and training requirements, 7.1.13 NMAC.

G. New Mexico Administrative Code, Title 14 Housing and Construction, chapters 5 through 12.

[7.7.3.18 NMAC - N/E, 6/16/2023]

NMAC History: [RESERVED]

REGULATION AND LICENSING DEPARTMENT OCCUPATIONAL THERAPY, BOARD OF EXAMINERS FOR

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 15 OCCUPATIONAL THERAPISTS

PART 7 EXPEDITED LICENSING REQUIREMENTS

16.15.7.1 ISSUING

AGENCY: Board of Examiners for Occupational Therapy.

[16.15.7.1 NMAC - N, 6/27/2023]

16.15.7.2 SCOPE: All those individuals who wish to practice occupational therapy in the state of New Mexico.

[16.15.7.2 NMAC - N, 6/27/2023]

16.15.7.3 STATUTORY AUTHORITY:

Section 61-12A-6 NMSA 1978.

[16.15.7.3 NMAC - N, 6/27/2023]

16.15.7.4 DURATION:

Permanent.

[16.15.7.4 NMAC - N, 6/27/2023]

16.15.7.5 EFFECTIVE DATE:

June 27, 2023, unless a later date is cited at the end of a section.

[16.15.7.5 NMAC - N, 6/27/2023]

16.15.7.6 OBJECTIVE:

This purpose of this part is to provide for the issuance of expedited licenses pursuant to Section 61.1.31.1 NMSA

1978 and Section 61-1-34 NMSA 1978.
[16.15.7.6 NMAC - N, 6/27/2023]

16.15.7.7 DEFINITIONS:

A. “Eligible jurisdiction” means any state or territory of the United States except those included in the list of disapproved licensing jurisdictions under 16.15.7.8 NMAC of this rule;

B. “Expedited license” means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board.

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

D. “Jurisdiction” has the same meaning as defined in Subsection F of Section 61-1-34 NMSA 1978.

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

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

G. “Qualified applicant” means an applicant who:

- (1) Holds a current license in good standing in another jurisdiction, as defined by Subsection D of 16.15.7.7 NMAC.
- (2) Does not have a disqualifying criminal conviction, as defined in Subsection J of 16.15.2.9 NMAC of the Board’s rules; and
- (3) Is not subject to pending disciplinary action in New Mexico.

H. “Veteran” has the same meaning as defined in Paragraph (3) Section E of Section 61-1-34 NMSA 1978.
[16.15.7.7 NMAC - N, 6/27/2023]

16.15.7.8 EXPEDITED LICENSURE BY ENDORSEMENT; LIST OF

DISAPPROVED LICENSING JURISDICTION; REASONS:

A. Applicants for licensure as an occupational therapist licensed in the following territories of the United States shall not be eligible for expedited licensure under Section 61-1-31-1 NMSA 1978:

(1) American Samoa, on the grounds that education and exam requirements cannot be determined for this jurisdiction.

(2) U.S Virgin Islands, on grounds that this jurisdiction does not regulate this professional.

B. Applicants for licensure as an occupational therapy assistant licensed in the following territories of the United States shall not be eligible for expedited licensure Section 61-1-31-1 NMSA 1978:

(1) American Samoa, on the grounds that this jurisdiction does not regulate this profession.

(2) U.S Virgin Islands, on the grounds that this jurisdiction does not regulate this profession.

[16.15.7.8 NMAC - N, 6/27/2023]

16.15.7.9 RESERVED:

[16.15.7.9 NMAC - N, 6/27/2023]

16.15.7.10 EXPEDITED LICENSURE APPLICATION:

A. A candidate for expedited licensure must submit to the board a completed application containing all of the following:

- (1) A complete and signed application form;
- (2) Proof of current unrestricted licensure in good standing held by the application in an eligible jurisdiction(s).

(3) Payment of the required application fee.

B. An expedited license application shall ne deemed complete until the applicant has submitted, and the board’s staff is in receipt of all of the materials, including documentation from third parties, as required by Subsection A of this section.

C. Upon receipt of a complete application, the board’s shall process the application and issue the expedited license to a qualified application within 30 days.

D. If the applicant has a disqualifying criminal conviction or the board may have other causes to deny the application pursuant to Section 61-12A-22 of the Occupational Therapy Act:

(1) The matter of the applicant’s application shall be submitted to the board for consideration and the action at its next available regular meeting:

(2) The license may not be issued within 30 days of submission of the complete application : and

(3) The board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board’s rules.

[16.15.7.10 NMAC - N, 6/27/2023]

16.15.7.11 EXPEDITED LICENSE BY ENDORSEMENT; DURATION AND RENEWAL:

A. An expedited license issued to an applicant under this rule shall be valid for one year from the date of issuance, provided that the board may extend the duration of the license beyond one year upon the licensee’s showing of extenuating circumstances.

B. A licensee holding an expedited license may apply for license renewal in the manner provided by the board’s rules pursuant to 16.15.2.13 NMAC and this section. If the licensee holding an expedited license was not required by the licensee’s original jurisdiction outside of New Mexico to pass an examination prescribed by the national board for certification in occupational therapy or the board, the licensee shall be required to take and pass an examination prescribed by the national board for certification in occupational therapy or the board, and an examination on the state laws, rules, and regulations that pertain to the practice of occupational therapy

in New Mexico as a prerequisite to license renewal pursuant to 16.15.2.7 NMAC of the board's rules.

C. Upon renewal, the board shall issue a regular license to a licensee holding an expedited license granted under this rule.
[16.15.7.11 NMAC - N, 6/27/2023]

16.15.7.12 EXPEDITED LICENSE FOR MILITARY SERVICE MEMBER, SPOUSES AND VETERANS:

A. A candidate for expedited licensure must submit to the board a complete application containing all of the following:

(1) A completed and signed application form;

(2) Proof of current unrestricted license in good standing held by the applicant in another jurisdiction, including a branch of the United States armed forces;

(3) Submission of the following documentation:

(a) for military service member: a copy of military orders;

(b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(c) for spouses of deceased military members : a copy of decedent's DD 214 and copy of marriage license;

(d) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated), proof of honorable discharge, such as a copy of DD form 214, DD form 215, DD form 256, DD form 257, NGB form 22, military ID card,

driver's license or state ID card with a veteran's designation, or other documentation verifying honorable discharge.

B. An expedited license application shall not be deemed complete until the applicant has submitted and the board's staff is in receipt of all of the materials, including documentation from third parties, required by Subsection A.

C. Upon receipt of a complete application, the board's staff process the application and issued expedited license to a qualified applicant within 30 days.

D. If the applicant is not qualified applicant as defined by this rule and has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-12A-22 of the Occupational Therapy Act.

(1) The matter of the applicant's application shall be submitted to the board for consideration and action at its next board meeting;

(2) The license may not be issued within 30 days of submission of the completed application; and

(3) The board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

E. A military service member or veteran who is issued an expedited license shall not be charged any initial licensing fees or renewal fees for the first three years of licensure with the board
[16.15.7.12 NMAC - N, 6/27/2023]

16.15.7.13 EXPEDITED LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES, DEPENDENTS AND VETERANS; DURATION AND RENEWAL:

A. An expedited license issued to an applicant under this rule shall be valid for one year from the date of issuance.

B. A licensee holding an expedited license may

apply for the license renewal in the manner provided by the board's rules 16.15.2.13 NMAC and this section. If the licensee holding an expedited license was not required by the licensee's original jurisdiction outside of New Mexico to pass an examination prescribed by the national board for certification in occupational therapy or the board, the licensee shall be required to take and pass an examination prescribed by the national board for certification in occupational therapy or the board, and an examination on the state laws, rules and regulations that pertain to the practice of occupational therapy in New Mexico as a prerequisite to license renewal pursuant to 16.15.2.7 NMAC of the board's ruled.

C. Upon renewal, the board shall issue a regular license to a licensee holding an expedited license granted under this rule.
[16.15.7.13 NMAC - N, 6/27/2023]

HISTORY of 16.15.7 NMAC:
Pre-NMAC History: none.

History of the Repealed Material:
[RESERVED]

Other History: 16 NMAC 15.7

REGULATION AND LICENSING DEPARTMENT OCCUPATIONAL THERAPY, BOARD OF EXAMINERS FOR

This is an amendment to 16.15.2 NMAC Section 7, 13, and 19, effective 06/27/2023.

16.15.2.7 DEFINITIONS:
[~~"Military service member" has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.~~] **RESERVED**
[6/14/1997; 16.15.2.7 NMAC - Rn, 16 NMAC 15.2.7, 6/29/2000; A, 1/30/2015; A, 2/24/2022, A 6/27/2023]

16.15.2.13 ANNUAL RENEWAL:

A. Annual renewal fees in the form of a check or money order must be remitted when due or license will expire automatically.

B. Licenses may be renewed upon receipt of a renewal application submitted on the form provided by the board, or via on-line renewal application through the board's on-line professional licensing system, the applicable annual renewal fee, and proof of continuing education requirements pursuant to regulations of the board.

C. The annual renewal date is October 1st of each year. All licenses issued by the board will expire on September 30th of each year.

D. At the time of renewal, an occupational therapy assistant shall confirm no changes to the statement of supervision filed at the time of initial application. If a change in supervision has occurred, a new statement of supervision must be submitted along with the completed renewal application.

E. Expedited license renewals and fees are issued pursuant to 16.15.1.11 NMAC and 16.15.7.13 NMAC.
[6/14/1997; 16.15.2.13 NMAC - Rn & A, 16 NMAC 15.2.13, 6/29/2000; A, 4/3/2003; A, 2/24/2022; A, 6/27/2023]

16.15.2.19 [EXPEDITED LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS: Application Requirements:

- A.** Applications for registration shall be completed on a form provided by the board of examiners for occupational therapy.
- B.** The applicant shall provide a complete application that includes the following information:
 - (1)** applicant's full name;
 - (2)** current mailing address;
 - (3)** current electronic mail address, if any;
 - (4)** date of birth;
 - (5)** background check, if required; and

(6) proof as described in Subsection C below.

C. The applicant shall provide the following satisfactory evidence as follows:

(1) applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;

(2) applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirement for New Mexico; and

(3) the following documentation:

(a) for military service member: copy of military orders;

(b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(c) for spouse of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(d) for dependent children of military service member: copy of military service member's order listing dependent child, or copy of military order and one of the following: copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): copy of DD 214 showing proof of honorable discharge.

D. The license or registration shall be issued by the board as soon as practicable but no later than 30 days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.

E. Military service members and veterans shall not pay

and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule:

F. A license issued pursuant to this section shall be valid for the time period that is specific in the Occupational Therapy Act.

G. A license issued pursuant to this section shall not be renewed unless the license holder satisfies that requirements for renewal set forth in 16.15.2.13 NMAC pursuant to Subsection A of Section 61-12A-9 NMSA 1978.

H. As a courtesy, the board will send via electronic mail license renewal notification to licensees or registrants before the license expiration date to the last known email address on file with the board. Failure to receive the renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.]

[RESERVED]
[16.15.2.19 NMAC - N, 1/30/2015; A, 2/13/2015; A, 2/24/2022; Repealed 6/27/2023]

REGULATION AND LICENSING DEPARTMENT OCCUPATIONAL THERAPY, BOARD OF EXAMINERS FOR

This is an amendment to 16.15.6 NMAC, Section 8, effective 06/27/2023

16.15.6.8 SCHEDULE OF FEES: (note, these fees are nonrefundable.)

- A.** Application for full (non-provisional) Licensure received between September 1 and May 31:
 - (1)** occupational therapist: \$110.00
 - (2)** occupational therapy assistant: \$100.00

B. applications for full (non-provisional) licensure received between June 1 and August 31st.: \$50.00

(1)
occupational therapist: \$60.00

(2)
occupational therapy assistant:
\$50.00

C. Provisional permit:
\$25.00

D. List of licensees:
\$50.00

E. Labels of addresses:
\$80.00

F. Electronic data disk:
\$80.00

G. Verification of
licensure: \$20.00

H. Jurisprudence
exam: \$10.00

I. Annual renewal
fees:

(1)
occupational therapist: \$85.00

(2)
occupational therapy assistant:
\$60.00

J. Renewal fee
after receipt of expedited licensure
by reciprocity issued pursuant to
16.15.7.11 NMAC

[H] K. Duplicate of license
(issued only in cases of loss or if
licensee wishes name change due to
divorce, marriage, etc.): \$15.00

[K] L. Penalty fee for
renewals not postmarked by October
1st of the renewal year: \$100.00

[E] M. Continuing
education approval for course
provider: \$25.00

[M] N. Copy charges for
public documents (per page): \$1.00

[N] O. Inactive status fees:

(1) initial
inactive status fee: \$15.00

(2) annual
inactive status fee: \$15.00

(3)
reactivation from inactive status fees:

(a)
occupational therapist: \$70.00

(b)
occupational therapy assistant:
\$50.00

[O] P. Returned check
charge (per check): \$20.00
[6/14/1997; 16.15.6.8 NMAC - Rn
& A, 16 NMAC 15.6.8, 06/29/2000;
A, 04/03/2003; A, 08/29/2005; A,
01/30/2015; A, 06/27/2023]

**REGULATION
AND LICENSING
DEPARTMENT
PHYSICAL THERAPY BOARD**

The Regulation and Licensing
Department, Board of Physical
Therapy approved, at its 05/11/2023
hearing, to repeal its rule 16.20.12
NMAC, Expedited Licensure for
Military Service Members and
Veterans, and replace with 16.20.12
Expedited Licensure effective
06/27/2023.

**REGULATION
AND LICENSING
DEPARTMENT
PHYSICAL THERAPY BOARD**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL
LICENSING
CHAPTER 20 PHYSICAL
THERAPISTS
PART 12 EXPEDITED
LICENSING REQUIREMENTS**

16.20.12.1 ISSUING
AGENCY: New Mexico Physical
Therapy Board.
[16.20.12.1 NMAC - Rp, 16.20.12.1
NMAC, 06/27/2023]

16.20.12.2 SCOPE: All those
individuals who wish to practice
physical therapy in the state of New
Mexico.
[16.20.12.2 NMAC - Rp, 16.20.12.2
NMAC, 06/27/2023]

16.20.12.3 STATUTORY
AUTHORITY: These rules are
promulgated pursuant to Subsection C
of Section 62-23D-5, Section 61-1-1
to -34 (ULA) (HB 180) NMSA 1978
and Section 61-1-1 to -37 (ULA) (HB
191) NMSA 1978.
[16.20.12.3 NMAC - Rp, 16.20.12.3
NMAC, 06/27/2023]

16.20.12.4 DURATION:
Permanent.
[16.20.12.4 NMAC - Rp, 16.20.12.4
NMAC, 06/27/2023]

16.20.12.5 EFFECTIVE
DATE: June 27, 2023, unless a later
date is cited at the end of a section.
[16.20.12.5 NMAC - Rp, 16.20.12.5
NMAC, 06/27/2023]

16.20.12.6 OBJECTIVE: The
purpose of this part is to provide for
the issuance of expedited licenses
pursuant to Section 61-1-31.1 NMSA
and 1978 Section 61-1-34 NMSA
1978.
[16.20.12.6 NMAC - Rp, 16.20.12.6
NMAC, 06/27/2023]

16.20.12.7 DEFINITIONS:

**A. "Eligible
jurisdiction"** means any state
or territory of the United States
except those included in the list of
disapproved licensing jurisdictions
under 16.20.12.8 NMAC

**B. "Expedited
license"** means a provisional
license that confers the same rights,
privileges and responsibilities as a
regular license issued by the board.

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

D. "Jurisdiction"
has the same meaning as defined
in Subsection F of Section 61-1-2
NMSA 1978.

E. "Licensing fee"
has the same meaning as defined in
Subsection E of Paragraph (1) of
Section 61-1-34 NMSA 1978.

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

**G. "Qualified
applicant"** means an applicant who:

(1) holds a
current license in good standing in
another jurisdiction, as defined by
Subsection D of this rule;

(2) does
not have a disqualifying criminal
conviction, as defined by Subsection
C of 16.20.3.8 NMAC of the Board's
rules; and

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

H. “Veteran” has the same meaning as defined in Subsection E of Paragraph (3) of Section 61-1-34 NMSA 1978. [16.20.12.7 NMAC - Rp, 16.20.12.7 NMAC, 06/27/2023]

16.20.12.8 EXPEDITED LICENSURE BY RECIPROCITY; LIST OF DISAPPROVED LICENSING JURISDICTIONS; REASONS:

A. Applicants for licensure as physical therapists licensed in the following states and territories of the United States shall not be eligible for expedited licensure under Subsection H of Section 61-12D-10 NMSA 1978, of the Physical Therapy Act:

(1) American Samoa, on the grounds that education and licensure requirements cannot be determined to be consistent with those requirements in New Mexico;

(2) Guam, on the grounds that Guam, on the grounds that it cannot be determined if there is an examination requirement;

B. Applicants for licensure as physical therapist assistants licensed in the following states and territories of the United States shall not be eligible for expedited licensure under Subsection H of Section 61-12D-10 NMSA 1978, of the Physical Therapy Act:

(1) American Samoa, on the grounds that this profession is not licensed;

(2) Guam, on the grounds that it cannot be determined if there is an examination requirements; [16.20.12.8 NMAC - Rp, 16.20.12.8 NMAC, 06/27/2023]

16.20.12.9 [RESERVED]

16.20.12.10 EXPEDITED LICENSURE BY RECIPROCITY; APPLICATION:

A. A candidate for expedited licensure must submit to the board a complete application

containing all of the following:

(1) A completed and signed application form;

(2) Proof of current unrestricted license in good standing held by the applicant in another jurisdiction, including a branch of the United States armed forces;

(3) Submission of fingerprints and other information necessary for a state criminal background check;

(4) Payment of the required application fee.

B. An expedited license application shall not be deemed complete until the applicant has submitted and the board’s staff is in receipt of all of the materials, including documentation from third parties, required by subsection A.

C. Upon receipt of a complete application, the board’s staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

D. If the applicant is not a qualified applicant as defined by this rule and has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-12D-18 of the Physical Therapy Act:

(1) The matter of the applicant’s application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) The license may not be issued within 30 days of submission of the complete application; and

(3) The board/ commission may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board’s rules. [16.20.12.10 NMAC - N, 06/27/2023]

16.20.12.11 CONTINUING EDUCATION REQUIREMENTS; FIRST RENEWAL OF EXPEDITED LICENSURE:

15 hours of continuing education is required for physical therapists or physical therapists assistants after one

(1) year of the expedited licensure; [16.20.12.11 NMAC – N, 06/27/2023]

16.20.12.12 EXPEDITED LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES, DEPENDENTS AND VETERANS; APPLICATION REQUIREMENTS:

A. A candidate for expedited licensure must submit to the board a complete application containing all of the following:

(1) A completed and signed application form;

(2) Proof of current unrestricted license in good standing held by the applicant in another jurisdiction, including a branch of the United States armed forces;

(3) Submission of fingerprints and other information necessary for a state criminal background check;

(4) Submission of the following documentation:

(a) for military service member: a copy of military orders;

(b) for spouse of military service members: copy of military service member’s military orders, and copy of marriage license;

(c) for spouses of deceased military service members: copy of decedent’s DD 214 and copy of marriage license;

(d) for dependent children of military service members: a copy of military service member’s orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member’s federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): proof of honorable discharge, such as a copy of DD Form 214, DD Form 215, DD Form 256, DD Form 257, NGB Form 22, military ID card,

driver's license or state ID card with a veteran's designation, or other documentation verifying honorable discharge.

B. An expedited license application shall not be deemed complete until the applicant has submitted and the board's staff is in receipt of all of the materials, including documentation from third parties, required by subsection A.

C. Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

D. If the applicant is not a qualified applicant as defined by this rule and has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-12D-13 of the Physical Therapy Act:

(1) The matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) The license may not be issued within 30 days of submission of the complete application; and

(3) The board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

E. A military service member, spouse, dependent or veteran who is issued an expedited license shall not be charged a any initial licensing fees or renewal fees for the first three years of licensure with the board;
[16.20.12.12 NMAC; N, 06/27/2023]

16.20.12.13 EXPEDITED LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES, DEPENDENTS AND VETERANS; DURATION AND RENEWAL:

A. An expedited license issued to an applicant under this rule shall be valid for one year from the date of issuance.

B. A licensee holding an expedited license may

apply for license renewal in the manner provided by the board's rules. If the licensee holding an expedited license was not required by the licensee's original jurisdiction outside of New Mexico to pass the national physical therapy examination and the New Mexico jurisprudence exam, the licensee shall be required to take and pass the national physical therapy examination and the New Mexico jurisprudence exam in accordance with as a prerequisite to license renewal.

C. Upon renewal, the board shall issue a regular license to a licensee holding an expedited license granted under this rule.
[16.20.12.13 NMAC; N, 06/27/2023]

HISTORY OF 16.20.12 NMAC:

16.20.12 NMAC, Expedited Licensure For Military Service Members And Veterans, Filed 9/30/2014, was repealed and replaced by 16.20.12 NMAC, Expedited Licensure, effective 06/27/2023.

REGULATION AND LICENSING DEPARTMENT PHYSICAL THERAPY BOARD

This is an amendment of 16.20.2 NMAC, Section 10, effective 6/27/2023.

16.20.2.10 REQUIREMENTS FOR THE JURISPRUDENCE EXAMINATION:

A. All applicants for licensure except those applicants applying for expedited licensure pursuant to 16.20.12.9 and 16.20.12.13 NMAC, must take the New Mexico jurisprudence [exam] examination and have a passing score of eighty percent, based on a total available score of one hundred percent. Any applicant who fails to pass the jurisprudence examination may retake the [exam] examination upon receipt of the required fees.

B. A licensee who received an expedited license by 16.20.12.9 or 16.20.12.13

NMAC must take the New Mexico jurisprudence examination when renewing their license for the first time and have a passing score of eighty percent, based on a total available score of one hundred percent. Any licensee who fails to pass the jurisprudence examination may retake the examination upon receipt of the required fees.
[6/3/1994; 10/15/1997; 16.20.2.10 NMAC - Rn, 16 NMAC 20.2.10, 8/31/2000; A, 06/27/2023]

REGULATION AND LICENSING DEPARTMENT PHYSICAL THERAPY BOARD

This is an amendment of 16.20.3 NMAC, Section 8, effective 6/27/2023

16.20.3.8 APPLICATION FOR LICENSURE.

A. The board may issue a license to an applicant, other than one applying for expedited licensure or licensure by reciprocity, who fulfills the following requirements:

- (1) completes the application;
- (2) includes a passport-size photograph taken within the preceding 12 months and affixes it to the application;
- (3) pays the non-refundable application fee in full as provided in Part 5;
- (4) passes the jurisprudence exam (as specified in 16.20.2.10 NMAC) and pays the non-refundable exam fee as provided in Part 5;
- (5) submits official college or university transcripts from a program approved by the commission on accreditation in physical therapy education (CAPTE) verifying one of the following:
 - (a) post-baccalaureate degree in physical therapy;
 - (b) associate degree as a physical therapist assistant;

(6) if official transcripts are not available because of school closure or destruction of the records, e.g., the applicant must provide satisfactory evidence of meeting the required physical therapy educational program requirements by submitting documentation that will be considered on a case-by-case basis by the board and pursuant to the following:

(a) for applicants who graduated after January 1, 2002, documentation of graduation with a post-baccalaureate degree in physical therapy from an educational program accredited by CAPTE;

(b) for applicants who graduated prior to January 1, 2002, documentation of graduation with a baccalaureate degree in physical therapy or a certificate in physical therapy from an educational program accredited by CAPTE;

(c) for physical therapist assistant applicants, documentation of graduation from an accredited physical therapist assistant program accredited by CAPTE and approved by the board;

(7) passes the national physical therapy licensure examination (NPTE) (as specified in 16.20.2.8 NMAC); if the applicant has previously taken the NPTE, the testing entity shall send the test scores directly to the board; test scores sent by individuals, organizations or other state boards will not be accepted.

(8) Effective February 1, 2020, all applicants for licensure must submit nationwide and statewide department of public safety (DPS) criminal history screening background check. All applicable application fees associated with the nationwide and statewide criminal history screening background check shall be paid by the applicant.

(a) Applicants will follow the criminal background check process required by the New Mexico department of public safety or its agents.

(b) Applications for exam or endorsement will not be processed without results of a criminal background check.

(c) If the criminal background check reveals a crime of moral turpitude or relevant felony or violation of the New Mexico physical therapy practice act, the applicant will be notified to submit copies of legal documents and other related information to the board that will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

B. For applicants who have not practiced since graduating from a physical therapy education program, or who have not practiced as a physical therapist or physical therapist assistant for a period of more than three consecutive years, full licensure requires fulfilling the following requirements:

(1) satisfactory completion of all application requirements for licensure as provided in Subsection A of 16.20.3.8 NMAC;

(2) provides proof of having taken 15 continuing education contact hours for each year the applicant was not practicing as a physical therapist or physical therapist assistant (coursework to be pre-approved by the board);

(3) provides evidence of additional competency to practice as required by the board.

C. Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license issued by the board/commission:

(1) crimes involving homicide, murder, manslaughter, assisting suicide or resulting in death;

(2) crimes involving human trafficking, or trafficking in controlled substances;

(3) crimes involving kidnapping, false imprisonment, assault, aggravated assault, battery or aggravated battery;

(4) rape, criminal sexual penetration, criminal

sexual contact, incest, indecent exposure, prostitution, or other sexual crimes;

(5) crimes involving great bodily harm, adult abuse, child abuse, neglect, abandonment, stalking, aggravated stalking, custodial interference, unlawful interference with custody, injury to pregnant woman, breaking and entering, damage to property of a household member, or exploitation of a care facility resident's property;

(6) contributing to the delinquency of a minor, unlawful carrying of a deadly weapon on school premises, unlawful carrying of a firearm in an establishment licensed to dispense alcoholic beverages, or a felon in possession of a firearm;

(7) criminal damage to property, damaging insured property, falsely obtaining services or accommodations;

(8) accepting the earnings of a prostitute;

(9) crimes involving the unauthorized distribution of sensitive images, computer abuse or unauthorized computer use;

(10) crimes involving ransom, robbery, larceny, extortion, burglary, sabotage, fraud, forgery, embezzlement, identity theft, credit card fraud, credit card theft, dealing in credit cards of another, unauthorized use of a credit card, receiving or transferring stolen property, money laundering, shoplifting, or stolen vehicles;

(11) crimes involving making a bomb scare, arson, explosives, incendiary devices, facsimile bombs, hoax explosives, deadly weapons, or firearms;

(12) crimes involving seizing or exercising control of a bus by force or violence or by threat of force or violence;

(13) violation of Partial-Birth Abortion Ban Act or the Endowed Care Cemetery Act;

(14) crimes involving the unlawful disposal of, use or sale of an unclaimed body;

(15) intentionally hampering, obstructing, tampering or destroying a monitoring device or a recording made by a monitoring device installed in a facility pursuant to the Patient Care Monitoring Act;

(16) crimes involving the second or subsequent offense of certain prohibited acts of the owner of a dangerous potentially dangerous dog in the Dangerous Dog Act;

(17) crimes involving cruelty to animals, dog fighting, cockfighting, unlawful tripping of an equine causing the maiming, crippling or death of the equine, injury to police dog, police horse or fire dog;

(18) crimes involving the use of telephone to terrify, intimidate, threaten, harass, annoy or offend;

(19) crimes involving the use of any firearm, destructive device or technique capable of causing injury or death to any person with the intent that the knowledge or skill taught, demonstrated or gained be unlawfully used in furtherance of a civil disorder;

(20) violations of the Model State Commodity Code, the Uniform Securities Act, the Mortgage Loan Company Act, the Mortgage Loan Originator Licensing Act, the Savings and Loan Act;

(21) violations of the Election Code or the Indian Arts and Crafts Sales Act;

(22) crimes involving procuring or attempting to procure telecommunications service without paying charge, theft or intentional damage of, communications or public utility equipment, whether customer- or utility-owned, which created a public safety hazard or causes a disruption of communications services or public utility services to ten or more households;

(23) crimes involving bribery, intimidating witnesses, retaliation against a witness, tampering with evidence, tampering with public records,

performing an official act for personal gain, demanding or receiving a bonus, gratuity or bribe, unlawful interest in a contract involving an irrigation district, or receiving profits derived from an unlawful interest in a contract involving an irrigation district, or unlawful interest in a public contract;

(24) crimes involving jury tampering, or impersonating a police officer;

(25) crimes involving escape from custody, community custody release program, jail or penitentiary, fleeing a law enforcement officer;

(26) crimes involving unlawful rescue, procuring escape, or conniving at, aiding or assisting escape of a person confined or held in lawful custody or confinement, or harboring or aiding a felon;

(27) crimes involving furnishing articles for a prisoner's escape, furnishing drugs or liquor to a prisoner, or bringing contraband into a prison or jail;

(28) crimes involving tax evasion or tax fraud;

(29) willful failure to collect and pay over taxes;

(30) crimes involving attempts to evade or defeat any tax;

(31) crimes involving violations of officers or employees engaging in the administration of the property tax who buy property sold for delinquent property taxes that is unlawful;

(32) crimes involving paying or receiving public money for services not rendered;

(33) crimes involving violations of the Cigarette Tax Act, including packaging cigarettes and counterfeit stamps;

(34) crimes involving violations of the Cigarette Enforcement Act;

(35) crimes involving the Credit Union Act;

(36) crimes involving perjury, public assistance, false swearing of oath or affidavit, false voting, falsely obtaining services or accommodations,

falsifying documents, filing false documents, making false statements, making unauthorized withdrawals, issuing a worthless check, obtaining information under false pretenses, or providing the credit bureau information of a consumer to an entity who is not authorized to receive that information;

(37) unlawful dealing in federal food coupons or WIC checks, unlawful use of food stamp identification card or medical identification card;

(38) crimes involving the Medicaid Fraud Act,

(39) failure to reimburse the human services department upon receipt of third party payment;

(40) an act or omission, with intent to defraud, expressly declared to be unlawful by the Banking Act;

(41) crimes involving improper disposition of certain court funds or improper sale, disposal, removal or concealing of encumbered property;

(42) crimes involving the possession of 4 or more incomplete credit cards or machinery, plates or other contrivance;

(43) crimes involving altering or changing engine or other number of a vehicle or motor vehicle;

(44) crimes involving any contractor or subcontractor justly indebted to a supplier of material or labor who accepts payment for construction and knowingly and intentionally applies the proceeds to a use other than paying those persons with whom he contracted;

(45) crimes involving a false public voucher, false reports, uttering or making false statements, paying or receiving public money for services not rendered;

(46) crimes involving unlawful influencing, unlawful sale of a lottery ticket, unlawful representation of a business or individual as a credit union, conducting business as a credit union when not authorized to do so;

(47) crimes involving extortionate extensions of credit or racketeering;

(48) crimes involving the Pyramid Promotional Scheme Act or Antitrust Act;

(49) crimes involving the unlawful request, receipt, or offer to another that is exchanged for the promised performance of an official act, performance of an official act for personal gain or illegal kickbacks;

(50) failing to comply with the registration or verification requirements of the Sex Offender Registration and Notification Act;

(51) crimes involving the practice of medicine, dentistry, optometry or osteopathic medicine without a license or authorization of the appropriate regulating authority;

(52) second or subsequent conviction of Chiropractic Physician Practice Act;

(53) crimes involving certain violations of the Optometry Act;

(54) fourth or subsequent driving under the influence of intoxicating liquor or drugs;

(55) crimes involving controlled substances, including violations of the Controlled Substances Act;

(56) crimes involving violations of the Drug Precursor Act or the Drug, Device and Cosmetic Act;

(57) misuse of public funds;

(58) intent to defraud uses on a public security or instrument of payment;

(59) crimes involving commercial gambling, dealing in gambling devices, possession of an unlicensed or illegal gaming device, or a violation of the Gaming Control Act;

(60) crimes involving a violation of the Horse Racing Act;

(61) crimes involving having possession

with the intent to sell or resell alcoholic beverages that have been manufactured or transported in violation of state law, or manufacturing any spirituous liquor by a person who is not a licensed distiller or rectifier manufacturing;

(62) crimes involving selling or giving alcoholic beverages to minors, and possession of alcoholic beverages to minors, or the manufacture, possession, offering to sell or sale of any alcoholic beverages in the state that are not in accordance with the Liquor Control Act, or other violations of the Liquor Control Act;

(63) willfully attempting to evade or defeat any fee or other payment imposed pursuant to the Professional Athletic Competition Act;

(64) second or subsequent conviction for failing to comply with restrictions imposed by proclamation of the governor under the Riot Control Act during a state of emergency, or failure to comply with proclamation of the governor;

(65) willfully setting on fire or igniting or causing to be set on fire or ignited any building equipment or anything whatsoever at or within any mine when any person is present in such mine when any person is present in such mine at the time, or willfully setting fire upon state lands;

(66) crimes involving a violation of the Procurement Code;

(67) crimes involving a violation of the Governmental Conduct Act; or

(68) an attempt, solicitation, or conspiracy involving any of the felonies in this Subsection.

D. The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection C of this rule.

E. The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question

is one of the disqualifying criminal convictions listed in Subsection C of this rule.

F. Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Physical Therapy Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

G. In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

(1) an arrest not followed by a valid conviction;

(2) a conviction that has been sealed, dismissed, expunged or pardoned;

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.

H. A licensee requesting a name change must submit proof of name change, the original license and a replacement license fee.

I. Foreign educated applicants must meet all requirements for licensure as provided in Subsection A of 16.20.3.8 NMAC as well as those requirements listed in 16.20.9 NMAC.

J. Initial application is valid for a period of 12 months. [16.20.3.8 NMAC - Rp, 16.20.3.8 NMAC, 11/1/2004; A, 3/2/2006; A, 1/12/2008; A, 8/1/2009; A, 8/16/2010; A, 7/27/2017; A, 7/28/2019; A, 2/24/2022; A, 06/27/2023]

**REGULATION
AND LICENSING
DEPARTMENT
RESPIRATORY CARE
PRACTITIONERS, ADVISORY
BOARD OF**

The Regulation and Licensing Department, Advisory Board of Respiratory Care Practitioners, at its 12/09/2022 hearing, to repeal its rule 16.23.1 NMAC, General Provisions, filed 3/10/2022, and replace with 16.23.1 NMAC General Provisions, effective 6/27/2023.

The Regulation and Licensing Department, Advisory Board of Respiratory Care Practitioners, at its 12/09/2022 hearing, to repeal its rule 16.23.3 NMAC, Practitioner License Qualifications, Application, Renewal, and Expiration filed 3/10/2022, and replace with 16.23.3 NMAC Practitioner License Qualifications, Application, Renewal, and Expiration, effective 6/27/2023.

The Regulation and Licensing Department, Advisory Board of Respiratory Care Practitioners, at its 12/09/2022 hearing, to repeal its rule 16.23.5 NMAC, Licensure for Military Service Members, Spouses, Dependent Children, and Veterans filed 3/10/2022, and replace with 16.23.5 NMAC Expedited Licensure, effective 06/27/2023.

**REGULATION
AND LICENSING
DEPARTMENT
RESPIRATORY CARE
PRACTITIONERS, ADVISORY
BOARD OF**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL
LICENSING
CHAPTER 23 RESPIRATORY
CARE PRACTITIONERS
PART 1 GENERAL
PROVISIONS**

**16.23.1.1 ISSUING
AGENCY:** New Mexico Regulation

and Licensing Department in consultation with the Advisory Board of Respiratory Care Practitioners. [16.23.1.1 NMAC - Rp, 16.23.1.1 NMAC, 6/27/2023]

16.23.1.2 SCOPE: The provisions of Part 1 of Chapter 23 apply to all Parts of Chapter 23 and provide relevant information to anyone affected or interested in the licensing and regulation of the practice of respiratory care as set forth in Chapter 23.

[16.23.1.2 NMAC - Rp, 16.23.1.2 NMAC, 6/27/2023]

16.23.1.3 STATUTORY AUTHORITY: Part 1 of Chapter 23 is promulgated pursuant to the Respiratory Care Act Section 61-12B-6 NMSA 1978.

[16.23.1.3 NMAC - Rp, 16.23.1.3 NMAC, 6/27/2023]

16.23.1.4 DURATION: Permanent.

[16.23.1.4 NMAC - Rp, 16.23.1.4 NMAC, 6/27/2023]

16.23.1.5 EFFECTIVE DATE: June 27, 2023, unless a later date is cited at the end of a section.

[16.23.1.5 NMAC - Rp, 16.23.1.5 NMAC, 6/27/2023]

16.23.1.6 OBJECTIVE: The objective of Part 1 of Chapter 23 is to set forth the provisions which apply to all of Title 16, Chapter 23 NMAC of the New Mexico Administrative Code and to all persons and entities affected by Title 16, Chapter 23 NMAC.

[16.23.1.6 NMAC - Rp, 16.23.1.6 NMAC, 6/27/2023]

16.23.1.7 DEFINITIONS: Unless otherwise defined below, terms used in Title 16, Chapter 23 NMAC, have the same meanings as set forth in the Respiratory Care Act or in other cited New Mexico statutes:

**A. Definitions
beginning with "A":**

(1)

"Applicant" means a person who has applied to the department for a temporary permit or a respiratory care practitioner's license.

(2)

"Approval" means the review and acceptance of a specific activity.

(3)

"Approval body" means the agency, institution, or organization with the authorization to award continuing education credit.

(4)

"Approved training and education program" means a program supported by the commission accreditation for respiratory care (COARC), or its predecessor the joint review committee for respiratory therapy education (JRCRTE), or accredited by the commission on accreditation of allied health education programs (CAAHEP), or its successor approval body.

(5) **"Audit"**

means an examination and verification of continuing education documents by the department.

B. Definitions

beginning with "B": "Board" has the same meaning as defined in Subsection A of Section 61-12B-3 NMSA 1978.

C. Definitions

beginning with "C":

(1) **"Clock**

hour" means a unit of measurement to describe a continuing education offering which equals a 60-minute clock hour.

(2)

"Complaint" means a complaint, which has been filed with the department or the board, against a temporary permittee, respiratory care practitioner licensee, or applicant for either permit or license.

(3)

"Complainant" means the party who files a complaint against a temporary permittee, a respiratory care practitioner licensee, or an applicant for either a permit or a license governed by the Respiratory Care Act.

(4)

"Continuing education" or "CE" means a learning experience intended to enhance professional development and includes continuing education units (CEUs) and continuing medical education (CME).

(5)

"Controlled Substances Act" refers

to Section 30-31-1 through Section 30-31-41 NMSA 1978.

(6) **“CRT”**
means certified respiratory therapist. This is the entry level of respiratory care.

(7) **“CRTT”**
means a certified respiratory therapy technician. This is the entry level of respiratory care.

D. Definitions beginning with “D”:

(1)
“Department” has the same meaning as defined in Subsection B of Section 61-12B-3 NMSA 1978.

(2) **“Direct supervision”** means direction and control by a training supervisor over a student extern temporary permittee or a graduate temporary permittee while the permittee is providing respiratory care procedures under the authority of the training supervisor’s license.

(3) **“DME or DME company”** refers to durable medical equipment or companies that provide durable medical equipment in the health care industry.

E. Definitions beginning with “E”:

(1)
“Electronic signature” has the same meaning as defined in Subsection 7 of Section 14-16-2 NMSA 1978.

(2) **“Expired license”** means a license that has not been renewed on or before the end of the license renewal period.

(3)
“Expanded practice” has the same meaning as the definition in Subsection E of Section 61-12B-3 NMSA 1978.

F. Definitions beginning with “F”: **“Facility”** means the employer of a licensed respiratory care practitioner or temporary permit holder.

G. Definitions beginning with “G”:

(1)
“Graduate” means a non-licensed person who has completed an approved respiratory care training program and is employed by a supervisory facility to provide respiratory care for remuneration and

in accordance with the provisions for a temporary permit issued under these regulations.

(2)
“Gratuitous” means to receive no form of payment or remuneration.

H. Definitions beginning with “H”: **“Home care setting”** as it applies to respiratory care, means any facility, including a patient’s home that would usually not employ respiratory care practitioners, specifically those facilities visited by a person from outside the facility to provide respiratory care services.

I. Definitions beginning with “I”:

(1) **“Impaired Health Care Provider Act”** refers to Section 61-7-1 through Section 61-7-12 NMSA 1978.

(2) **“Initial licensure”** means the process of achieving the legal privilege to practice within a professional category upon the completion of educational and other licensing requirements.

J. Definitions beginning with “J”: [RESERVED]

K. Definitions beginning with “K”: [RESERVED]

L. Definitions beginning with “L”:

(1) **“Lapsed license”** means an expired license which has not been reactivated within the time limitations set forth in Section 17 in 16.23.1 NMAC.

(2) **“License”** means a document identifying the legal privilege and authorization to practice within a professional category. In the context of military and veterans applications submitted pursuant to 16.23.5 NMAC, “license” has the same meaning as defined in Paragraph (1) of Subsection F of Section 61-1-34 NMSA 1978.

(3) **“License reactivation”** means the process of making current a license that has expired as a result of failure to comply with the necessary renewal requirements.

(4) **“Licensing period for extern permits”** means a one year period from the date of

issuance to the last day of the same month, one year later.

(5) **“Licensing period for graduate permits”** means six months from the date of application and is not renewable; or until receipt of failing national board of respiratory care (NBRC) registered respiratory therapist (RRT) exam results. Initial applicants who do not become licensed within one year of becoming (NBRC) credentialed are issued a one year graduate permit from the date of application.

M. Definitions beginning with “M”:

(1) **“Medical board”** as it applies to respiratory care, means a group of medical experts that review clinical practice in a facility to assure that the practice of health care meets the standard of care in the health care community.

(2) **“Medical direction”** as it applies to respiratory care, means a prescription or order by a physician authorized to practice medicine or by any other person authorized to prescribe under the laws of New Mexico.

(3) **“Military service member”** has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

N. Definitions beginning with “N”:

(1) **“NBRC”** means the national board for respiratory care, inc.

(2) **“National licensing exam”** means the national examination for respiratory care practitioners administered by the national board for respiratory care resulting in obtaining CRTT, CRT, or RRT credentials.

(3) **“Non-traditional training program”** refers to a respiratory care training program in which a person receives on-the-job training in respiratory care from a supervising medical director, a supervising physician, or a licensed respiratory care practitioner, and in which the trainee may receive compensation while in such a training program.

(4) **“Notice of contemplated action” or “NCA”** means the administrative action provided for by the Uniform Licensing Act, whereby the respondent is given notice of a pending disciplinary action against his or her application, permit or license, based upon violations of the department’s rules and regulations governing the practice of respiratory care or the Respiratory Care Act, which have been alleged in a complaint filed with the department or the board. The respondent is afforded an opportunity for a formal hearing before the department, in consultation with the board.

O. Definitions beginning with “O”: [RESERVED]

P. Definitions beginning with “P”:

(1) **“Prescription”** means an order given individually for the person for whom prescribed, either directly from the prescriber to the person licensed to fill the prescription or indirectly by means of a written order signed by the prescriber.

(2) **“Parental Responsibility Act” or “PRA”** refers to Section 40-5A-1 through Section 40-5A-13, NMSA 1978 (1995 Supp.) herein referred to as the Parental Responsibility Act or PRA.

(3) **“Permittee”** means a person who has been granted a temporary permit by the department, in consultation with the board.

(4) **“Public health emergency”** is an emergency declared pursuant to the All Hazards Emergency Management Act, Sections 12-10-1 to 12-10-21 NMSA 1978, and the Public Health Emergency Response Act, Sections 12-10A-1 to 12-10A-19 NMSA 1978.

(5) **“Public Records Act”** refers to Section 14-3-1 through Section 14-3-25, NMSA 1978.

Q. Definitions beginning with “Q”: [RESERVED]

R. Definitions beginning with “R”:

(1) **“Redacted”** means the act or process of editing or revising the complaint so that the parties, which are the subject of the complaint, are unknown to the board.

(2) **“Reinstatement”** means the process whereby a license that has been subject to revocation or suspension is returned to former status.

(3) **“Respiratory Care Act”** refers to Section 61-12B-1 through Section 61-12B-16, NMSA 1978.

(4) **“Respiratory Care Practitioner” or “RCP”** means a person who is licensed to practice respiratory care in New Mexico.

(5) **“Respiratory Therapy Training Program”** means a program approved by the commission on accreditation of allied health education programs (CAHEP), or its successor approval body.

(6) **“Respondent”** means the permit or license applicant or the temporary permittee or licensed practitioner who is the subject of the complaint.

(7) **“RRT”** means a registered respiratory therapist. This is the advanced level of respiratory care.

S. Definitions beginning with “S”:

(1) **“Student”** means a person enrolled in an approved respiratory care training and education program and who receives *no remuneration* for respiratory care services performed in a supervisory facility as part of an approved respiratory care training program.

(2) **“Student extern”** means a person who is engaged by a supervisory facility to provide respiratory care for remuneration while enrolled in an approved respiratory care training and education program, and in accordance with the provisions for a temporary permit issued under these regulations.

(3) **“Superintendent”** has the same meaning as defined in Subsection I of Section 61-12B-3 NMSA 1978.

(4) **“Supervisory facility”** means the employer of a temporary permit holder.

T. Definitions beginning with “T”:

(1) **“Telemedicine”** means the use of telephonic or electronic communications to provide clinical services to patients without an in-person visit.

(2) **“Traditional training program”** refers to a respiratory care training program that provides classroom instruction and clinical experience only to students or student externs under direct supervision of a licensed and responsible professional.

(3) **“Training supervisor”** means a New Mexico licensed respiratory care practitioner or a New Mexico licensed physician who agrees to be responsible for the respiratory care administered by student externs and graduates while these individuals are employed by a supervisory facility and are being trained there.

U. Definitions beginning with “U”: [RESERVED]

V. Definitions beginning with “V”: [RESERVED]

W. Definitions beginning with “W”: [RESERVED]

X. Definitions beginning with “X”: [RESERVED]

Y. Definitions beginning with “Y”: [RESERVED]

Z. Definitions beginning with “Z”: [RESERVED]
[16.23.1.7 NMAC - Rp, 16.23.1.7 NMAC, 6/27/2023]

16.23.1.8 SEVERABILITY: Should any part or application of Title 16, Chapter 23 NMAC be declared invalid, the remainder shall remain in full force and effect.

[16.23.1.8 NMAC - Rp, 16.23.1.8 NMAC, 6/27/2023]

16.23.1.9 EXCEPTIONS: Title 16, Chapter 23 NMAC does not apply to the following:

A. Other persons and health care providers licensed by appropriate agencies of New Mexico.

B. Persons providing self-care to themselves.

C. Persons who do not represent themselves or hold themselves out to be a respiratory care practitioner who are providing gratuitous care to a friend or family member.

D. Persons who provide respiratory care services in a case of emergency.

E. Title 16 Chapter 23 NMAC does not prohibit the following from performing recognized functions and duties of medical laboratory personnel for which they are appropriately trained and certified.

(1) qualified clinical laboratory personnel working in facilities licensed by the federal Clinical Laboratories Improvement Act of 1967, as amended, or any subsequent act;

(2) persons accredited by the college of American pathologists; or

(3) qualified clinical laboratory personnel who work in facilities accredited by the joint commission on accreditation of health care organizations.

[16.23.1.9 NMAC - Rp, 16.23.1.9 NMAC, 6/27/2023]

16.23.1.10 INSPECTION OF PUBLIC RECORDS: The board operates in compliance with the Inspection of Public Records Act, Section 14-2-1 through Section 14-2-12, NMSA 1978. The board administrator is the custodian of the board's records.

[16.23.1.10 NMAC - Rp, 16.23.1.10 NMAC, 6/27/2023]

16.23.1.11 TELEPHONE CONFERENCES: When it is difficult or impossible for a board member to attend a board meeting in person, the member may participate by means of a conference telephone or similar communications equipment as authorized by the Open Meetings Act, Section 61-15-1, NMSA 1978.

A. Participation by such means shall constitute presence in person at the meeting.

B. Each member participating by conference telephone must be identified when speaking.

C. All participants must be able to hear each other at the same time.

D. Members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting.

[16.23.1.11 NMAC - Rp, 16.23.1.11 NMAC, 6/27/2023]

16.23.1.12 INCOMPLETE APPLICATIONS PURGED:

Incomplete applications for licensure will be purged from board files two years from the date the file is closed.

[16.23.1.12 NMAC - Rp, 16.23.1.12 NMAC, 6/27/2023]

16.23.1.13 LEGAL NAME CHANGE:

If a licensee or permit holder requests a new license or permit, as the result of a legal name change, the department will issue a new license upon receipt of the following:

A. the old license(s) or permit(s);

B. legal proof of the name change;

C. a written request for name change to be made on licensing or permit records; and

D. any applicable fee.

[16.23.1.13 NMAC - Rp, 16.23.1.13 NMAC, 6/27/2023]

16.23.1.14 ADDRESS OR EMPLOYMENT CHANGES:

It is the licensee's or permittee's responsibility to keep the department informed immediately of any changes in contact information.

[16.23.1.14 NMAC - N, 6/27/2023]

16.23.1.15 DUPLICATE LICENSE:

In the event a license or permit is lost or destroyed, the department will issue a duplicate license or permit upon receipt of the following.

A. Notice to the department of the loss by the licensee or permittee.

B. A request for a duplicate.

C. Any applicable fee. [16.23.1.15 NMAC - Rp, 16.23.1.15 NMAC, 6/27/2023]

16.23.1.16 INACTIVE STATUS REQUIREMENTS:

Currently licensed practitioners who are not currently practicing in New Mexico under the terms and provisions authorized by the Respiratory Care Act, or who are working for the federal government, may place their licenses on inactive status at the time of renewal rather than let their licenses expire.

A practitioner's license will be placed on inactive status by the department after the licensee has provided the following:

A. A practitioners license will be placed on inactive status by the department after the licensee has provided the following:

(1) a completed renewal application signed by the applicant under penalty of perjury, on which the "inactive status requested" box has been checked;

(2) documentation verifying that the continuing education requirements were met as set forth 16.23.12 NMAC; and

(3) the applicable fee for inactive status set forth in 16.23.2.8 NMAC.

B. the practitioner must submit the completed renewal application form marked for inactive status with a postmark dated on or before September 30 in order to be processed for inactive status.

C. Upon approval of the inactive status application request, the department will send the licensee notice that the license has been placed on inactive status.

D. Until the inactive status license has been reactivated, the respiratory care practitioner may not practice respiratory care in New Mexico unless employed by the federal government.

E. Inactive status reactivation: The individual who has placed his or her license on inactive status may reactivate the license before September 30 of the next odd-

numbered year by completing the following procedure.

(1) complete, sign, and submit the reactivation application provided by the department; and

(2) payment of any applicable fee for reactivation from inactive status.

F. Upon approval of the reactivation application, the department will issue a reactivated license to the licensee. The license number will remain the same.

G. **Continuing education requirements for reactivation:** For the next renewal cycle, the number of continuing education hours that will be required will depend upon the reactivation date as follows:

(1) **Twenty clock hours per renewal cycle.** If the completed reactivation application is received by the department postmarked *on or before* September 30 of the *even*-numbered year, the number of continuing education hours due at the next renewal (September 30 of the next odd-numbered year) will be 20.

(2) **Ten clock hours per renewal cycle.** If the completed reactivation application is received by the department postmarked on or after October 1 of the *even*-numbered year through May 31 of the odd-numbered year, the number of continuing education hours due at the next renewal (September 30 of the same year) will be 10.

(3) **Zero clock hours.** If the completed reactivation application is approved by the department postmarked on or after June 1 of the *odd*-numbered (renewal) year through July 31 of the same year, the number of continuing education hours due at the next renewal (September 30 of the same year) will be zero.

[16.23.1.16 NMAC - Rp, 16.23.1.16 NMAC, 6/27/2023]

16.23.1.17 LICENSE EXPIRATION AND LAPSE DUE TO NON-RENEWAL: Respiratory care practitioner licenses not renewed

or which have not been placed on inactive status by the end of the renewal cycle will be deemed expired and invalid.

A. The individual who has allowed license expiration, must reactivate the expired license before the next scheduled renewal expiration date for licensed respiratory care practitioners on September 30 of the next odd-numbered year. The applicant must complete the following process in order to reactivate the license.

(1) Complete, sign and submit a reactivation application provided by the department.

(2) Payment of any applicable renewal and reactivate fee.

(3) Proof of 20 clock hours of continuing education required from the renewal cycle.

B. License lapse: An expired license that has not been reactivated before the next scheduled license expiration date of September 30 of the next odd-numbered year, will lapse and become null and void.

(1) Re-licensure required. Before resuming the practice of respiratory care in New Mexico, the individual whose license has lapsed must be approved for licensure by the department.

(2) Application required. The applicant with a lapsed license must repeat the entire initial licensure application process as set forth in 16.23.3 and 16.23.4 NMAC.

[16.23.1.17 NMAC - Rp, 16.23.1.17 NMAC, 6/27/2023]

16.23.1.18 PARENTAL RESPONSIBILITY ACT

COMPLIANCE: Disciplinary action related to compliance with the provisions in the Parental Responsibility Act, Sections 40-5A-1 to 40-5A-13 NMSA 1978, are regulated pursuant to 16.1.1 NMAC, Parental Responsibility Act Compliance.

[16.23.1.18 NMAC - Rp, 16.23.1.18 NMAC, 6/27/2023]

HISTORY OF REPEALED MATERIAL:

16.23.1 NMAC, "Respiratory Care Practitioners - General Provisions", filed 6/6/2000 - Repealed effective 4/21/2022.

16.23.1 NMAC, "Respiratory Care Practitioners - General Provisions", filed 3/10/2022 - Repealed effective 6/27/2023.

Other History: 16.23.1 NMAC, "Respiratory Care Practitioners - General Provisions", (filed 6/6/2000) was replaced by 16.23.1 NMAC, "General Provisions", effective 4/21/2022.

16.23.1 NMAC, "Respiratory Care Practitioners - General Provisions", (filed 3/10/2022) was replaced by 16.23.1 NMAC, "General Provisions", effective 6/27/2023.

**REGULATION AND LICENSING DEPARTMENT
RESPIRATORY CARE PRACTITIONERS, ADVISORY BOARD OF**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 23 RESPIRATORY CARE PRACTITIONERS
PART 3 PRACTITIONER LICENSE QUALIFICATIONS, APPLICATION, RENEWAL, AND EXPIRATION**

16.23.3.1 ISSUING

AGENCY: New Mexico Regulation and Licensing Department in consultation with the Advisory Board of Respiratory Care Practitioners. [16.23.3.1 NMAC - Rp, 16.23.3.1 NMAC, 6/27/2023]

16.23.3.2 SCOPE: The provisions of Part 3 of Chapter 23 apply to all persons applying to the board for a license to practice respiratory care in New Mexico. [16.23.3.2 NMAC - Rp, 16.23.3.2 NMAC, 6/27/2023]

16.23.3.3 STATUTORY AUTHORITY: Part 3 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-6 NMSA 1978. [16.23.3.3 NMAC - Rp, 16.23.3.3 NMAC, 6/27/2023]

16.23.3.4 DURATION: Permanent. [16.23.3.4 NMAC - Rp, 16.23.3.4 NMAC, 6/27/2023]

16.23.3.5 EFFECTIVE DATE: June 27, 2023 unless a later date is cited at the end of a section. [16.23.3.5 NMAC - Rp, 16.23.3.5 NMAC, 6/27/2023]

16.23.3.6 OBJECTIVE: The objective of Part 3 of Chapter 23 is to establish the required qualifications necessary for licensure as a respiratory care practitioner. [16.23.3.6 NMAC - Rp, 16.23.3.6 NMAC, 6/27/2023]

16.23.3.7 DEFINITIONS: All definitions related to this section are in 16.23.1.7 NMAC. [16.23.3.7 NMAC - Rp, 16.23.3.7 NMAC, 6/27/2023]

16.23.3.8 LICENSE REQUIRED TO PRACTICE: The applicant may not engage in the practice of respiratory care in New Mexico until approval for licensure has been given, and the department has issued an initial license. The applicant may not represent or hold him or herself out to be a respiratory care practitioner or RCP without a valid license. [16.23.3.8 NMAC - Rp, 16.23.3.8 NMAC, 6/27/2023]

16.23.3.9 INITIAL LICENSURE REQUIREMENTS: The board only recognizes accreditation by the commission on accreditation for respiratory care (CoARC) or its successor approval body. All references to the national board examinations in this part are to the national board for respiratory care, inc (NBRC) examination. In accordance with Section 61-12B-

7 and Section 61-12B-8, NMSA 1978, and the qualifications set forth therein, the applicant must provide verification of the following:

- A. successful completion of an accredited respiratory care education program;
- B. proof of passing the NBRC examination resulting in credentialing as a registered respiratory therapist or RRT and maintaining a current RRT credential; or
- C. Applicants for licensure must provide the following items of documentation to the department:

- (1) A complete application on forms provided by the board.

- (2) An acceptable form of identification, including the following:

- (a) a document issued by a federal, state, county, or municipal government, or a political subdivision or agency thereof, including, but not limited to, a valid motor vehicle operator’s license that contains the name, date of birth and photo of the person;

- (b) a valid identification card issued to a member of the Armed Forces that includes the person’s name, date of birth, and photo of the person; or

- (c) a valid passport issued by the United States or by a foreign government.

- (3) A copy of an official transcript, certificate or diploma showing completion of an approved respiratory care program or a letter sent directly from the program director prior to matriculation.

- (4) A copy of one of the following documents from the NBRC:

- (a) identification card from the NBRC confirming that the applicant holds a current RRT credential; or

- (b) the examination results showing successful passing of the NBRC, RRT examination if the applicant has not yet received the NBRC certificate;

- (c) a verification letter from the NBRC showing CRT (prior to January 1, of 2018 in New Mexico or another United States jurisdiction), or RRT credential;

(5) Payment applicable.

(6) Verification of licensure, to include any disciplinary history, by all jurisdictions where the applicant is or has ever been licensed.

D. If applicable, those returning to the field and are applying for new licensure shall meet the requirements set in this rule.

E. After the above listed documentation has been reviewed and approved by the department, in consultation with the board, the applicant will be issued a respiratory care practitioner’s license valid until September 30 of the next odd numbered year.

[16.23.3.9 NMAC - Rp, 16.23.3.9 NMAC, 6/27/2023]

16.23.3.10 INITIAL LICENSE TERM AND EXPIRATIONDATE:

A. Initial regular licenses, including initial licenses issued to applicants for expedited licensure, shall be issued for an initial term until September 30 of the next odd numbered year.

B. No initial license, except for provisional license, shall be issued for less than 12 months.

[16.23.3.10 NMAC - N, 6/27/2023]

16.23.3.11 REQUIREMENTS FOR UPGRADING LICENSE

TYPE: Respiratory therapists wanting to upgrade their license type from CRT to RRT must complete an application and submit the required fee.

[16.23.3.11 NMAC - Rp, 16.23.3.11 NMAC, 6/27/2023]

16.23.3.12 ELECTRONIC SIGNATURES:

Electronic signatures will be acceptable for applications submitted pursuant to Section 14-16-1 through 14-16-21 NMSA 1978.

[16.23.3.12 NMAC - Rp, 16.23.3.12 NMAC, 6/27/2023]

16.23.3.13 [RESERVED]

[16.23.3.13 NMAC - Repealed, 6/27/2023]

16.23.3.14 VERIFICATION OF LICENSURE TO EMPLOYER:

A copy of the initial license and any subsequent renewal licenses must be kept on file with the licensee's employer.

[16.23.3.14 NMAC - Rp 16.23.3.14 NMAC, 6/27/2023]

16.23.3.15 PRACTITIONER LICENSE EXPIRATION DATE:

Respiratory care practitioner licenses expire on September 30 of each odd-numbered year.

[16.23.3.15 NMAC - Rp, 16.23.3.15 NMAC, 6/27/2023]

16.23.3.16 RENEWAL OF PRACTITIONER LICENSE,

NOTIFICATION: No less than 45 days prior to the license expiration date, notices and renewal applications will be mailed to the licensee at the address on file with the department.

A. Failure to receive the renewal application notice will not relieve the licensee of the responsibility of renewing the license by the expiration date.

B. It is the licensee's responsibility to request a renewal application if one has not been received.

C. Practitioner licenses shall be renewed by the department, in consultation with the board, only upon receipt of the following:

- (1) a completed renewal application;
- (2) certification of continuing education requirements; and
- (3) proof of current national board of respiratory care (NBRC) credential;
- (4) payment of any applicable fee.

D. Expedited license renewals and fees are issued pursuant to 16.23.5.NMAC.

[16.23.3.16 NMAC - Rp, 16.23.3.16 NMAC, 6/27/2023]

16.23.3.17 RENEWAL

DEADLINE: The deadline for renewal of current respiratory care practitioner licenses is September 30 of each odd-numbered year.

A. September 30 postmark requirement. Completed renewal applications must be postmarked or completed on-line on or before September 30 of the renewal year.

B. Application rejected. Incomplete renewal applications will be rejected by the board.

C. Late renewal. Any renewal application received after September 30 of the renewal year, is expired and must be accompanied by the fee required for reactivation.

[16.23.3.17 NMAC - Rp, 16.23.3.17 NMAC, 6/27/2023]

16.23.3.18 LICENSE EXPIRATION:

A. Respiratory care licenses not renewed by the end of the renewal year will be expired and invalid.

B. Official notification of license expiration may be sent via electronic mail to the last address on file with the department.

C. A person continuing to practice without a valid license is in violation of Section 61-12B-4 NMSA of the Respiratory Care Act, and may be guilty of a misdemeanor. The department may seek civil action against the violator in accordance with Section 61-12B-15 NMSA 1978.

[16.23.3.18 NMAC - Rp, 16.23.3.18 NMAC, 6/27/2023]

HISTORY OF 16.23.3 NMAC:

PRE-NMAC HISTORY: The material in PART 3 was derived from regulations previously filed with the State Records Center and Archives by former department name Health and Environment Department, rule numbers, HED-85-1 (HSD), "Regulations Governing the Respiratory Care Act," filed 1/22/1985; HED-87-3 (HSD), "Regulations Governing the Respiratory Care Act," filed 5/11/1987; by department name

Regulation & Licensing Department, former division name, Boards & Commissions Division rule number BCD 87-3, "Regulations Governing the Respiratory Care Act," filed 12/10/1987; and by department name Regulation and Licensing Department, Respiratory Care Advisory Board rule numbers, Rule 91-2, "Qualifications for Practitioner Licenses," filed 8/20/1991 and Rule 2, "Qualification for Practitioner License," filed 03/22/1995.

HISTORY OF THE REPEALED MATERIAL:

16.23.3 NMAC, "Qualifications for Practitioner License", filed 12/30/2002 - Repealed effective 7/15/2017.

16.23.3 NMAC, "Qualifications for Practitioner License", filed 6/15/2019 - Repealed effective 4/21/2022.

16.23.3 NMAC, Practitioner License Qualifications, Application, Renewal, and Expiration, filed 3/10/2022 - Repealed effective 6/27/2023.

Other History: Rule 2, "Qualification for Practitioner License," filed 3/22/1995 was renumbered, reformatted and replaced into first version of the New Mexico Administrative Code as 16 NMAC 23.3, "Qualifications for Practitioner License", filed 11/10/1997.

16 NMAC 23.3, "Qualifications for Practitioner License", filed 11/10/1997, renumbered and reformatted to 16.23.3 NMAC, "Qualifications for Practitioner License", effective 1/30/2003.

16.23.3 NMAC, "Qualifications for Practitioner License", (filed 12/30/2002) was replaced by 16.23.3 NMAC, "Qualifications for Practitioner License", effective 7/15/2017.

16.23.3 NMAC, "Qualifications for Practitioner License (filed 06/15/2019) was replaced by 16.23.3 NMAC, Practitioner License Qualifications, Application, Renewal, and Expiration, effective 4/21/2022.

16.23.3 NMAC, Practitioner License Qualifications, Application, Renewal, and Expiration (filed 3/10/2022) was replaced by 16.23.3 NMAC,

Practitioner License Qualifications, Application, Renewal, and Expiration, effective 6/27/2023.

**REGULATION
AND LICENSING
DEPARTMENT
RESPIRATORY CARE
PRACTITIONERS, ADVISORY
BOARD OF**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL
LICENSING
CHAPTER 23 RESPIRATORY
CARE PRACTITIONERS
PART 5 EXPEDITED
LICENSURE**

16.23.5.1 ISSUING
AGENCY: New Mexico Regulation and Licensing Department in consultation with the Advisory Board of Respiratory Care Practitioners. [16.23.5.1 NMAC - Rp, 16.23.5.1 NMAC, 6/27/2023.]

16.23.5.2 SCOPE: The provisions in Part 5 of Chapter 23 apply to all applicants for expedited licensure. [16.23.5.2 NMAC - Rp, 16.23.5.2 NMAC, 6/27/2023.]

16.23.5.3 STATUTORY AUTHORITY: Part 5 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-6 NMSA 1978. [16.23.5.3 NMAC - Rp, 16.23.5.3 NMAC, 6/27/2023.]

16.23.5.4 DURATION: Permanent. [16.23.5.4 NMAC - Rp, 16.23.5.4 NMAC, 6/27/2023.]

16.23.5.5 EFFECTIVE DATE: June 27, 2023, unless a later date is cited at the end of a section. [16.23.5.5 NMAC - Rp, 16.23.5.5 NMAC, 6/27/2023.]

16.23.5.6 OBJECTIVE: The objective of Part 5 is to promote, preserve and protect the public health, safety and welfare by regulating and setting professional standards for

applicants for expedited licensure. [16.23.5.6 NMAC - Rp, 16.23.5.6 NMAC, 6/27/2023.]

16.23.5.7 DEFINITIONS:

A. “Eligible jurisdiction” means any state or territory of the United States except those included in the list of disapproved licensing jurisdictions under Paragraph (1) of Subsection A of 16.23.5.8 NMAC of this rule.

B. “Expedited license” means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board/ commission.

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

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

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

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

G. “Qualified applicant” means an applicant who:

(1) holds a current license in good standing in another jurisdiction, as defined by Subsection D of this rule;

(2) does not have a disqualifying criminal conviction, as defined in Subsection A of 16.23.17.10 NMAC of the board’s rules; and

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

H. “Veteran” has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34 NMSA 1978. [16.23.5.7 NMAC - Rp, 16.23.5.7 NMAC, 6/27/2023]

16.23.5.8 LIST OF DISAPPROVED LICENSING JURISDICTIONS; REASONS:

A. Applicants for licensure as a respiratory care practitioners licensed in the following states and territories of the United States shall not be eligible for expedited licensure under Section 61-12B-8 NMSA 1978 of the Respiratory Care Act:

(1) The following jurisdictions on that grounds that the profession is not licensed or otherwise regulated:

- (a) Alaska;
- (b) American Samoa;
- (c) Northern Mariana Islands; and
- (d) U.S. Virgin Islands.

(2) The following jurisdictions, unless the applicant holds a respiratory care practitioner license with NBRC Registered Respiratory Therapist (RRT) credentials, on the grounds that RRT credentials is a minimal qualification for licensure in New Mexico:

- (a) Alabama;
- (b) Arizona;
- (c) Arkansas;
- (d) California;
- (e) Colorado;
- (f) Connecticut;
- (g) Delaware;
- (h) District of Columbia;
- (i) Florida;
- (j) Georgia;
- (k) Hawaii;
- (l) Idaho;
- (m) Illinois;

Indiana;	(n)	Utah;	(qq)	(1) the
Iowa;	(o)	Vermont;	(rr)	matter of the applicant's application
Kansas	(p)	Virginia;	(ss)	shall be submitted to the board for
Kentucky;	(q)	Washington;	(tt)	consideration and action at its next
Louisiana;	(r)	West Virginia;	(uu)	available regular meeting and then
Maine;	(s)	Wisconsin;	(vv)	provided to the superintendent for
Maryland;	(t)	Wyoming;	(ww)	final action;
Massachusetts;	(u)	Puerto Rico; and	(xx)	(2) the
Michigan;	(v)	Guam.	(yy)	license may not be issued within 30
Minnesota;	(w)	[16.2.5.8 NMAC - N, 6/27/2023]		days of submission of the complete
Mississippi;	(x)	16.23.5.9 [RESERVED]		application; and
Missouri;	(y)	[16.23.5.9 NMAC - Repealed,		(3) the
Montana;	(z)	6/27/2023]		superintendent may grant the
Nebraska;	(aa)	16.23.5.10 EXPEDITED		application or refer the matter to an
Nevada;	(bb)	LICENSE APPLICATION:		administrative prosecutor for denial
New Hampshire;	(cc)	A. A candidate for		of the application as provided by the
New Jersey;	(dd)	expedited licensure must submit to		board's rules.
New York;	(ee)	the board a complete application		[16.23.5.10 NMAC – N, 6/27/2023]
North Carolina;	(ff)	containing all of the following:		
North Dakota;	(gg)	(1) A		
Ohio;	(hh)	completed and signed application		
Oklahoma;	(ii)	form.		
Oregon;	(jj)	(2) Proof of		
Pennsylvania;	(kk)	current unrestricted licensure in good		
Rhode Island;	(ll)	standing held by the applicant in an		
South Carolina;	(mm)	eligible jurisdiction(s).		
South Dakota;	(nn)	(3) Payment of		
Tennessee;	(oo)	the required application fee.		
Texas;	(pp)	B. An expedited		
		license application shall not be		
		deemed complete until the applicant		
		has submitted and the board's staff		
		is in receipt of all of the materials,		
		including documentation from third		
		parties, required by subsection A.		
		C. Upon receipt of a		
		complete application, the board's staff		
		shall process the application and issue		
		the expedited license to a qualified		
		applicant within 30 days.		
		D. If the applicant		
		has a potentially disqualifying		
		criminal conviction or the board or		
		superintendent may have other cause		
		to deny the application pursuant to		
		61-12B-12 NMSA 1978:		

**16.23.5.11 EXPEDITED
LICENSURE APPLICATION
FOR MILITARY SERVICE
MEMBERS, SPOUSES AND
VETERANS:**

A. A candidate for expedited licensure must submit to the board a complete application containing all of the following:

- (1) a completed and signed application form;
- (2) proof of current license in good standing in another jurisdiction, including a branch of the United States armed forces; and
- (3) submission of the following documentation:

(a) for military service member: a copy of military orders;

(b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(d) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal

tax return or other governmental or judicial documentation establishing dependency; or

(e)

for veterans (retired or separated), proof of honorable discharge, such as a copy of DD Form 214, DD Form 215, DD Form 256, DD Form 257, NGB Form 22, military ID card, driver’s license or state ID card with a veteran’s designation, or other documentation verifying honorable discharge.

B. An expedited license application shall not be deemed complete until the applicant has submitted and the board’s staff is in receipt of all of the materials, including documentation from third parties, required by Subsection A.

C. Upon receipt of a complete application, the board’s staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

D. If the applicant has a potentially disqualifying criminal conviction or the board or superintendent may have other cause to deny the application pursuant to Section 61-12B-12 NMSA 1978.

(1) the matter of the applicant’s application shall be submitted to the board for consideration and action at its next available regular meeting and then provided to the superintendent for final action;

(2) the license may not be issued within 30 days of submission of the complete application; and

(3) the superintendent may grant the application or refer the matter to an administrative prosecutor for denial of the application as provided by the board’s rules.

E. A military service member or veteran who is issued an expedited license shall not be charged any initial licensing fees or renewal fees for the first three years of licensure with the board.
[16.23.5.11 NMAC - N, 6/27/2023]

16.23.5.12 EXPEDITED LICENSE BY ENDORSEMENT; DURATION AND RENEWAL:

A. An expedited license shall be valid for the same length of time as a regular license issued by the board.

B. A licensee holding an expedited license may apply for license renewal in the manner provided by the board’s rules.

C. Upon renewal, the board shall issue a regular license to a licensee holding an expedited license issued pursuant to these rules.
[16.23.5.12 NMAC N, 6/27/2023]

HISTORY OF 16.23.5 NMAC: [RESERVED]

HISTORY OF REPEALED MATERIAL:

16.23.5 NMAC, “Licensure For Military Service Members, Spouses, Dependent Children, And Veterans”, filed 6/15/2017 - Repealed effective 04/21/2022.

16.23.5 NMAC, “Licensure For Military Service Members, Spouses, Dependent Children, And Veterans”, filed 3/10/2022 - Repealed effective 6/27/2023.

Other History: 16.23.5 NMAC, “Licensure For Military Service Members, Spouses, Dependent Children, And Veterans”, filed 6/15/2017 was replaced by 16.23.5 NMAC, “Licensure For Military Service Members, Spouses, Dependent Children, And Veterans”, effective 04/21/2022.
16.23.5 NMAC, “Licensure For Military Service Members, Spouses, Dependent Children, And Veterans”, filed 3/10/2022 - Replaced by 16.23.5 NMAC, “Expedited Licensure” effective 6/27/2023.

REGULATION AND LICENSING DEPARTMENT RESPIRATORY CARE PRACTITIONERS, ADVISORY BOARD OF

This amendment is to 16.23.2 NMAC, Section 8, effective 6/27/2023.

16.23.2.8

ADMINISTRATIVE FEES: In accordance with Subsection A of Section 61-12B-11 NMSA 1978, of the New Mexico Respiratory Care Act, the board establishes the following nonrefundable fees.

A. Application fees:

(1) initial application and practitioner license [~~fee one hundred fifty dollars (\$150.00)~~] \$150.00;

(2) initial application temporary student extern permit [~~fifty dollars (\$50.00);~~] \$50.00;

(3) initial application and graduate permit [~~one hundred dollars (\$100.00)~~] \$100.00;

(4) practitioner reactivation from inactive status [~~fifteen dollars (\$15.00)~~] \$15.00;

(5) practitioner reactivation from expired status [~~two hundred fifty dollars (\$250.00)~~] \$250.00;

(6) credential upgrade from certified respiratory therapist (CRT) to registered respiratory therapist (RRT) [~~twenty-five dollars (\$25.00)~~] \$25.00.

B. [annual renewal] Renewal fees:

(1) active respiratory care practitioner license [~~one hundred fifty dollars (\$150.00)~~] \$150.00;

(2) inactive respiratory care practitioner license [~~thirty dollars (\$30.00)~~] \$30.00;

(3) temporary student extern permit [~~fifty dollars (\$50.00)~~] \$50.00.

C. miscellaneous fees [~~listed below will be approved annually by the board and made available by the board office upon request~~]:

(1) photocopying \$0.25;

(2) written license verifications [~~fifteen dollars (\$15.00)~~] \$15.00;

(3) list of licensees [~~fifty dollars (\$50.00)~~] \$50.00;

(4) duplicate licenses/permit [~~twenty-five dollars (\$25.00)~~] \$25.00;

~~[(5) upgrade from a CRT to an RRT twenty-five dollars (\$25.00);~~

~~[(6) copies of statutes, rule and regulations are free online at the board website.]~~

[16.23.2.8 NMAC - Rp, 16.23.2.8 NMAC, 7/15/2017; A, 04/21/2022; A, 6/27/2023]

SECRETARY OF STATE, OFFICE OF THE

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS PART 36 ELECTION FUND GRANTS, REIMBURSEMENTS AND REPORTING

1.10.36.1 ISSUING

AGENCY: Office of the Secretary of State.

[1.10.36.1 NMAC - N, 7/1/2023]

1.10.36.2 SCOPE:

This rule applies to any statewide elections required by the Election Code.

[1.10.36.2 NMAC - N, 7/1/2023]

1.10.36.3 STATUTORY

AUTHORITY: Section 1-11-19 NMSA 1978; Section 1-2-1 NMSA 1978.

[1.10.36.3 NMAC - N, 7/1/2023]

1.10.36.4 DURATION:

Permanent

[1.10.36.4 NMAC - N, 7/1/2023]

1.10.36.5 EFFECTIVE

DATE: July 1, 2023, unless a later date is cited at the end of a section.

[1.10.36.5 NMAC - N, 7/1/2023]

1.10.36.6 OBJECTIVE:

To establish the procedure for election grants, reimbursements and reporting between the secretary of state and county clerks for the purposes of paying the costs of conducting and administering statewide elections required by the Election Code.

[1.10.36.6 NMAC - N, 7/1/2023]

1.10.36.7 DEFINITIONS:

A. "Compensation for poll workers, election board members, and messengers"

means the compensation to members of an election board on Election Day and members of an election board and messengers assigned to alternate voting or alternate mobile voting locations or absent voter precincts, provided that:

(1) Election board members on Election Day shall be compensated up to \$400 pursuant to Section 1-2-16 NMSA 1978. Compensations for training provided prior to Election Day is not subject to the \$400 statutory limitation.

(2) Members of an election board and messengers assigned to alternate voting or alternate mobile voting locations, monitored secured containers, or absent voter precincts shall be compensated no less than the minimum wage of the state of New Mexico and no more than double the minimum wage of the state of New Mexico.

B. "Election equipment" means tabulators, ballot on demand systems, same-day voter registration tablets, and ancillary equipment used to cast and count votes, designed to print or to make ballots at a polling location, or considered a component of a voting system under Section 1-9-1 NMSA 1978 and includes:

(1) The number of tabulators pursuant to Section 1-9-7 NMSA 1978

(2) The number of ballot on demand systems pursuant to the formula developed by the secretary of state pursuant to Section 1-9-5 NMSA 1978.

C. "Eligible expenses" means expenditures necessary for conducting and administering statewide elections or post-election canvass as statutorily required by the Election Code and include:

(1) All necessary and reasonable expenses incurred by a county clerk for compliance with the Native American Voting Rights Act, including the costs

of election equipment, translation, and personnel for polling places and monitored secured containers on Indian nation, tribal, or pueblo land.

(2) Ballot and ballot permit paper.

(3) Compensation for poll workers, election board members, and messengers.

(4) Election equipment.

(5) Election supplies.

(6) Election publications as required by the Election Code.

(7) Language interpreters.

(8) Office supplies.

(9) Postage.

(10) Recount costs.

(11) Tabulator delivery.

(12) Tabulator programming.

(13) Vendor support.

D. "Election supplies" means supplies necessary for conducting and administering statewide elections statutorily required by the Election Code and include test decks for the purposes of certifying voting machines.

E. "Ineligible expenses" means expenditures that are not necessary and reasonable for the administration of a statewide election or post-election canvass as determined by the secretary of state.

F. "Office supplies" means consumable office supplies purchased for conducting and administering statewide elections as required by the Election Code. Such supplies are limited to items required to conduct the election and post-election canvass including paper, ballot marking pens, pencils, paperclips, staples etc.

[1.10.36.7 NMAC - N, 7/1/2023]

1.10.36.8 MEMORANDUMS OF UNDERSTANDING:

A. The secretary of

state shall provide memorandums of understanding (MOUs) to each county for the granting of funds to cover eligible expenses for a statewide election at least ninety days prior to election day.

B. The secretary of state and county clerks shall finalize and sign MOUs at least 60 days prior to Election Day.

C. Should a MOU between the secretary of state and a county clerk fail to be finalized 60 days prior to an election, counties shall only be reimbursed for eligible expenses as outlined in 1.10.36 NMAC and will only be reimbursed upon finalization of an executed MOU.

D. The secretary of state is not responsible for entering into MOUs for the administration of the municipal officer election occurring in even-numbered years. However, county clerks may finalize and sign MOUs with municipalities participating in those elections.

E. The secretary of state is not responsible for entering into MOUs for the administration of special elections. However, county clerks may finalize and sign MOUs with local public bodies participating in those elections.
[1.10.36.8 NMAC - N, 7/1/2023]

1.10.36.9 ADDITIONAL AND INELIGIBLE EXPENSES:

A. If election costs incurred to a county exceed the initial amount provided through a MOU, the county may request reimbursement no later than 45 days after a statewide election using a prescribed form provided by the secretary of state with a description detailed enough to directly associate the expense to the election. Additional costs are not guaranteed to be reimbursed but shall be reimbursed by the secretary of state if they are determined to be eligible expenses as outlined in 1.10.36.7 NMAC.

B. The secretary of state shall not reimburse ineligible expenses. The secretary of state shall utilize historical data including voter turnout to make determinations

regarding eligibility of expenses.
[1.10.36.9 NMAC - N, 7/1/2023]

1.10.36.10 REPORTING REQUIREMENTS:

A. Each county clerk shall file a report of expenditures with the secretary of state no later than 45 days after a statewide election for timely reimbursement and/or accounting. The report shall include an official form provided by the secretary of state as well as descriptions with a description detailed enough to directly associate the expense to the election with line-item reporting of expenditures incurred such that the secretary of state can reconcile each expense by counties during the election.

B. County clerks shall return any unused funds via physical check made out to the office of the secretary of state no later than 45 days after a statewide election.

C. If a county clerk does not file expenditure reports by the deadline established in Section A of 1.10.36.10 NMAC, the county shall be reimbursed after a report is filed and as funds become available for reimbursement.
[1.10.36.10 NMAC - N, 7/1/2023]

HISTORY OF 1.36.11 NMAC: [RESERVED]

SECRETARY OF STATE, OFFICE OF THE

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS PART 37 PUBLIC OFFICIAL HOME ADDRESS CONFIDENTIALITY

1.10.37.1 ISSUING AGENCY: Office of the Secretary of State.
[1.10.37.1 NMAC - N, 7/1/2023]

1.10.37.2 SCOPE: This rule applies to the secretary of state,

county clerks and public officials.
[1.10.37.2 NMAC - N, 7/1/2023]

1.10.37.3 STATUTORY AUTHORITY: Section 1-2-1 NMSA 1978; Section 10-16A-9 NMSA 1978; Chapter 39 of New Mexico Laws of 2023

[1.10.37.3 NMAC - N, 7/1/2023]

1.10.37.4 DURATION: Permanent

[1.10.37.4 NMAC - N, 7/1/2023]

1.10.37.5 EFFECTIVE DATE: July 1, 2023, unless a later date is cited at the end of a section.
[1.10.37.5 NMAC - N, 7/1/2023]

1.10.37.6 OBJECTIVE: To establish procedures for the secretary of state and county clerks for the non-disclosure of home addresses for public officials on election- and financial- related records.
[1.10.37.6 NMAC - N, 7/1/2023]

1.10.37.7 DEFINITIONS:

A. "Election-related disclosures" means records pertaining to a public official for campaign or election purposes and include nominating petitions, candidacy declarations, designations of confidential home address forms and voter registration forms.

B. "Financial-related disclosures" means records filed with a county clerk or secretary of state and includes disclosures pursuant to the Financial Disclosure Act, Chapter 10, Article 16A NMSA 1978, and the Campaign Reporting Act, Chapter 1, Article 19 NMSA 1978.

C. "Public official" means a person elected or appointed to a state, county or local office or a candidate thereof or a person appointed to a state, county or local government position.

D. "Designated confidential address" means the address specified by a public official for non-disclosure on the designation of confidential home address form prescribed by the secretary of state, provided that the zip code of the

address remains publicly available.
[1.10.37.7 NMAC - N, 7/1/2023]

1.10.37.8 CONFIDENTIAL HOME ADDRESS DESIGNATION:

A. A public official may submit a request for designation of confidential home address using a form prescribed by the secretary of state. A copy of the form shall be forwarded to the county clerk of the county in which the official is registered to vote within seven business days of submission.

B. After the initial request, a public official with designated confidential home addresses shall resubmit a confidential home address form every two years by February 1 of that calendar year to the secretary of state in order to maintain a confidential designation. A copy of the form shall be forwarded to the county clerk of the county in which the official is registered to vote within seven business days of submission.

C. Using a form prescribed by the secretary of state, a candidate for state, county or local office may file a designation of confidential home address with the proper filing officer when filing a declaration of candidacy. In cases where the county clerk is the proper filing officer, the county clerk shall send a copy of the designation to the secretary of state within one business day of the filing. In cases where the secretary of state is the proper filing officer, the secretary of state shall send a copy of the designation to the county clerk of the county where the candidate is registered to vote within one business day of the filing.

D. A designation of confidential home address for a public official shall be void upon failure to be elected to a state, county or local office.

E. Upon submission of a request for designation of confidential home address, the public official shall provide a mailing address other than the confidential home address which shall be substituted on all election- and financial - related disclosures.

F. The secretary of state shall maintain a list of public officials who have designated confidential addresses, and the list shall be accessible by county clerks.

G. The home address of the public official shall not be publicly disclosed or published on a governmental website so long as a current request for designation of confidential home address has been filed and the public official maintains their status as a public official, or unless such request for designation is otherwise withdrawn in writing by the public official on a form prescribed by the secretary of state.

[1.10.37.8 NMAC - N, 7/1/2023]

1.10.37.9 PRESERVATION OF ORIGINAL RECORDS:

A. Original election- and financial- disclosures that contain a designated confidential address shall be preserved by the secretary of state and county clerks for the purposes of any potential judicial review.

B. Original election- and financial- disclosures that contain a designated confidential address shall not be redacted. When such records are requested by the public, a copy shall be provided, and the confidential address shall be redacted, except for the zip code, on the copy of the disclosure.

[1.10.37.8 NMAC - N, 7/1/2023]

HISTORY OF 1.10.37.10 NMAC: [RESERVED]

**SECRETARY OF STATE,
OFFICE OF THE**

This is an amendment to 1.10.27 NMAC, Section 7 and adding a new Section 12, effective 7/1/2023.

1.10.27.7 DEFINITIONS:

A. “Applicant candidate” means a candidate who is running for a covered office and who is seeking to be a certified candidate in a primary or general election.

B. “Certified candidate” means a candidate running for a covered office who

chooses to obtain financing pursuant to the Voter Action Act and is certified as a Voter Action Act candidate. An applicant candidate becomes a certified candidate upon submittal and the secretary of state determination under Sections 1-19A-4 to 1-19A-6 NMSA 1978.

C. “Election cycle” means ~~[the primary and general elections for the same term for the covered office. The first day of the primary election is the first day of the election cycle and ends on the primary election date. The first day of the general election is first day after the primary election and ends on the general election date.]~~ the period beginning on January 1 after the last general election and ending on December 31 after the general election.

[1.10.27.7 NMAC - N, 9/30/2005; A, 10/15/2007; A, 7/1/2023]

1.10.27.12 ELECTRONIC FUND TRANSFER:

A. Pursuant to Subsection I of Section 1-19A-2 NMSA 1978, qualifying contributions may be accepted by the candidate via an electronic form of payment. The following kinds of electronic transactions may be accepted by the candidate: debit and credit card, direct bank to bank transfers or online or mobile payment services such as PayPal, Apple Pay, Google Pay, or Venmo.

B. The qualifying candidate may only accept a qualifying contribution made by a credit card or a debit card via the internet or where the card is not physically present if, at the time the qualifying contribution is made, the contributor provides the card security code assigned to and printed or imprinted on the card and the billing address associated with the card.

C. The candidate or their representative may accept an electronic fund transfer (“EFT”) but the qualifying contribution shall be kept separate from the candidate’s bank account established pursuant to the Campaign Reporting Act. A dedicated bank account shall be

created by the candidate's campaign committee to accept the electronic transfer of funds for purposes of collecting qualifying contributions.

D. The candidate shall collect a qualifying contribution receipt as is used for other forms of payment.

E. If the EFT service provider collects a transaction fee, the qualifying candidate shall provide an accounting of the transaction fee on the qualifying contribution receipt.

F. At the time of the qualifying appointment with the secretary of state, the qualifying candidate shall submit a check that includes all electronic payments received, payable to the public election fund. Based upon the information on the qualifying receipts and the total amount of the check, the secretary of state shall verify that the qualifying contributions minus any transaction fees have been accounted for.

G. Additionally, the qualifying candidate shall submit a separate check, payable to the public election fund, to reimburse the fund for any transaction fees deducted from the qualifying contribution by the EFT service provider. The qualifying candidate shall also report this expense as an expenditure of the campaign on the report required pursuant to the Campaign Reporting Act.

[1.10.27.12 NMAC - N, 7/1/2023]

End of Adopted Rules

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Other Material Related to Administrative Law

ETHICS COMMISSION**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The State Ethics Commission gives Notice of a Minor, Nonsubstantive Correction to 1.8.1 NMAC.

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

Renumbered Section 14: Corrected the section number from "1.8.14" to "1.8.1.14 NMAC".

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

**REGULATION
AND LICENSING
DEPARTMENT
OCCUPATIONAL THERAPY,
BOARD OF EXAMINERS FOR**
**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Board of Examiners for Occupational Therapy gives Notice of a Minor, Nonsubstantive Correction to 16.15.2 NMAC and 16.15.7 NMAC.

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

16.15.2 NMAC

Section 19: The strikethrough and bracket was removed from the part number and history note. The part number is RESERVED and was kept and the history note was corrected to show section was Repealed, effective 6/27/2023.

16.15.7 NMAC

Section 5: Corrected effective date from "June 14, 1997" to "June 27, 2023".

Section 12: In Subsection A, Paragraph (3), changed numbering for subparagraphs from (i) thru (v) to (a) thru (e), to conform to correct legislative style. In Subsection D, the statutory citation for Section 61-12A-22 NMSA 1978 was corrected to conform with correct legislative style.

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

**REGULATION
AND LICENSING
DEPARTMENT
PHYSICAL THERAPY BOARD**
**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Physical Therapy Board gives Notice of a Minor, Nonsubstantive Correction to 16.20.2 NMAC and 16.20.12 NMAC.

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

16.20.2 NMAC

Section 10: In Subsection B, corrected percentages "80%" and "100%" to "eighty percent" and "one hundred percent", to conform to correct legislative style, respectfully.

16.20.12 NMAC

Section 5: Corrected effective date from "September 30, 2014" to "June 27, 2023".

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

**REGULATION
AND LICENSING
DEPARTMENT
RESPIRATORY CARE
PRACTITIONERS, ADVISORY
BOARD OF**
**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The New Mexico Regulation and Licensing Department in consultation with the Advisory Board of Respiratory Care Practitioners gives Notice of a Minor, Nonsubstantive Correction to 16.23.3 NMAC and 16.23.5 NMAC.

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

16.23.3 NMAC

Section 9: Corrected subsection numbers from "E" and "F" to "D" and "E", respectfully.

16.23.5 NMAC

Section 5: Corrected effective date from "January 27,

2023” to “June 27, 2023”.

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

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

2023 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXIV, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 5	January 18
Issue 2	January 19	January 31
Issue 3	February 2	February 14
Issue 4	February 16	February 28
Issue 5	March 2	March 14
Issue 6	March 16	March 28
Issue 7	March 30	April 11
Issue 8	April 13	April 25
Issue 9	May 4	May 16
Issue 10	May 18	May 31
Issue 11	June 1	June 13
Issue 12	June 15	June 27
Issue 13	July 7	July 18
Issue 14	July 20	July 31
Issue 15	August 3	August 15
Issue 16	August 17	August 29
Issue 17	August 31	September 12
Issue 18	September 14	September 26
Issue 19	September 28	October 10
Issue 20	October 12	October 24
Issue 21	October 26	November 7
Issue 22	November 9	November 21
Issue 23	November 22	December 5
Issue 24	December 7	December 19

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