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# New Mexico Register

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

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## **The New Mexico Register**

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# New Mexico Register

Volume XXXI, Issue 17

September 15, 2020

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## Notices of Rulemaking and Proposed Rules

### GAME AND FISH DEPARTMENT

#### STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission (“Commission”) will be hosting a virtual meeting and rule hearing on Friday, October 16, 2020 beginning at 9:00 a.m. For instructions on how to virtually attend this meeting, visit the Department’s website at <http://www.wildlife.state.nm.us/commission/webcast/>. The purpose of this meeting is to hear and consider action as appropriate on the following: presentation of proposed changes to the Hunter Education rule.

#### **Synopsis:**

The proposal is to amend the Hunter Education rule, 19.36.3 NMAC, which will become effective January 1, 2021.

The proposed new rule will include changes to reduce the minimum age to participate in the Mentored-Youth Hunting Program from 10 to 8 years of age, add pronghorn antelope to allowable species Mentored-Youth may hunt and make minor spelling corrections.

A full text of changes will be available on the Department’s website at: [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us).

Interested persons may submit comments on the proposed changes to the Hunter Education rule at [lance.cherry@state.nm.us](mailto:lance.cherry@state.nm.us); or individuals may submit written comments to the physical address below. Comments are due by 8:00 a.m. on October 15, 2020. The final proposed rule will be voted on by the Commission during a virtual public meeting on October 16, 2020. Interested persons may also provide data, views or arguments, orally or in writing, at the virtual public rule hearing to be held on October 16, 2020.

Full copies of text of the proposed new rule, technical information related to proposed rule changes, and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, Santa Fe, New Mexico 87507, or from the Department’s website at [www.wildlife.state.nm.us/commission/proposals-under-consideration/](http://www.wildlife.state.nm.us/commission/proposals-under-consideration/). This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director’s Office at (505) 476-8000, or the Department’s website at [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us) for updated information.

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 meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

Legal authority for this rulemaking can be found in the General Powers and Duties of the State Game Commission 17-1-14, et seq. NMSA 1978; Commission’s Power to establish rules and regulations 17-1-26, et seq. NMSA 1978.

### HEALTH, DEPARTMENT OF

#### NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the proposed repeal and replacement of rule, 16.11.2 NMAC, “Certified Nurse-Midwives”. The public hearing will be held on October 26, 2020 at 9:30 a.m.

via Cisco WebEx online, via telephone, and, comments will be received via email through the conclusion of the hearing.

The hearing is being held via internet, email and telephonic means due to the concerns surrounding Coronavirus and in accord with Governor Michelle Lujan Grisham’s Executive Order 2020-004, Declaration of a Public Health Emergency, and any subsequent executive orders, and various the Public Health Emergency Orders limiting mass gatherings due to COVID-19.

The hearing will be conducted to receive public comments regarding the proposed repeal and replacement of the current rule, 16.11.2 NMAC, concerning the licensing, scope of practice, and disciplining of certified nurse midwives, including amendments and change to the following rule parts:

1. Amended Subsection A of 16.11.2.10 NMAC scope of practice for a certified nurse midwife to include treatment of “clients” replacing the term “male partners” for sexually transmitted infections.
2. Amended 16.11.2.7 NMAC to add definitions for electronic professional licensing management system, lapsed license, opioid antagonist, reactivation and reinstatement.
3. Amended Subsection C of 16.11.2.9 NMAC on the timing of when renewal applications are due.
4. Amended Paragraph (3) of Subsection B of 16.11.2.10 NMAC to add that controlled substances can now be prescribed electronically.
5. Added a reference in Subsection (k) of Paragraph (2) of Subsection C of 16.11.2.10 NMAC that a CNM shall comply with opioid antagonist prescribing practices as set forth in the New Mexico Pain Relief Act.
6. Amended 16.11.2.10 NMAC to add Section E, a requirement for immediate reporting of a neonatal or maternal mortality for those CNMs

who work in a setting other than a licensed health facility.

7. Amended Paragraph (5) of Subsection A of 16.11.2.11 NMAC and Paragraph (6) of Subsection A of 16.11.2.11 NMAC to clarify grounds for disciplinary action involving a felony offense and added misdemeanor offense as grounds for disciplinary action.

The legal authority authorizing the proposed repeal and replacement of the rule by the Department is at Subsection E of Section 9-7-6 NMSA 1978, Subsections S and V of Section 24-1-3 NMSA 1978, and 24-1-4.1 NMSA 1978. A free copy of the full text of the proposed rule can be obtained from the Department's website at <https://nmhealth.org/publication/regulation/>.

Any interested member of the public may attend the hearing and offer public comments on the proposed rule during the hearing. To access the hearing by telephone: please call 1-408-418-9388. Your telephone comments will be recorded. To access the hearing via internet: please go to Webex.com; click the "Join" button; click the "Join a meeting" button; enter the following meeting number and password where indicated on screen-Meeting number (access code): 146 939 8411 #, Meeting password: uP3p72ja5tG; click the "OK" button. You may also provide comment via Chat during the live streaming.

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

Written public comments may also be submitted to the mailing address shown below. Please submit any written comments regarding the proposed rule to the attention of:

Catherine Avery  
Maternal Health Program Manager

Family Health Bureau/Public Health Division  
2040 S. Pacheco (Colgate Building)  
Santa Fe, New Mexico 87505  
Catherine.Avery@state.nm.us  
(505) 476-8866

All written comments will be published on the agency website at <https://nmhealth.org/publication/regulation/> within 3 days of receipt, and will be available at the New Mexico Department of Health Office of General Counsel for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Sheila Apodaca by telephone at (505) 827-2997. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

## PUBLIC REGULATION COMMISSION

### NOTICE OF PROPOSED RULEMAKING CASE NO. 20-00159-UT

The New Mexico Public Regulation Commission (the "commission") gives notice of its initiation of a proposed rulemaking to repeal and replace **17.9.560, 17.10.650 and 17.12.760 NMAC**. The rules which may be adopted as the final rules in this proceeding may include all, part, or none of the language in the proposed rules issued by the commission. The commission may also consider alternative proposals for amending or replacing the current rules.

#### Concise statement of proposed rules:

The commission is considering repealing and replacing rules 17.9.560, 17.10.650 and 17.12.760 NMAC to prohibit the discontinuation of residential customer public utility service during the time period of the Governor's Executive Orders related to the COVID-19 pandemic

are in effect and to bring the rules into NMAC2 format. As part of this repeal and replacement process the commission is considering changes to sections of the rules regarding discontinuation of residential utility services. In particular, the commission is considering changes that would ensure that public utilities subject to the jurisdiction of the New Mexico Public Regulation Commission, specifically investor owned electric utilities, rural electric cooperatives, gas utilities and water utilities, are prohibited from the disconnection of the utility service of residential customers for non-payment during the period of time the Governor of the State of New Mexico's Executive Orders related to the COVID-19 pandemic are in effect.

#### Constitutional and statutory authority:

New Mexico Constitution, Article XI, Section 2; the New Mexico Public Utility Act, Sections 62-3-1 et seq., NMSA 1978; and the Public Regulation Commission Act, Section 8-8-1 through 8-8-21 NMSA 1978, Paragraph (10) of Subsection B of Section 8-8-4 NMSA 1978.

A copy of the full text of the proposed rules may be obtained from the Rulemaking Proceedings section of the Commission's website at <http://www.nmprc.state.nm.us> under Case No. 20-00159-UT or by calling Isaac Sullivan-Leshin in the Office of General Counsel at (505) 670-4830.

Written initial comments and written response comments shall be filed by the deadlines below. Currently, due to the COVID-19 pandemic and orders of the governor pertaining thereto, the commission has adopted emergency electronic filing procedures, which may or may not be in place at the time that comments are filed in this docket. In the alternative, the commission may revert to the filing procedures in place before the emergency electronic filing procedures were instituted, in which case such filings shall be made with the commission's records bureau at P.O. Box 1269, Santa Fe, NM 87504-1269. For information

as to how to file at the time of filing, please contact Melanie Sandoval, the commission's records bureau chief at [melanie.sandoval@state.nm.us](mailto:melanie.sandoval@state.nm.us) or (505) 827-6968. Written comments shall be filed no later than **October 16, 2020**. Comments shall refer to Case No. 20-00159-UT. All written comments will be posted on the commission's website within three days of their receipt by the records bureau.

A public hearing will be held on **October 21, 2020 at 9:00 a.m.** which shall be accomplished through Zoom. Instructions on how to connect will be posted on the NMPRC home webpage at <http://www.nmprc.state.nm.us> prior to the hearing. The purpose of the hearing is to receive oral comments. Because commenters are afforded the opportunity to submit written comments to the Commission, any individual who wants to provide oral comments shall be limited to five minutes to express those comments, subject to the Commission's discretion. The Commission may also determine that a spokesperson be designated to speak on behalf of an organization, a group, or a group of individuals that shares the same message or seeks the same goals, in order to maximize the efficiency of the public comment hearing. No testimony or other evidence will be taken at the hearing as this is a rulemaking proceeding.

The record of this case will close on October 21, 2020.

Any person with a disability requiring special assistance in order to participate in the hearing should contact Mr. Bradford Borman at (505) 827-4048 at least 48 hours prior to the commencement of the hearing.

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**REGULATION AND  
LICENSING DEPARTMENT  
PHARMACY, BOARD OF**

**NOTICE OF REGULAR BOARD  
MEETING AND RULE HEARING**

The New Mexico Board of Pharmacy will convene for the purpose of conducting a regular board meeting on October 22nd at 9:00 a.m. and continue until finished. If the meeting agenda items are not finished by 5:00 p.m., the Board will convene on October 23rd at 9:00 a.m. and continue until finished. Pursuant to the June 12, 2020 Public Health Order restricting Mass Gatherings due to COVID-19, the meeting will be held as a virtual meeting.

Location: Virtual meeting

October 22, 2020

Meeting link: <https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e873be62b2c838388cc3d9accd04b02a8>

Meeting number: 146 976 0229

Password: F2pm6KWry38

Join by phone +1-415-655-0002

United States Toll

Access code: 146 976 0229

October 23, 2020

Meeting link: <https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e6f2d977126609b31e0bb73dca02aad7>

Meeting number: 146 293 3380

Password: PHwPpXSM836

Join by phone +1-415-655-0002

United States Toll

Access code: 146 293 3380

The agenda is posted 72 hours prior to the scheduled meeting. You may view and download a copy of the agenda through the board's website: [www.rld.state.nm.us/boards/pharmacy.aspx](http://www.rld.state.nm.us/boards/pharmacy.aspx). All proposed language regarding rule hearings is linked to the *Agenda*, the *Notice to the Public* on our website, and the *New Mexico Sunshine Portal*.

Individuals petitioning the board regarding requests/waivers and/or interested persons wishing to comment on proposed language regarding rule hearings must submit documentation for presentation; via fax (505) 222-9845, mail or email to the Executive Director, Cheranne McCracken, [Cheranne.McCracken@state.nm.us](mailto:Cheranne.McCracken@state.nm.us)

[state.nm.us](http://state.nm.us) at least one week in advance of the scheduled meeting, as public comment is allowed during the rule hearing. On the morning of the hearing beginning at 8:00 a.m. and ending when the rule hearing adjourns, a Board of Pharmacy representative will be stationed at the board office, located at 5500 San Antonio Drive NE, Albuquerque, NM 87109, to receive written comments regarding the rule hearings and also to convey them to the Board. Public attendance will be limited to remote participation. Oral participation by members of the public will be limited to those comments and discussion through audiovisual means.

The board may go into Executive Session to discuss items pursuant to Section 10-15-1H(1), Section 10-15-1H(2), Section 10-15-1H(3) or Section 10-15-1H(7) of the Open Meeting Act. Agenda items may be executed at any time during the meeting to accommodate hearings.

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 meeting, please contact Cheranne McCracken 505-222-9830 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Cheranne McCracken, at 505-222-9830 or e-mail [mccracken@state.nm.us](mailto:mccracken@state.nm.us) if a summary or other type of accessible format is needed.

The Board will address:

All Board Matters:

Rule Hearings:

October 22, 2020 9:10 a.m.

16.19.6 NMAC – PHARMACIES:

Sections 1, 2, 17, and 21 - administrative updates. Sections 23 and 24: Amendment to Section 23 - to allow the transfer of an



original unfilled non-controlled substance prescription. Record keeping requirements are specified, and transfer or forwarding of controlled substance prescriptions is clarified for consistency with federal law. Amendment allowing prescription adaptation in filling a new non-controlled substance prescription, to change the quantity, dosage, dosage form or directions for use if it meets the intent of the prescriber, or to complete missing information. This is to facilitate timely filling of prescriptions, to avoid delays in medication therapy. Amendment to Section 24 - non-resident pharmacy application not successfully completed with 12 months of date received by the board will be considered withdrawn; requiring a non-resident pharmacy as a condition of licensure to submit the procedure for ensuring proper medication storage conditions until the medication is delivered to the patient.

STATUTORY AUTHORITY:  
Paragraph (6) of Subsection (A) of Section 61-11-6 NMSA 1978

16.19.12 NMAC – FEES: Section 1 - administrative updates; Sections 12, 13 and 20: Amendment to Section 12 - The board may issue a controlled substance registration for a time period determined by the board and shorter than three years if it is consistent with the public health and safety. Amendment to Section 13 - increase fees from \$700 to 1000 biennially for manufacturer, wholesale drug distributor, manufacturer/re-packager, re-packager, and third party logistics provider. The increased fee is due to the increased complexity and requirements of licensing associated with the Drug Supply Chain and Security Act. Amendment to Section 20 - limit controlled substance registration delinquent renewal fees to \$180.

STATUTORY AUTHORITY:  
Sections 30-31-11, 30-31B-6, 61-11-12, 61-11-13, and 61-11-14 NMSA 1978

16.19.20 NMAC - CONTROLLED SUBSTANCES: Sections 1, 3, 44,

46, 47 - administrative updates. Sections 10, 42, and 69: Amendment to Section 10 - reference 16.19.12 NMAC for controlled substance registration fee, rather than duplicating language; Amendment to Section 42 - requiring electronic prescribing of controlled substance prescriptions and specifying exceptions. Electronic prescribing of controlled substances is an important tool in improving the safety and quality of patient care, to protect the public via reduction of medication errors, prescription forgery, and controlled substance diversion. Amendment to Section 69 - de-schedule a drug product approved for marketing by the U.S. Food and Drug Administration and which contains cannabidiol derived from cannabis and no more than 0.1 percent tetrahydrocannabinols.

STATUTORY AUTHORITY:  
Sections 30-31-1 through 30-31-42 NMSA 1978. Paragraph (2) of Subsection (B) of Section 61-11-6 NMSA 1978

16.19.30 NMAC –  
COMPOUNDING OF NON-  
STERILE PHARMACEUTICALS:

Amendment to Sections 1, 2, and 3 - administrative updates - citation correction, and citation format; Amendment to Section 9 - allow a licensed pharmacy to compound non-sterile, non-controlled substance preparations in reasonable quantities for veterinarian office use. The office use preparation may be dispensed by a veterinarian for a patient under specific conditions, which include: the patient has an emergency condition that the compounded drug is necessary to treat, and timely access to a compounding pharmacy is not available. Up to a five day supply can be dispensed for use in a single course of treatment. Product from an outsourcing facility cannot be dispensed.

STATUTORY AUTHORITY:  
Paragraph (6) of Subsection (A) of Section 61-11-6 NMSA 1978

Disciplinary Hearing(s): At the time of publication in the NM Register, no disciplinary hearings are scheduled.

Final hearing date and time for each case, if any, will be included in the agenda posted to the board's website at least 72 hours before the meeting.

Executive Director's Report:

Published in NM Register September 15, 2020

Published in Albuquerque Journal September 15, 2020

## REGULATION AND LICENSING DEPARTMENT REAL ESTATE COMMISSION

### NOTICE OF SPECIAL MEETING AND RULE HEARING

The New Mexico Real Estate Commission (NMREC) will hold a special meeting and public hearing on proposed amendments to the Real Estate Commission Rules on Tuesday, October 20, 2020, at 9 a.m. Interested parties may participate in the public hearing through live/streaming.

The Rule Hearing Agenda will be available on the NMREC website at least 10 days prior to the hearing date at: [http://www.rld.state.nm.us/boards/Real\\_Estate\\_Commission\\_Members\\_and\\_Meetings.aspx](http://www.rld.state.nm.us/boards/Real_Estate_Commission_Members_and_Meetings.aspx). Those wishing to participate may do so virtually through live streaming, and may register in advance of the rule hearing by clicking on the following Zoom link:

When: Oct 20, 2020 09:00 AM Mountain Time (US and Canada)  
Register in advance for this meeting:  
<https://us02web.zoom.us/join>  
<https://us02web.zoom.us/join/ztZUsceqopjwG9cVipl6j5yCdWwWbZ95WI4T>

After registering, registrants will receive a confirmation email containing information about joining the meeting. The Zoom link is sponsored by the Greater Albuquerque Association of Realtors (GAAR). For questions regarding live stream access, contact Nate Brooks at [nbrooks@gaar.com](mailto:nbrooks@gaar.com) or Gabe

Baca at gabe@gaar.com, or by calling GAAR at (505) 842-1433.

Following the publication of this Notice of Rule Hearing in the New Mexico Register on September 15, 2020, the full text of the proposed rule changes are available on the New Mexico Real Estate Commission web site at: [http://www.rld.state.nm.us/boards/Real\\_Estate\\_Commission\\_Members\\_and\\_Meetings.aspx](http://www.rld.state.nm.us/boards/Real_Estate_Commission_Members_and_Meetings.aspx), or you may contact Thomas P. Baca, NMREC Education Administrator, at thomas.baca@state.nm.us. Beginning on September 15, 2020, written comments on the proposed rules will be accepted by the Commission up to the commencement of the Rule Hearing on October 20, 2020 at 9:00 a.m. Written comments will be posted on the Commission's website listed above. Oral comments will be accepted during the rule hearing. Written comments should be provided by email to Thomas Baca, Education Administrator, at Thomas.baca@state.nm.us

The NMREC will be considering and receiving public comments on proposed amendments to the following rules recommended by the Commission acting as a Rules Task Force.

**16.61.1.7 NMAC, GENERAL PROVISIONS: Definitions:** The amendment would further add, define, expand and clarify the following 13 definitions:

**(1) Agent** at C. of 16.61.1.7 NMAC: This amendment adds language that differentiates between residential and commercial property management applications of when a broker is considered an "agent" with respect to clients and customers. **Purpose:** The purpose of the amendment is to clarify the differences between residential and commercial property management relationships to customers and clients.

**(2) Approved education course** at D. of 16.61.1.7 NMAC: The amendment eliminates the education category of courses offered. **Purpose:** The

elimination of this definition allows for the creation of the non-core elective category of courses that is a combination of education and training courses that are non core elective courses.

**(3) Approved training Course** at E. of 16.61.1.7 NMAC: The amendment eliminates the training category of courses offered. **Purpose:** The elimination of this definition allows for the creation of the non-core elective category of courses that is a combination of education and training courses that are non-core elective courses.

**(4) Core Elective Course** at P. of 16.61.1.7 NMAC: The amendment clarifies the definition of core elective as having a focus on important topical subjects as key to the practice of real estate. **Purpose:** The amended definition allows for a clearer set of subject matter and topical parameters necessary in order to determine that a course is in this more important category.

**(5) Custodial Trust Account** at R. of 16.61.1.7 NMAC: This strikes the word "trust" in the definition leaving it titled Custodial Accounts. **Purpose:** The amended definition clarifies the qualifying broker's custodial and controlling responsibility with respect to these accounts.

**(6) Exclusive Agency** at AA. Of 16.61.1.7 NMAC: This amendment adds clarifying language differentiating between applications of agency to commercial as opposed to residential property management situations. **Purpose:** The purpose of the amendment is to clarify applications of agency to the two modes of property management (i.e. commercial property management, and residential property management).

**(7) In house transaction** at HH. Of 16.61.1.7 NMAC: This amendment further clarifies that one brokerage may facilitate both sides of an individual transaction. **Purpose:**

The purpose of this amendment is to clarify the meaning of a transaction handled by one brokerage.

**(8) Military service member** at JJ. Of 16.61.1.7 NMAC: This amendment adds dependent children into the definition of military service member. **Purpose:** The purpose is to bring the definition into conformity with HB30 in the 2020 Legislative session of the New Mexico Legislature which amended the definition to include dependents of the service member.

**(9) Non-core elective course.** This is a new definition. The amendment combines courses categorized as training and education that are not core electives or ethics courses. **Purpose:** This amendment allows for a removal of the 10 CEU cap on training courses especially those training courses that are a part of specialty certification and designation and combines valuable courses that are not considered core electives.

**(10) Property management** at QQ of 16.61.1.7 NMAC: The amendment expands the definition to include activities of owner associations managed by licensed real estate brokers. **Purpose:** The purpose of the amendment is to clarify that the definition of property management as defined in Paragraph QQ of 16.61.1 NMAC includes owner associations managed by licensed brokers.

**(11) Property manager** at SS of 16.61.1.7 NMAC. The amendment would expand the definition of property manager to include brokers who manage homeowner associations and further define the difference between residential property managers and commercial property managers. **Purpose:** The purpose of the amendment is to clarify and differentiate the duties owed by residential property managers and commercial property managers.

**(12) Residential real estate** at XX. Of 16.61.1.7 NMAC: This is a new definition defines the parameters

for considering properties based upon zoning by authorities primarily for residential use as opposed to multifamily and commercial properties. **Purpose:** This new definition clarifies what is considered residential within a zoning context.

**(13) Transaction coordinator at CCC.** Of 16.61.1.7 NMAC: This definition clarifies that transaction coordinators may be subject to licensure if they engage in activities requiring such by law. **Purpose:** This amendment emphasizes that licensure may be required if transaction coordinators engage in the specific activities defined by law as requiring licensure.

**16.61.3 NMAC REAL ESTATE BROKER'S LICENSE: EXAMINATION AND LICENSING APPLICATION REQUIREMENTS: Sections 9 through 12, New legislatively mandated considerations for military service members and veterans.** The amendment adds new considerations toward licensure for those considered military service members, their spouses, their direct dependents and Veterans. A new consideration for this category of applicants is an exemption from the initial license fee of \$270 for their first term of licensure. The commission must issue a license provided the candidate in this category meets all prelicensure requirements within 60 days.

**Purpose:** Recent changes in New Mexico law require additional license benefits and considerations for those who meet the new definition of military service member to include spouses and dependents, and to veterans. This amendment incorporates those legislative changes and considerations into the rule.

**16.61.3 NMAC REAL ESTATE BROKER'S LICENSE: EXAMINATION AND LICENSING APPLICATION REQUIREMENTS: Section 13 Qualifying broker refresher course:** This amendment would award six

continuing education credits for taking the qualifying broker refresher course. The amendment incorporates the six hours earned as a part of the cumulative continuing education credits required for qualifying brokers to renew their license, and increases the 36 qualifying broker cumulative continuing education hours to 42 hours per cycle.

**Purpose:** The purpose of this amendment is to acknowledge the continuing education value of the qualifying broker refresher course. The cumulative education requirement for qualifying brokers that includes this course is 42 hours and not 36 as the course was taken above and beyond the current stated 36 hour cumulative renewal requirement. The awarding of continuing education credits makes it possible for this course to be taken by associate brokers as part of their 36 hour continuing education requirements.

**16.61.7 NMAC FINGERPRINTING AND ARREST RECORD CHECKS: Section 8. Requirements.** The amendment strikes the requirement for fingerprinting for renewal applications based upon a change in New Mexico law that went into effect on July 1, 2020. Fingerprinting will continue to be required for new applications. The amendment clarifies that background checks will continue to be done for all applications.

**Purpose:** The amendment incorporates the new legislative mandate exempting fingerprinting for renewal application submittals.

**16.61.11 NMAC LICENSE EXPIRATION AND RENEWAL: Section 8. Requirements.** The amendment codifies Section 61-29-8 NMSA 1978, into the rules and incorporates statutory language concerning certain penalty fee exemptions in place but that have not been mirrored in the rule. Based upon the statutory provision, the amendment to the rule would allow an exemption from paying a late renewal

fee if a broker by reason of active duty military service, illness or injury, and may make application for a license renewal/reinstatement without the late penalty if the application is submitted within the one-year period after license expiration. The amendment adds a provision that background checks will be conducted on all renewal applications. The amendment reformats requirements detailed in the current rule.

**Purpose:** The purpose of the amendment is to mirror existing statutory provisions in exempting brokers from late fee renewal penalties per Section 61-29-8 NMSA 1978 and expand the exemption to include caregiving.

**16.61.13 NMAC CONTINUING EDUCATION REQUIREMENTS: Section 8. Requirements.** The amendments to Section 8:

(1) expands qualifying broker minimum renewal hours to be 42 as the minimum number of continuing education now would include the qualifying broker refresher course which would award six credits as opposed to no credits. The associate broker 36 minimum hours remains the same;

(2) removes references to training category courses and education category courses exchanging for them the core elective category course and non-core elective category course;

(3) removes reference to the pre-2017 eight-hour mandatory course requirement that was repealed after the 2017 rule change implementing the annual core course requirement in its place;

(4) confirms the penalty for failure to complete any one of the annual core courses required in a three-year cycle as the 30 classroom hour broker basics course for no continuing education credits; and removes reference to the previous penalty;

(5) establishes a new provision that allows relief for brokers who missed an annual core course because of medical incapacity

or medical related impairment to complete the most recent iteration of an annual core course twice under different instructors;

(6) establishes a new provision to allow for the carry-over of core course continuing education credit to the next cycle under certain criteria;

(7) expands instructor continuing education credit from 10 hours to up to 28 hours for teaching courses for which they are approved; and,

(8) establishes that up to 16 non-core elective continuing education credits may be awarded to brokers serving on the commission and on appointed committees of the commission. For members of the real estate commission the provision would not be effective until the appointment of new commissioners after January 1, 2021.

(9) adds a prohibition for brokers receiving CE credit for attending a disciplinary hearing in which they are a respondent.

**Purposes:** The purposes of the amendments are: (a) to acknowledge the continuing education value of the qualifying broker refresher course; (b) to make changes concurrent with the elimination of training and education categories and their replacement with core elective and non-core elective definitions in 16.61.1.7 NMAC; (c) to clarify core elective requirements for qualifying brokers and associate brokers; (d) to clarify minimum continuing education cumulative credits for qualifying brokers and associate brokers; (e) to remove the antiquated reference to a now defunct mandatory course requirement; (f) to confirm the penalty for failing to complete core course requirements, (g) to establish relief if non-completion of the annual core course requirement is due to medical incapacitation or impairment; (h) to expand continuing education incentives for instructors to develop and instruct needed courses; (i) to establish incentives for brokers who participate in time intensive volunteer work as appointed members of

committees, task forces, and work groups; and (j) clarify that respondent brokers cannot gain continuing education credits for attending their own hearing.

**16.61.15 NMAC APPROVAL OF REAL ESTATE COURSES, SPONSORS, AND INSTRUCTORS: Section 8 Education Advisory Committee and Section 9. Continuing Education Programs.** The amendment to Section 8, Education Advisory Committee, eliminates the non-voting member category of appointments to the education advisory committee and would allow all appointees to the committee would have voting status. Amendments to Section 9 Continuing Education Programs, eliminates references to education and training category courses, and replaces those categories with core elective and non-core elective categories, and establish how applications for new courses will be considered in light of the two new categories concurrent and consistent with amendments to 16.61.13 NMAC, Continuing Education Requirements, and changes to 16.61.1.7 NMAC, Definitions.

**Purpose:** The purpose of the amendment to Section 8 (B) is to honor equally the value of all the commission's appointees to the education advisory committee. The purpose of the amendments to Section 9, Continuing Education Programs, is to make the language consistent with changes to 16.61.1.7 NMAC Definitions, concerning eliminated training and education categories of courses, and replacement with core elective and non-core elective categories of courses.

**16.61.16 NMAC QUALIFYING BROKER: AFFILIATION AND RESPONSIBILITIES: Section 9 Responsibilities.** The amendment would further define the supervisory responsibilities of the qualifying brokers in their relationship to the associate brokers.

**Purpose:** The purpose of the amendments are to clarify and expand

the qualifying broker to associate broker supervisory relationship, and to outline steps to improve communication within brokerages and ensure compliance with best management practices in light of emerging complexities in modern brokerages.

**16.61.17 NMAC ASSOCIATE BROKER: AFFILIATION AND RESPONSIBILITIES:** This amendment would clarify the role of the associate broker within the complexities of modern brokerages and the need to follow policies and procedures and supervisory initiatives of the qualifying broker. The amendment compliments amendments made to Part 16.

**Purpose:** The purpose of the amendments is to clarify the duties of associate brokers toward qualifying brokers in light of emerging complexities in modern brokerages.

**16.61.19 NMAC BROKER DUTIES AND BROKERAGE RELATIONSHIPS: Section 8 Disclosure.** This amendment adds a disclosure provision to the existing rule that if a broker in the transaction is not providing the service, advice or assistance described in Paragraphs (a) and (b) of this Subsection B of 16.61.19.8 NMAC, the party must agree in writing that the broker is not expected to provide such service, advice or assistance.

**Purpose:** This amendment is for the purpose of clarifying all disclosure responsibilities in all transactions.

**16.61.20.8 NMAC TRANSACTION COORDINATOR: Section 8(H) Requirements:** This amendment clarifies the duties of brokers who are hired by other brokers to act as transaction coordinators but who have no interaction with the broker's customer or client or other brokers involved in the transaction.

**Purpose:** The purpose of the amendment is to clarify that brokers who are hired solely to serve as

transaction coordinators still may owe some broker duties.

**16.61.23 NMAC TRUST ACCOUNTS: Sections 8 through 12:**

The amendments clarify responsibilities regarding the keeping of records, the filing of reports, and the overall management of trust and custodial account management.

**Purpose:** The purpose of the amendments are to clarify that established record keeping, and reporting responsibilities apply to the management of custodial accounts.

**16.61.24 NMAC PROPERTY MANAGEMENT: Sections 9 through 12:**

These amendments follow amendments to Part 23 to clarify that the brokers who offer property management services have record keeping and reporting responsibilities as they apply to the management of trust accounts as well as custodial accounts.

**Purpose:** The purpose of the amendments are to clarify that established record keeping, and reporting responsibilities apply to the management of custodial accounts in the context of offering property management services to others.

**16.61.32 NMAC REAL ESTATE ADVERTISING: Section 8**

**Advertisements:** The amendments clarify broker disclosure responsibilities concerning advertising properties which the broker owns, or partially owns, and adds “will own” to the disclosure responsibility on advertising, signs etc.

**Purpose:** The purpose of the amendment is to clarify broker disclosure responsibilities regarding advertising real estate.

**Statutory Authority:** Section 61.29.4 NMSA 1978

**STATE PERSONNEL BOARD**

**NOTICE OF PROPOSED RULEMAKING**

**Public Notice:** The New Mexico State Personnel Board provides notice that it will conduct a public hearing via Zoom meeting on Friday, October 16, 2020 at 9:00 a.m. Log-in details for the Zoom meeting will be available on the State Personnel Office website beginning Tuesday, October 13, 2020. The purpose of the public hearing is to receive public input on proposed amendments to 1.7.7 NMAC – Absence and Leave.

**Authority:** Personnel Act, NMSA 1978, Sections 10-9-10 and 10-9-12.

**Purpose:** The purposes of the amendments to 1.7.7 NMAC are to: 1) permit classified State employees to carry forward more than 240 hours of annual leave beyond December 2020 and through the first six months of 2021; 2) permit classified State employees to make and receive donations of annual leave to and from employees in the exempt service within the same agency, as long as permitted by the department of finance and administration’s *Policies for Governor Exempt Employees*; and 3) provide classified State employees who have passed their probationary period with two personal leave days each calendar year.

**Summary of Proposed Amendments to 1.7.7 NMAC:**

**1.7.7.8 – Annual Leave**

The proposed amendment to Subsection E would permit classified State employees to carry forward more than 240 hours of annual leave beyond the last pay period of December 2020, but not beyond July 9, 2021, in order to provide those employees with an additional six months to use, rather than lose, annual leave they may have accrued and been unable to use during the COVID-19 public health

emergency. The proposed division of Subsection G into Subsections G and H distinguishes the regulations pertaining to all employees separating from the classified service from those pertaining to employees separating from the classified service due to a reduction in force. The proposed amendment to Subsection G clarifies that the annual leave payout for an employee separating from the classified service may not exceed 240 hours, even with the proposed amendment to Subsection E. The proposed amendment to Subsection H clarifies that the payout for an employee separating from the classified service due to a reduction in force may not exceed 240 hours because of the proposed amendment to Subsection E. The proposed amendment to new Subsection I clarifies that the accrued annual leave payout of an employee who dies may not exceed 240 hours because of the proposed amendment to Subsection E.

**1.7.7.9 – Donation of Annual and/or Sick Leave**

The proposed amendment to Subsection A would clarify that classified State employees may donate annual and/or sick leave to other classified State employees within the same agency. The amendment would also permit classified State employees to make and receive donations of annual leave to and from employees in the exempt service within the same agency, as long as permitted by Department of Finance and Administration (DFA) *Policies for Governor Exempt Employees*. DFA policy currently states, “Exempt employees may donate accrued annual leave to or receive accrued annual leave from a classified employee within the same agency.” *Policies for Governor Exempt Employees*, Policy No. ESPP 20.c.

**1.7.7.17 – Personal Leave Day**

The proposed amendments to Subsections A-D would provide classified State employees who have passed their probationary period with

two personal leave days each calendar year, instead of one.

#### How to Comment on the Proposed Rules:

Interested individuals may provide comments at the public hearing and/or submit written or electronic comments to Denise Forlizzi, via email at [DeniseM.Forlizzi@state.nm.us](mailto:DeniseM.Forlizzi@state.nm.us), fax (505) 476-7806, or mail to Attn: Denise Forlizzi – Rule Changes to 1.7.7 NMAC, State Personnel Office, 2600 Cerrillos Rd., Santa Fe, New Mexico 87505.

Written comments must be received no later than 5:00 pm on October 15, 2020. However, the submission of written comments as soon as possible is encouraged. Persons may also submit written comments at the public hearing.

#### Copies of Proposed Rules:

Copies of the proposed rules are available for download on the State Personnel Office's website at <http://www.spo.state.nm.us/>. A copy of the proposed rules may also be requested by contacting Denise Forlizzi at (505) 365-3691.

#### Special Needs:

Individuals with disabilities who require this 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 Forlizzi at (505) 365-3691 as soon as possible to provide requested special accommodations.

### TRANSPORTATION, DEPARTMENT OF NOTICE OF PROPOSED RULEMAKING

The New Mexico Department of Transportation (NMDOT) is proposing to repeal and replace 18.27.5 NMAC, Contractor Prequalification Rule.

Approval of the initial rulemaking action for the proposed new rule was granted to NMDOT by the New Mexico State Transportation Commission on January 16, 2020 pursuant to Sections 9-5-1, 67-3-8 and 67-3-11, NMSA 1978. The legal authority authorizing this rulemaking is Section 67-3-78, NMSA 1978.

**Summary of Full Text:** The Contractor Prequalification Rule was first promulgated in 2015. The operation of the rule rewards good contractor performance and encourages lesser quality contractor performance to improve.

**Purpose:** The purpose for this proposed repeal and replacement of the rule is to clarify the scoring method, to clarify the definition of "project" and to rework the appeals procedure. Revisions are necessary to address these issues and to fine tune the rule to better accomplish the intended purpose of the program.

**Full Text of the Proposed Rule:** A copy of the full text of the proposed new rule 18.27.5 NMAC may be found on the NMDOT website at the following Internet link, under the *Public Notices* tab: <https://dot.state.nm.us/content/nmdot/en/public-notices.html>. To obtain a printed copy of the proposed amended rule, contact Rick Padilla at: Telephone (505) 490-1168 or Email: [Rick.Padilla@state.nm.us](mailto:Rick.Padilla@state.nm.us). A reasonable fee may be charged for printed copies.

**Rulemaking Hearing:** NMDOT will hold one statewide virtual public hearing for the purpose of receiving oral and written public comment from interested parties on the proposed new rule, 18.27.5 NMAC. This hearing will be held in conformance with the Governor's directives regarding gatherings and social distancing. The hearing is scheduled on **Thursday, October 15, 2020, from 1:00 PM to 3:00 PM**. To participate in this hearing:

Logon to: <https://zoom.us/j/99344014157>

Or call: 1-346-248-7799 Meeting ID: 993 4401 4157

**Written Comments:** To submit written comments on or before date of hearing, please send to: Rick Padilla, New Mexico Department of Transportation, P.O. Box 1149, Santa Fe, New Mexico 87504, at Telephone: (505) 490-1168 or Email: [Rick.Padilla@state.nm.us](mailto:Rick.Padilla@state.nm.us). Written comments will be accepted from the date this notice is published in the New Mexico Register, September 15, 2020, until the close of the hearing scheduled in this rulemaking. If you plan to submit written comments, argument or data, please make sure any documentation contains your name, phone number and email address. 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 final 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 Rick Padilla at Telephone: (505) 490-1168, or Email: [Rick.Padilla@state.nm.us](mailto:Rick.Padilla@state.nm.us) 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.

**ENERGY, MINERALS AND  
NATURAL RESOURCES  
DEPARTMENT  
YOUTH CONSERVATION  
CORPS COMMISSION**

**This is an amendment to 11.2.171 NMAC, Amending part name and Sections 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 effective 9/15/2020.**

**TITLE 11 LABOR AND  
WORKERS COMPENSATION  
CHAPTER 2 JOB TRAINING  
PART 171 THE YOUTH  
CONSERVATION CORPS (YCC)  
~~[AND OUTDOOR EQUITY  
GRANT (OEG) PROGRAMS]~~  
PROGRAM**

**11.2.171.6 OBJECTIVE:**  
The objective of this rule is to establish procedures and standards for the administration of the Youth Conservation Corps (YCC) program ~~[and the Outdoor Equity grant (OEG) program].~~  
[11.2.171.6 NMAC – Rp, 11.2.171.6 NMAC, 12/17/2019; A, 9/15/2020]

**11.2.171.7 DEFINITIONS:**

**A. “In-kind contribution”** means a non-monetary donation of goods or services provided by the project sponsor for the purpose of carrying out a program.

~~**B. “Low-income youth”** for the purposes of the outdoor equity grant program means New Mexico residents up to the age of 18 who qualify for a state or federal assistance program, such as free or reduced lunch, Medicaid or other similar program.~~

**[E] B. “Native American”** means a person having origins in any of the original peoples of North and South America (including Central America) and who maintain tribal affiliation or community attachment.

~~**[D] C. “Residential program”** means a program where corps members and their supervisors are housed on-site in a residential facility.~~

~~**[E] D. “Rural”** means an area not within a metropolitan statistical area as defined by the United States office of management and budget.~~

~~**[F] E. “Summer program”** means a program taking place between May and September.~~

~~**[G] F. “Seasonal program”** means a program that takes place any time of year and is six months or less in duration.~~

~~**[H] G. “Under-resourced”** means lacking sufficient resources, including, but not limited to funds, opportunity, work force, knowledge base, support systems, physical aids, communication devices, and other physical assets that limit access to job training and outdoor recreation.~~

~~**[I] H. “Urban”** means an area within a metropolitan statistical area as defined by the United States office of management and budget.  
[11.2.171.7 NMAC – Rp, 11.2.171.7 NMAC, 12/17/2019; A, 9/15/2020]~~

**11.2.171.8 PROPOSALS:**  
At least annually, the commission will request proposals for YCC ~~[and OEG]~~ projects. The commission’s announcement will include where to obtain proposal information and the date by which proposals must be submitted.  
[11.2.171.8 NMAC – Rp, 11.2.171.15 NMAC, 12/17/2019; A, 9/15/2020]

**11.2.171.9 YCC PROJECT ELIGIBILITY:**

**A. Project sponsors:**  
The YCC Commission will accept applications from:

**(1) A** federally recognized sovereign tribal

government within the state.

**(2) A** state agency.

**(3) A** local government agency or unit.

**(4) A** federal agency operating within the state.

**(5) A** non-profit organization with a 501(c) internal revenue service designation operating within the state.

**(6) Any** organization or agency with a 501(c) fiscal sponsor.

**B.** Projects must be consistent with the purposes of the NMYCC program and may include, but need not be limited to, projects that:

- (1)** protect, conserve, rehabilitate or increase resiliency of terrestrial and aquatic species, forests, refuges, rangelands and waters of the state;
  - (2)** improve use and access to public parks, greenways, historic sites, libraries, museums, zoos, recreational areas and associated facilities;
  - (3)** reinforce the “keep New Mexico true” campaign;
  - (4)** provide emergency assistance, disaster relief or recovery;
  - (5)** improve disaster preparedness; increase energy efficiency.
  - (6)** beautify, improve and restore urban areas;
  - (7)** renovate community facilities, including those for the elderly or indigent.
- ~~**[C.]** Prohibited activities: The following activities are prohibited in the conduct of any NMYCC project:~~
- ~~**(1)** the displacement or substitution of an existing employee by a corps member~~



or the replacement of a seasonal employee normally hired by the project sponsor;

~~(2) the participation by corps members in the removal or cleaning up of any toxic or hazardous waste or toxic or hazardous waste site; and~~

~~(3) the assignment of corps members to general work activities such as, but not limited to, routine lawn mowing, routine litter control, janitorial duties and clerical tasks.]~~

[11.2.171.9 NMAC – Rp, 11.2.171.12 and 11.2.171.13 NMAC, 12/17/2019; A, 9/15/2020]

**11.2.171.10 PROHIBITED ACTIVITIES:** The following activities are prohibited in the conduct of any NMYCC project:

A. the displacement or substitution of an existing employee by a corps member or the replacement of a seasonal employee normally hired by the project sponsor;

B. the participation by corps members in the removal or cleaning up of any toxic or hazardous waste or toxic or hazardous waste site; and

C. the assignment of corps members to general work activities such as, but not limited to, routine lawn mowing, routine litter control, janitorial duties and clerical tasks.

D. funding permanent capital improvements on privately owned property.

[11.2.171.10 NMAC – N, 9/15/2020]

~~[11.2.171.10]~~ **11.2.171.11 YCC PROJECT REQUIREMENTS:**

A. Project sponsors shall ensure that all project sites and practices conform to appropriate state and federal health and safety standards and requirements.

B. Project sponsors shall classify their programs as a summer, seasonal, or residential project; and also specify whether their project primarily engages Native American, rural, urban or other under-resourced populations.

C. Wages, unemployment insurance and workers' comp for corps members, corps leaders, and corps trainers shall account for a minimum of seventy percent of the total funds requested.

D. Projects shall hire a minimum of four corps members and one corps crew leader or corps crew trainer.

E. Project sponsors must provide an education and training program to corps members for the duration of the project. The number of hours of training provided for each corps member shall be no less than ~~[twelve percent]~~ ten percent of the total hours budgeted per corps member for the entirety of the project.

F. Project sponsors shall match a minimum of twenty percent of total funds requested with in-kind or cash contributions.

G. Project sponsors shall provide proof they have obtained permission from all land owners or managers where the project shall take place.

~~[H.]~~ Project sites: Projects may be undertaken on:

~~(1) public lands, waters or structures located within the state that are under the jurisdiction of the project sponsor or in accordance with a written agreement between the project sponsor and the agency that has jurisdiction over the public lands, waters or structures;~~

~~(2) lands, waters or structures owned or administered by a non-profit entity or federally recognized sovereign tribal government, provided that these facilities are open to the public on a reasonable basis, there is a public value or benefit to the project, and the facilities are located within the state; or~~

~~(3) lands, waters or structures owned or administered by a nonprofit organization or federally recognized sovereign tribal government in accordance with a written agreement between the project sponsor and the nonprofit entity or federally recognized sovereign tribal~~

government, provided that these facilities are open to the public on a reasonable basis, there is a public value or benefit to the project, and the facilities are located within the state.]

~~[H]~~ H. Project sponsors shall have worker's compensation and unemployment insurance in place for the duration of the project.

~~[I]~~ I. Program applicants shall provide proof of adequate insurance coverage for any liability arising out of program activities for the duration of the program.

[11.2.171.11 NMAC – Rn & A, 11.171.2.10 NMAC, 9/15/2020]

**11.2.171.12 YCC PROJECT LOCATIONS:** Projects may be undertaken on:

A. public or federally recognized tribal lands, waters or structures located within the state that

(1) are under the jurisdiction, owned or administered by the project sponsor; or

(2) are accessible to the project sponsor in accordance with a written agreement between the project sponsor and the agency or entity that owns, administers or has jurisdiction over the public or federally recognized tribal lands, waters or structures; and

(3) provided that the land or facilities are open to the public on a reasonable basis and there is a public value or benefit as a result of the project.

B. privately owned lands, waters or structures located within the state that

(1) are owned or administered by a nonprofit organization; or

(2) are accessible to the project sponsor in accordance with a written agreement between the project sponsor and the nonprofit organization; and

(3) provided that these the land or facilities are open to the public on a reasonable basis and there is a public value or benefit as a result of the project; and

~~(4)~~ provided no funding for capital improvements is requested for the project.  
[11.2.171.12 NMAC – N, 9/15/2020]

~~[H.2.171.H]~~ **11.2.171.13 YCC CORPS MEMBERS:**

**A.** Project sponsors shall, at their own expense, comply with all applicable laws, regulations, rules ordinances, and requirements of local, state, and federal authorities, including but not limited to those pertaining to equal opportunity employment, workers compensation benefits, and fair labor standards.

**B.** Recruitment, selection, supervision, development and dismissal of corps members will be the responsibility of the project sponsors.

**C.** Sponsors shall verify corps members meet the following eligibility requirements at the time of enrollment and keep records of such:

- (1) are unemployed at the time of hire;
- (2) are New Mexico residents consistent with 18.19.5 NMAC;
- (3) are in-school or out-of-school youth at the time of hire;
- (4) are between the ages of 14 and 25 years of age at the time of hire;
- (5) have a work permit if under the age of 16; and
- (6) are not the children or siblings of the project sponsor's hiring officer or project supervisor.

**D.** Sponsors shall enforce all labor laws and shall be familiar with child labor laws as they apply to employees under the age of 18.

**E.** Classification:  
(1) Corps members shall be individuals who meet the eligibility requirements and are at least 14 years of age at the beginning of the project.

(2) Corps crew leaders or corps crew trainers shall be individuals who meet the

eligibility requirements, and serve in a leadership, trainer or mentor position.

~~[E]~~ **E.** Compensation:

(1) All corps members shall be compensated, at a minimum, as provided by law following the state or municipality established minimum wage.

~~[(2)]~~ Corps members shall be individuals who meet the eligibility requirements and are at least 14 years of age at the beginning of the project.

~~[(3)]~~ Corps crew leaders or corps crew trainers shall be individuals who meet the eligibility requirements, are at least 18 years of age at the beginning of the project, and serve in a leadership, trainer or mentor position.

~~[(4)]~~ (2) Project sponsors may request wage increases of no more than ten percent of starting wage for corps members based on promotion, performance or additional responsibilities; and if there are sufficient funds in the budget to complete the project as planned.

~~[(5)]~~ (3) The YCC will support the project sponsor's existing policy for holiday pay and sick pay.

~~[(6)]~~ (4) Project sponsors may not budget overtime pay into the cost proposal, and under no circumstances will the commission reimburse project sponsors for overtime.

~~[(7)]~~ (5) The YCC will not reimburse the project sponsor for hazard pay.

~~[(8)]~~ **G.** Project sponsors shall follow their established personnel policies for dismissal of corps members. Sponsors are encouraged to provide opportunities for improvement prior to dismissal.

**[F] H.** The length of a corps member's employment shall be determined by the duration of the work project in which the corps member is participating.

**[G.]** The maximum accumulated length of service for which a corps member may be employed on a YCC crew, including all projects in which the corps member participated, shall not exceed 24 months.

[11.2.171.13 NMAC – Rn & A 11.2.171.11 NMAC, 9/15/2020]

~~[H.2.171.H]~~ **11.2.171.14 YCC EDUCATIONAL TUITION VOUCHERS AND ADDITIONAL CASH COMPENSATION:**

**A.** On completion of employment with the YCC, a corps member who has 12 full months (48 weeks) of employment as a corps member during a period not to exceed 48 months, and who has received satisfactory evaluations throughout their employment, may apply for a \$500.00 additional cash compensation or a \$1500.00 educational tuition voucher.

**B.** [The project sponsor shall certify that the corps member was employed for the duration of the project and the YCC staff shall verify same.

~~(1)~~ The educational voucher is good for reimbursement of expenses at a New Mexico institution of higher education, including accredited universities, colleges, community colleges, vocational schools and on-line education associated with an accredited New Mexico institution of higher education:

~~(2)~~ The educational tuition voucher is valid for two years and will be reimbursed upon presentation of receipts and proof of payment.

~~(a)~~ Examples of reimbursable expenses include educational expenses such as tuition, textbooks, and classroom and lab supplies:

~~(b)~~ Examples of non-reimbursable expenses include personal expenses, transportation, computers, residential rent, and food:

~~(3)~~ A corps member who receives satisfactory employment evaluations and has completed a minimum of six months employment but less than 12 months in a four-year period due to circumstances beyond the corps member's control, may receive a partial cash compensation or a partial educational tuition voucher.

(a)  
 Circumstances beyond a corps member's control may include but are not limited to: illness; death in the family; a return to school; family relocation.

(b)  
 Circumstances beyond the corps member's control do not include the unavailability of projects or that the project sponsor did not select them for employment with the project.]  
A corps member who receives satisfactory employment evaluations and has completed a minimum of 32 weeks employment but less than 12 months (48 weeks) in a four-year period due to circumstances beyond the corps member's control, may receive a partial cash compensation or a partial educational tuition voucher.

(1)  
 Circumstances beyond a corps member's control may include but are not limited to illness, death in the family, a return to school, or family relocation.

(2)  
 Circumstances beyond the corps member's control do not include the unavailability of projects or that the project sponsor did not select them for employment.

C. The YCC staff shall certify that the corps member was employed for the duration of the project.

(1) The educational voucher is good for reimbursement of expenses at a New Mexico institution of higher education, including accredited universities, colleges, community colleges, vocational schools and on-line education associated with an accredited New Mexico institution of higher education.

(2) The educational tuition voucher is valid for two years and will be reimbursed upon presentation of receipts and proof of payment.

(a)  
 Examples of reimbursable expenses include educational expenses such as tuition, textbooks, and classroom and lab supplies.

(b)  
Examples of non-reimbursable expenses include personal expenses, transportation, computers, residential rent, and food.  
 [11.2.171.14 NMAC – Rn & A  
 11.2.171.12 NMAC, 9/15/2020]

~~[11.2.171.13~~ **OEG PROGRAM ELIGIBILITY**

A. The YCC Commission will accept applications from:

(1) A federally recognized sovereign tribal government within the state.

(2) A state agency.

(3) A local government agency.

(4) A federal agency operating within the state.

(5) A non-profit organization with a 501(c)(3)-internal revenue service designation operating within the state.

(6) Any organization or agency with a 501(c)(3) fiscal sponsor.

(7) A privately-owned New Mexico resident business.

B. Programs must be consistent with the purposes of the outdoor equity grant program as described in the act; and may include, but are not limited to, programs that provide recreational opportunities and enhance outdoor skills and knowledge of activities such as bicycling, birdwatching, boating, camping, climbing, farming, fishing, flora and fauna identification, hang-gliding, hiking, horse-back riding, hot-air ballooning, hunting, jet skiing, mountain biking, mushrooming, nature study, off-highway vehicles, orienteering, paddling, rafting, ranching, rock-climbing, sandboarding, skiing, sledding, snowboarding, snowshoeing, and swimming.]

[11.2.171.13 NMAC – N, 12/17/2019, Repealed 9/15/2020]

~~[11.2.171.14~~ **OEG PROGRAM REQUIREMENTS:**

A. Program sponsors

shall ensure that all program components and practices conform to appropriate state and federal health and safety standards and requirements.

B. The majority of the program must take place outdoors, and the program shall be designed so that participants are actively engaging in outdoor recreational or educational activities the majority of the time.

C. Program applicants will specify whether their proposal primarily engages Native American, rural, urban or other under-resourced populations.

D. Programs that shall not be funded include, but are not limited to, those that take place primarily indoors, such as classrooms or gymnasiums; museums, aquariums; zoos, festivals or events; organized youth sports, such as baseball or soccer; and service projects.

E. Program sites: Programs may occur in whole or partially on:

(1) public lands, waters or structures located within the state that are under jurisdiction of the program applicant or in accordance with a written agreement between the program sponsor and the agency that has jurisdiction over the public lands; waters or structures;

(2) privately-owned lands located within the state owned or leased by the program applicant or in accordance with a written agreement between the program applicant and the property owner;

(3) any lands, waters or structures located within the state that are owned or administered by a non-profit entity or federally recognized sovereign tribal government or in accordance with a written agreement between the program sponsor and the nonprofit entity or federally recognized sovereign tribal government.

F. Program applicants shall provide proof of adequate insurance coverage for any liability arising out of program activities for the duration of the program.

~~G. Service projects or publicly funded enhancements on private land that would increase the value of that land are prohibited.~~  
[11.2.171.14 NMAC – N, 12/17/2019, Repealed 9/15/2020]

#### 11.2.171.15 EVALUATION OF PROPOSALS:

**A.** The commission shall adopt a competitive evaluation process to guide the allocation of funds.

**B.** The commission shall review and evaluate all proposals to determine the proposal's conformance with the goals of the programs as described in the act and 11.2.171 NMAC, Sections 9, 10, and 11 [~~13 and 14~~].

**C.** The commission shall take appropriate measures to ensure the evaluation process is not influenced by donors to the youth conservation corps [~~or outdoor equity fund~~]. This may include, but is not limited to, appointing an external review committee; and concealing the identity of applicants during the review process.

**D.** The commission will distribute funds equitably among qualified projects that variously engage Native American, rural, urban or other under-resourced populations. [11.2.171.15 NMAC – Rp, 11.2.171.16 NMAC, 12/17/2019; A, 9/15/2020]

#### HISTORY of 11.2.171 NMAC:

##### Pre-NMAC History:

The material in this Part was derived from that previously filed with the state records center & archives under; NMYCC Rule No. 92-1, Rules and Regulations Governing the New Mexico Youth Conservation Corps, filed November 20, 1992.

##### History of Repealed Material:

11.2.171 NMAC, The Youth Conservation Corps (YCC) Program, filed 4/30/2001, was repealed and replaced by 11.2.171 NMAC, The Youth Conservation Corps (YCC) Program and Outdoor Equity Grant (OEG) Program, effective 12/17/2019.

11.2.171 NMAC was renamed from 'The Youth Conservation Corps (YCC) And Outdoor Equity Grant (OEG) Programs' to 'The Youth Conservation Corps (YCC) Program' effective 9/15/2020.

**Other History:** 11 NMAC 2.YCC, The Youth Conservation Corps (YCC) Program, filed 5/14/1997, was reformatted, renumbered, and amended to 11.2.171 NMAC effective 4/30/2001.

## FINANCE AND ADMINISTRATION, DEPARTMENT OF

The New Mexico Department of Finance and Administration approved the emergency repeal of its rule 2 NMAC 20.2 - Execution of Contracts, Vouchers, Purchase Orders and Other Financial Commitments (Recompiled 10/1/2001) and replaced it with 2.20.2 NMAC - Execution of Contracts, Vouchers, Purchase Orders and Other Financial Commitments (adopted on 8/25/2020), and effective 8/25/2020.

## FINANCE AND ADMINISTRATION, DEPARTMENT OF

### TITLE 2 PUBLIC FINANCE CHAPTER 20 ACCOUNTING BY GOVERNMENTAL ENTITIES PART 2 EXECUTION OF CONTRACTS, VOUCHERS, PURCHASE ORDERS AND OTHER FINANCIAL COMMITMENTS

#### 2.20.2.1 ISSUING

**AGENCY:** Department of Finance and Administration.

[2.20.2.1 NMAC - Rp/E 2 NMAC 20.2.1, 8/25/2020]

#### 2.20.2.2 SCOPE:

**[RESERVED]**

[2.20.2.2 NMAC - Rp/E 2 NMAC 20.2.2, 8/25/2020]

#### 2.20.2.3 STATUTORY

**AUTHORITY:** In order to ascertain the authority and legality of contracts, purchase orders, vouchers, travel vouchers and other financial commitments for departments and other state agencies, pursuant to Section 6-5-3 NMSA 1978, it is necessary to determine whether the person executing the contract has been properly delegated the authority to bind the department or state agency. In many instances there is no clear statutory power granted to an officer to sign on behalf of an agency. Generally the person who is ultimately responsible for the administration of the law has the implied power to execute legal documents for a state agency. Generally the power to execute may be delegated; however, some laws may require specific officers to execute contracts and vouchers on behalf of the agency. In such cases, no delegation is allowed by law. [2.20.2.3 NMAC - Rp/E 2 NMAC 20.2.3, 8/25/2020]

#### 2.20.2.4 DURATION:

Permanent.

[2.20.2.4 NMAC - Rp/E 2 NMAC 20.2.4, 8/25/2020]

#### 2.20.2.5 EFFECTIVE

**DATE:** August 25, 2020

[2.20.2.5 NMAC - Rp/E 2 NMAC 20.2.5, 8/25/2020]

#### 2.20.2.6 OBJECTIVE:

The various acts creating departments pursuant to the Executive Reorganization Acts generally provide that the secretary of the department is responsible to the governor for the operation of the department and shall delegate authority to subordinates as the secretary deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto. It is the purpose of this rule to set forth those individuals who may legally bind state agencies which must submit their contracts or vouchers to the department of finance and administration.

[2.20.2.6 NMAC - Rp/E 2 NMAC 20.2.6, 8/25/2020]

**2.20.2.7 DEFINITIONS:**

As used in this rule:

**A. “authorized officer”** means a public officer or employee who is required or permitted by law or by lawful delegation of authority pursuant to this rule to sign contracts, vouchers, purchase orders or other financial commitments on behalf of a state agency;

**B. “contracts officer”** means an employee of the department of finance and administration designated as contracts officer by the secretary of finance and administration;

**C. “facsimile signature”** means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of the authorized officer;

**D. “signed” or “executed”** means affixed with any of the following:

- (1) the manual signature of an individual;
- (2) the facsimile signature of an individual;
- (3) the electronic signature of an individual procured through a third-party document-signing service; or
- (4) the name of an individual, typewritten on the signature line of a document using word processing software and accompanied with another writing confirming that individual’s approval of such document, including without limitation an e-mail to that effect.

**E. “state agency”** means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities, or institutions required to submit contracts or vouchers to the department of finance and administration for approval. [2.20.2.7 NMAC - Rp/E 2 NMAC 20.2.7, 8/25/2020]

**2.20.2.8 EXECUTION OF CONTRACTS, VOUCHERS AND PURCHASE ORDERS - AUTHORIZED SIGNATURES:**

**A.** The department of finance and administration will not

approve any contract, voucher, travel voucher, purchase order or other financial commitment of any state agency required pursuant to DFA rule 78-6 Amendment No. 1, (now 2.20.3 NMAC) and 87-1 Amendment No. 1 (now 2.40.2 NMAC), to submit its voucher or contract to the department for approval unless the contract, voucher, travel voucher, purchase order or other financial commitment has been executed by an authorized officer of the agency.

**B.** The authority to execute contracts, vouchers, purchase orders, travel vouchers or other financial commitments may be delegated unless provided otherwise by law to any officer or employee of the state agency, but such delegation shall:

- (1) be in writing;
- (2) state whether the delegated power may be subdelegated to another officer or employee of the state agency;
- (3) automatically terminate on whichever date occurs earliest:
  - (a) the date the term of office of the delegating secretary or other chief financial officer ends; or
  - (b) annually on June 30; and
- (4) be on file with the contracts officer of the department of finance and administration (for contracts); and
- (5) be on file with the financial control division of the department of finance and administration.

**C.** A written delegation of authority to execute contracts, vouchers, travel vouchers, purchase orders or other financial commitments may contain such limitations or conditions as the delegating authorized officer may deem appropriate.

**D.** No authorized officer shall delegate to any other person authority to sign the authorized officer’s signature.

**E.** Nothing in this rule shall prevent the use of facsimile,

printed or typed signature of the secretary or chief financial officer on a copy of a contract, voucher, travel voucher, purchase order or other financial commitment. [2.20.2.8 NMAC - Rp/E 2 NMAC 20.2.8, 8/25/2020]

**2.20.2.9 SIGNATURES REQUIRED:**

The two copies of every contract, voucher, travel voucher, purchase order or other financial commitment required to be submitted to the department shall be signed by an authorized officer. The department will retain at least one signed copy of every contract, voucher, travel voucher, purchase order or other financial commitment. Alternatively, agencies may submit a single electronic version, in portable document format (PDF) or a comparable format and in such a manner as the department may direct, of an executed contract, voucher, travel voucher, purchase order or other financial commitment required to be submitted to the department. [2.20.2.9 NMAC - Rp/E 2 NMAC 20.2.9, 8/25/2020]

**Continued Next Page**

**2.20.2.10 AUTHORIZED OFFICERS - DELEGATION:**

A. The following public officers are authorized to execute contracts, vouchers, purchase orders and other financial commitments on behalf of the state agency under their control or supervision. Signatures must be on file at the financial control division of the department of finance and administration.

STATE AGENCY	OFFICER AUTHORIZED
office of the governor	governor
office of the lieutenant governor	lieutenant governor
office of the attorney general	attorney general
secretary of state	secretary of state
state auditor	state auditor
state corporation commission	
(public regulation commission)	commission
insurance department	superintendent of insurance
state fire marshall	state fire marshall
transportation department	director
state land office	land commissioner
state treasurer	state treasurer
department of agriculture	secretary of department
N.M. livestock board	executive director
peanut commission	commission
corrections department	secretary of department
(children, youth and families dept.	secretary of department)
public defender department	director
juvenile parole board	board
adult parole board	board
economic development & tourism department	secretary of department
research and development Institute	director
state fair commission	commission
state racing commission	commission
energy, minerals and natural resources dept.	secretary of department
state game commission	commission
department of game and fish	director
public service commission	commission
department of finance and administration	secretary of department
commission on higher education	commission
office of cultural affairs	cultural affairs officer
committee on concerns of the handicapped	director
general services department	secretary of department
state personnel board	director
health & environment department	secretary of department
(health department)	
(environment department)	
state highway & transportation department	secretary of department
human services department	secretary of department
commission on the status of women	commission
state agency on aging	director
office of Indian affairs	commission on Indian affairs
department of labor	secretary of department
department of public safety	secretary of department
taxation and revenue department	secretary of department
commission for the blind	commission
crime stoppers commission	commission
crime victims reparation commission	commission
state department of public education	superintendent
division of vocational rehabilitation	director
state investment council	state investment officer
department of military affairs	adjutant general

state commission of public records	state records administrator
regulation and licensing department	superintendent
interstate stream commission	commission
office of the state engineer	state engineer
NM veteran service commission	commission
institutions of higher education	boards of regents or controllers
miners hospital	board
all boards	board
youth authority (children, youth and families dept.)	secretary of department

LEGISLATIVE BRANCH

legislative council service	director
legislative finance committee	committee
legislative school study committee	chairman of committee
all other vouchers	director

JUDICIAL BRANCH

supreme court	chief justice
compilation commission	secretary of commission
building commission	commission
director, administrative office of courts	supreme court
court of appeals	chief Judge
district courts	presiding judge
magistrate courts	director, administrative office of the courts
district attorneys	district attorney
judicial standards commission	executive director
judicial council	council

**B.** If the authorized officer set forth in Subsection A of this section is a board or commission, the power to execute contracts, vouchers, purchase orders or other financial commitments may be delegated by a majority of a quorum of the board or commission acting in accordance with the provisions of law.  
[2.20.2.10 NMAC - Rp/E 2 NMAC 20.2.10, 8/25/2020]

**HISTORY OF 2.20.2 NMAC:**

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

DFA 78-5 Execution of Contracts, Vouchers, Purchase Orders and Other Financial Commitments, 6/30/78.

DFA 78-5, Amendment No. 1, 12/20/89.

**History of Repealed Material:** 2.20.2 NMAC, Execution of Contracts, Vouchers, Purchase Orders and Other Financial Commitments, repealed to amend as emergency Sections 7 and 9, effective August 25, 2020.

**HEALTH,  
DEPARTMENT OF**

**TITLE 7 HEALTH  
CHAPTER 1 HEALTH -  
GENERAL PROVISIONS  
PART 30 ADMINISTRATIVE  
HEARINGS FOR CIVIL  
MONETARY PENALTIES  
ISSUED PURSUANT TO PHERA**

**7.1.30.1 ISSUING**  
**AGENCY:** New Mexico department of health.  
[7.1.30.1 NMAC - N, 9/15/2020]

**7.1.30.2 SCOPE:** This rule applies to all persons who receive a notice of contemplated action

for imposition of a civil monetary penalty pursuant to the Public Health Emergency Response Act (“Act”), Section 12-10A-19 NMSA 1978.  
[7.1.30.2 NMAC - N, 9/15/2020]

**7.1.30.3 STATUTORY AUTHORITY:** Public Health Emergency Response Act (“Act”), Section 12-10A-1 *et seq.*, NMSA 1978; and Subsection E of Section 9-7-6, NMSA 1978.  
[7.1.30.3 NMAC - N, 9/15/2020]

**7.1.30.4 DURATION:** Permanent.  
[7.1.30.4 NMAC - N, 9/15/2020]

**7.1.30.5 EFFECTIVE DATE:** September 15, 2020, unless a later date is cited at the end of a section.  
[7.1.30.5 NMAC - N, 9/15/2020]

**7.1.30.6 OBJECTIVE:** The objective of this rule is to provide administrative procedural rules to govern the appeal of a civil monetary penalty that is assessed by the department under the Act.  
[7.1.30.6 NMAC - N, 9/15/2020]

**7.1.30.7 DEFINITIONS:**  
**A. “Appellant”** means a person who is served a notice of contemplated action for imposition of a civil monetary

penalty pursuant to the Act at Section 12-10A-19 NMSA 1978, who timely submits a request for hearing, in accordance with this rule, to contest the proposed penalty.

**B. “Department”**

means the New Mexico department of health.

**C. “Notice of contemplated action”** means a notice that is issued by the department to a person pursuant to the Section 12-10A-19, NMSA 1978.

**D. “Person”** means a living person or a legal entity.

**E. “Recipient”** means a recipient of a notice of contemplated action.

**F. “Secretary”** means the cabinet secretary of the New Mexico department of health. [7.1.30.7 NMAC - N, 9/15/2020]

**7.1.30.8 HEARINGS PURSUANT TO THE PUBLIC HEALTH EMERGENCY RESPONSE ACT:**

**A. Right to**

**hearing:** A person may request an administrative hearing before a hearing officer appointed by the secretary or his or her designee, to appeal the proposed imposition of a civil monetary penalty pursuant to the Act at Section 12-10A-19 NMSA 1978. An appellant may request the hearing by mailing a certified letter, return receipt requested, to the New Mexico department of health at the mailing address that is specified on the notice of contemplated action within five days after service of the notice of the contemplated action. If the recipient fails to request a hearing in the time and manner required by this section, the recipient shall forfeit the right to a hearing, and the proposed action shall become final.

**B. Scheduling the hearing:**

**(1)**

**Appointment of hearing officer:** Upon the department’s receipt of a timely request for a hearing, the department shall appoint an impartial hearing officer and schedule a hearing.

**(2) Hearing**

**date:** The hearing shall be held not more than 60 days and not less than 12 days from the date of service of the notice of the hearing.

**(3) Notice of**

**hearing:** The department shall notify the appellant of the date, time, and place of the hearing and the identity of the hearing officer, within twenty days of the department’s timely receipt of the request for hearing.

**(4) Hearing**

**venue:** The hearing shall be held in Santa Fe, NM; provided that the hearing officer may, with the agreement of the parties, hold the hearing in another location within the state of New Mexico. Hearings may be held in whole or in part via telephone or live video, upon the request of either party, at the hearing officer’s discretion.

**C. Method of service:**

Any notice or decision required to be served under this section may be served either personally or by certified mail, return receipt requested, directed to the appellant at the appellant’s last known mailing address; provided that, if the appellant is a company registered with the New Mexico secretary of state, the notice shall be served upon the company’s duly registered agent. If the notice or decision is served personally, service shall be made in the same manner allowed by the rules of civil procedure for the state district courts of New Mexico. Where the notice or decision is served by certified mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery, or the date of the last attempted delivery of the notice or decision, or the date of the addressee’s refusal to accept delivery.

**D. Hearing officer**

**duties:** The hearing officer shall conduct the hearing, rule on any motions or other matters that arise prior to the hearing, and issue a written report and recommendation(s) to the secretary following the close of the hearing.

**E. Official file:** Upon appointment, the hearing officer shall

establish an official file which shall contain all notices, hearing requests, pleadings, motions, written stipulations, evidence, briefs, and correspondence received in the case. The official file shall also contain proffered items not admitted into evidence, which shall be so identified and shall be separately maintained. Upon conclusion of the proceeding and following issuance of the final decision, the hearing officer shall tender the complete official file to the department for its retention as an official record of the proceedings.

**F. Powers of**

**hearing officer:** The hearing officer shall have all the powers necessary to conduct a hearing and to take all necessary action to avoid delay, maintain order, and assure development of a clear and complete record, including but not limited to the power to: administer oaths or affirmations; schedule continuances; direct discovery; examine witnesses and direct witnesses to testify; subpoena witnesses and relevant books, papers, documents, and other evidence; limit repetitious and cumulative testimony; set reasonable limits on the amount of time a witness may testify; decide objections to the admissibility of evidence or receive the evidence subject to later ruling; receive offers of proof for the record; take notice of judicially cognizable facts; direct parties to appear and confer for the settlement or simplification of issues, and otherwise conduct pre-hearing conferences; impose appropriate evidentiary sanctions against a party who fails to provide discovery or who fails to comply with a subpoena; dispose of procedural requests or similar matters; require the parties to submit proposed findings of fact and conclusions of law, as well as written closing arguments; and enter the hearing officer’s own proposed findings of fact and conclusions of law, orders, reports and recommendations for the consideration of the secretary. The hearing officer may utilize his or her experience, technical competence, or specialized knowledge in the evaluation of evidence presented.



**G. Minimum discovery; inspection and copying of documents:** Upon written request to another party, any party shall have access to documents in the possession of the other party that are relevant to the subject matter of the appeal, except confidential or privileged documents.

**H. Minimum discovery; witnesses:** The parties shall each disclose to each other and to the hearing officer, either orally or in writing, the names of witnesses to be called, together with a brief summary of the testimony of each witness, by a deadline established by the hearing officer. In situations where written statements will be offered into evidence in lieu of a witness's oral testimony, the names of the persons making the statements and a brief summary of the statements shall be disclosed.

**I. Pre-hearing disposition:** The subject matter of any hearing may be disposed of by stipulation, settlement or consent order, unless otherwise precluded by law. Any stipulation, settlement, or consent order reached between the parties shall be written and shall be signed by the hearing officer and the parties or their attorneys.

**J. Postponement or continuance:** The hearing officer, at his or her discretion, may postpone or continue a hearing upon his or her own motion, or upon the motion of a party, for good cause shown. Notice of any postponement or continuance shall be given in person, by telephone, or by mail to all parties within a reasonable time in advance of the previously scheduled hearing date.

**K. Conduct of hearing:** Pursuant to the Open Meetings Act, Section 10-15-1, *et seq.*, NMSA 1978, hearings shall be open to the public; provided, however, that hearings may be closed in part to prevent the disclosure of confidential information, including but not limited to health information protected by state and federal laws.

**L. Telephonic testimony:** Upon timely notice to the opposing party and the hearing

officer, and with the approval of the hearing officer, the parties may present witnesses by telephone or live video (if available).

**M. Legal representation:** An appellant may be represented by an attorney licensed to practice in New Mexico, by a non-attorney representative, or by both. The department may be represented by an attorney licensed to practice in New Mexico, a department employee, or by both.

**N. Recording:** The hearing officer or a designee shall record the hearing by means of a mechanical sound recording device provided by the department for a record of the hearing. Such recording need not be transcribed, unless requested by a party who shall arrange and pay for the transcription.

**O. Burden of proof:** Except as otherwise provided in this rule, the department has the burden of proving by a preponderance of the evidence the basis for the proposed action.

**P. Order of presentation; general rule:** Except as provided in this rule, the order of presentation for hearings in all cases shall be:

(1) **appearances:** opening of proceeding and taking of appearances by the hearing officer;

(2) **pending matters:** disposition by the hearing officer of preliminary and pending matters;

(3) **opening statements:** the opening statement of the department, if any; and then the opening statement of the appellant, if any;

(4) **cases:** the department's case-in-chief, and then the case-in-chief of the appellant;

(5) **rebuttal:** the department's case-in-rebuttal, if any;

(6) **closing argument:** the department's closing statement, if any, which may include legal argument; and then the closing statement of the party opposing the department's action or proposed

action, if any, which may include legal argument; and

(7) **close:** close of proceedings by the hearing officer.

**Q. Admissible evidence; rules of evidence not applicable:** The hearing officer may admit evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs. Rules of evidence, such as the New Mexico rules of evidence for the district courts, shall not apply but may be considered in determining the weight to be given any item of evidence. The hearing officer may at his or her discretion, upon his or her motion or the motion of a party or a party's representative, exclude incompetent, irrelevant, immaterial, or unduly repetitious evidence, including testimony, and may exclude confidential or privileged evidence.

**R. Objections:** A party may timely object to evidentiary offers by stating the objection together with a succinct statement of the grounds for the objection. The hearing officer may rule on the admissibility of evidence at the time an objection is made or may receive the evidence subject to later ruling.

**S. Official notice:** The hearing officer may take notice of any facts of which judicial notice may be taken. When the hearing officer takes notice of a fact, the parties shall be notified either before or during the hearing of the fact so noticed and its source, and the parties shall be afforded an opportunity to contest the fact so noticed.

**T. Record content:** The record of a hearing shall include all documents contained in the official file maintained by the hearing officer, including all evidence received during the course of the hearing, proposed findings of fact and conclusions of law, the recommendations of the hearing officer, and the final decision of the secretary.

**U. Written evidence from witnesses:** The hearing officer may admit evidence in the form of a

written statement made by a witness, when doing so will serve to expedite the hearing and will not substantially prejudice the interests of the parties.

**V. Failure to appear:**

If a party who has requested a hearing or a party’s representative fails to appear on the date, time, or location announced for a hearing, and if no continuance was previously granted, the party shall be deemed to be in default; the hearing officer shall issue his or her report, noting the default; and the secretary may subsequently render a final decision adopting the proposed action. Where a person fails to appear at a hearing because of accident, sickness, or other cause, the person may within a reasonable time apply to the hearing officer to reopen the proceeding, and the hearing officer may, upon finding sufficient cause, fix a time and place for a hearing and give notice to the parties.

**W. Hearing officer written report and recommendation(s):** The hearing officer shall submit a written report and recommendation(s) to the secretary that contains a statement of the issues raised at the hearing, proposed findings of fact and conclusions of law, and a recommended determination. Proposed findings of fact shall be based upon the evidence presented at the hearing or known to all parties, including matters officially noticed by the hearing officer. The hearing officer’s recommended decision is a recommendation to the secretary of the New Mexico department of health and is not a final order.

**X. Submission for final decision:** The hearing officer’s report and recommendation(s) shall be submitted together with the complete official file to the secretary of the New Mexico department of health for a final decision no later than 30 days after the hearing.

**Y. Secretary’s final decision:** The secretary shall render a final decision within 45 calendar days of the submission of the hearing officer’s written report. A copy of the final decision shall be mailed to the appealing party by certified

mail, return receipt requested, within 15 days after the final decision is rendered and signed.  
[7.1.30.8 NMAC - N, 9/15/2020]

**History of 7.1.30 NMAC:  
[RESERVED]**

**PUBLIC EDUCATION  
DEPARTMENT**

**TITLE 6 PRIMARY AND  
SECONDARY EDUCATION  
CHAPTER 64 SCHOOL  
PERSONNEL – COMPETENCIES  
FOR LICENSURE  
PART 19 COMPETENCIES  
FOR ELEMENTARY  
MATHEMATICS SPECIALISTS**

**6.64.19.1 ISSUING  
AGENCY:** Public Education  
Department, hereinafter the  
department.  
[6.64.19.1 NMAC – N, 9/15/2020]

**6.64.19.2 SCOPE:** This  
rule applies to all institutions of  
higher education in New Mexico that  
establish or maintain a curriculum for  
persons seeking an endorsement as an  
elementary mathematics specialist to  
a state educator license.  
[6.64.19.2 NMAC – N, 9/15/2020]

**6.64.19.3 STATUTORY  
AUTHORITY:** This rule is  
promulgated pursuant to Sections  
22-2-1, 22-2-2, and 22-10A-3 NMSA  
1978.  
[6.64.19.3 NMAC – N, 9/15/2020]

**6.64.19.4 DURATION:**  
Permanent.  
[6.64.19.4 NMAC – N, 9/15/2020]

**6.64.19.5 EFFECTIVE  
DATE:** September 15, 2020, unless  
a later date is cited at the end of a  
section.  
[6.64.19.5 NMAC – N, 9/15/2020]

**6.64.19.6 OBJECTIVE:** The  
objective of this rule is to establish  
elementary mathematics specialists  
competencies that are based on what  
elementary mathematics teachers

are required to know and be able to support effective elementary mathematics programs in New Mexico schools. The competencies were developed to ensure alignment with the New Mexico content standards and benchmarks for mathematics and with the national standards of the association of mathematics teacher educators.  
[6.64.19.6 NMAC – N, 9/15/2020]

**6.64.19.7 DEFINITIONS:**

**A. “Cultural and linguistic responsiveness”** means learning environments, instructional materials, curriculum, support services, activities, and professional development that inform culturally and linguistically responsive pedagogy; reflect the cultures, languages, and lived experiences of a multicultural society; address multiple ethnic descriptions, interpretations, or perspectives of events and experiences; and encourage critical pedagogy.

**B. “Professional learning experience”** means the demonstration of leading professional learning or working with professional learning providers to support mathematics understanding and implementing content and pedagogy.

**C. “Work experience”** means the demonstration of knowledge and skills related to teaching mathematics.  
[6.64.19.7 NMAC – N, 9/15/2020]

**6.64.19.8 REQUIREMENTS:**

**A.** Teachers seeking to add an endorsement as an elementary mathematics specialist to an existing New Mexico level two or level three-A teaching license shall meet the following requirements:

(1) hold a level two or three-A teaching license for a minimum of three years; and

(2) hold a teaching license in elementary education, as provided in 6.64.4 NMAC and 6.61.2 NMAC.

**B.** Teachers seeking to add an endorsement as an elementary mathematics specialist shall do so through one of the following pathways:

(1) Provide evidence of five years of relevant work and professional learning experience in K-8 mathematics that is approved by the department. Candidates are required to provide demonstration of experience by submitting a resume and at least three verification letters stating the candidate has at least five years of relevant work and professional learning experience in the area of mathematics, mentoring educators in K-8, and participates in ongoing learning, which can be submitted from the following individuals:

- (a) a school district superintendent, director of a charter school, or curriculum and instruction director;
- (b) a school site administrators; or
- (c) professional learning provider director or team leader.

(2) Complete 18 semester hours of mathematics education coursework, of which nine semester hours are required to be upper division credit, based on the competencies detailed in 6.64.19.9 NMAC in a department-approved program.  
[6.64.19.8 NMAC – N, 9/15/2020]

**6.64.19.9 COMPETENCIES FOR ELEMENTARY MATHEMATICS SPECIALISTS:**

Leadership knowledge and skills:

A. The elementary mathematics specialist takes an active role in their professional growth by participating in professional development opportunities that directly relate to the learning and teaching of mathematics and to their development as a mathematics instructional leader, which may include professional networks, journals, and discussion groups, among other opportunities. The opportunities shall also include occasion to stay informed of:

- (1) critical issues in elementary mathematics;
- (2) national, state, and school district or charter school policy initiatives;

(3) research - and evidence-based best practices for elementary math instruction;

(4) characteristics of high-quality curriculum;

(5) features of high-quality instructional materials; and

(6) qualities of superior professional learning and best practices for designing adult learning environments.

B. The elementary mathematics specialist shall engage in and facilitate continuous and collaborative learning, drawing upon research in mathematics education to:

(1) inform practice and enhance learning opportunities for all students' and teachers' mathematical knowledge development;

(2) design and implement collaborative structures to build teacher capacity; and

(3) advance their own development and the development of others as reflective practitioners in utilizing group processes to collaboratively solve problems, make important decisions, manage conflict, and promote meaningful change.

C. The elementary mathematics specialist shall act and communicate professionally with school and school district or charter school teams to assure high-quality mathematics instruction, including:

(1) evaluate alignment of instructional materials to state standards and required assessments and make recommendations for addressing learning and achievement gaps;

(2) engage in discussions and decision-making to establish appropriate benchmarks for student learning goals from K-6;

(3) review curriculum and instructional materials for cultural and linguistic responsiveness and make recommendations to enhance culturally and linguistically diverse students' access to high-quality mathematics materials;

(4) determine the suitability of mathematics curricula and teaching materials (e.g., textbooks, technology, manipulatives) for particular learning goals;

(5) provision appropriate tools and resources targeted to specific individual student needs;

(6) collaborate with school-based professionals to develop evidence-based interventions for high- and low-achieving students; and

(7) collaborate with teachers and school administrators to secure additional resources as needed to maintain high expectations in mathematics classes for all students.

D. The elementary mathematics specialist shall plan, develop, implement, and evaluate professional development programs that assist teachers in using resources from professional mathematics organizations and support teachers in systematically reflecting and learning from practice.

E. The elementary mathematics specialist shall establish and maintain learning communities, such as professional learning communities.

F. The elementary mathematics specialist shall mentor new and experienced teachers to better serve students in terms of mathematics instruction and classroom support.

G. The elementary mathematics specialist shall nurture a culture of productive professionalism by:

(1) modeling a growth mindset and productive disposition toward mathematics teaching and learning for all staff and students;

(2) supporting a culture of reflection, refinement, and action focused on continuous improvement in classroom best practices;

(3) fostering a culture of collective responsibility and a school climate that treats students as holistic beings;

(4) promoting the use of data analysis to drive decisions around mathematics instruction; and

(5) communicating and working with school staff, administrators, families, and various stakeholders to create mutually beneficial partnerships and a shared vision of mathematics teaching and learning.

[6.64.19.9 NMAC – N, 9/15/2020]

**6.64.19.10 PEDAGOGICAL KNOWLEDGE FOR TEACHING MATHEMATICS:**

**A.** To promote and advocate for equitable, high-quality mathematics instruction for all students, the elementary mathematics specialist shall collaborate with teachers and administrators in supporting the diversities of the classroom and school, including cultural, disability, linguistic, gender, socioeconomic, and developmental, to:

(1) address issues of access and advancement at the individual student, classroom, school, school district, and charter school levels;

(2) establish clear goals within individual student learning progressions that utilize and build upon learners’ existing knowledge, skills, understandings, conceptions, and misconceptions to advance learning and use the goals to guide instructional decisions;

(3) purposefully construct guidelines and support for promoting a mathematics learning culture within the classroom environment, including specific routines and instructional strategies that help cultivate positive mathematics identities for all students;

(4) design student learning opportunities that:

(a) promote engagement in productive struggle and collaborative problem solving and extend the meaning and usefulness of mathematics in students’ daily lives;

(b) intentionally reward effort in mathematical learning;

(c) allow space for all students’ mathematical sense-making and include multiple entry points into problem solving;

(d) engage all students in making connection among mathematical representations to deepen understanding of mathematical concepts and procedures as tools for problem solving;

(e) provide ample opportunity for all students to engage in academic discourse around mathematical problem solving as well as for individual expression in problem solving, such as through oral or written explanation or sharing of mathematical thinking;

(f) utilize purposeful questions to assess and advance all students’ reasoning and sense-making about important mathematical ideas and relationships;

(g) diagnose and leverage mathematical misconceptions and errors to design appropriate learning opportunities that support all students’ mathematical conceptual development, understandings, and identities;

(h) integrate the use of appropriate mathematical tools and technology as essential resources to support students in making sense of mathematical ideas and communicating their mathematical thinking;

(i) encourage mathematical explorations among peers to extend learning opportunities; and

(j) assess all student abilities, through formative and summative assessments, and develop actionable strategies to help all students fill in learning gaps; and

(5) Reflect and take action to adjust instructional approaches characterized by:

(a) the use of evidence to adjust

instruction continually in ways that support and extend learning for all students, including differentiation and enrichment;

(b) the use of strategies deliberately designed to support specific groups of student learners; and

(c) organized support of delivery of developmentally appropriate instruction that is responsive to individual learners.

**B.** To promote pedagogical shifts and professional growth for self and teachers, the elementary mathematics specialist shall:

(1) model effective problem solving and the mathematical practices, including questioning, representing, communicating, conjecturing, making connections, reasoning and providing, and self-monitoring, and cultivate the development of such practices in all learners;

(2) model and support teachers and students in the use of technical language associated with mathematics, attending to both mathematical integrity and usability by learners;

(3) support the use of various instructional applications of technology that are evidence-based and are developmentally-, mathematically-, and pedagogically-grounded;

(4) research and share evidence-based instructional formats that support all students in accessing mathematical problems, including whole group, small group, partner, and individual, and that support success in achieving specific student learning goals;

(5) support teachers in their analysis and evaluation of student ideas and work, and design appropriate responses to support and further student mathematical learning, aligned to individual goals;

(6) apply learning trajectories related to mathematical topics and collaborate with teachers to sequence activities

and design instructional tasks and assessments;

(7) support teachers in the use of the formative assessment cycle, which includes administering a formative assessment task, analyzing student responses to the task, and designing and re-teaching lessons based on this analysis; and be able to find or create appropriate resources for this purpose;

(8) support teachers in the use of multiple assessment strategies, including, but not limited to listening to and observing students making sense of mathematics, and in analyzing, choosing, designing, and adapting assessment tasks for monitoring student learning and to assess students' mathematical knowledge, based on students' individual learning goals and expressions and demonstrations of understanding; and

(9) support teachers in the analysis of formative and summative assessment results and communication of results to students with actionable feedback and to appropriate and varied audiences for further support in making instructional decisions.

[6.64.19.10 NMAC – N, 9/15/2020]

**HISTORY OF 6.64.19 NMAC:  
[RESERVED]**

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**End of Adopted Rules**

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**Other Material Related to Administrative Law**


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**ADMINISTRATIVE  
HEARING OFFICE****NOTICE OF MINOR,  
NONSUBSTANTIVE  
CORRECTION**

The Administrative Hearings Office gives Notice of a Minor, Nonsubstantive Correction to 22.600.3 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:

In Section 15, Subsection A was deleted (due to lack of a subsection B and the former paragraphs were properly re-formatted to Subsections.

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

**REGULATION AND  
LICENSING DEPARTMENT  
CONSTRUCTION INDUSTRIES  
DIVISION****NOTICE OF MINOR,  
NONSUBSTANTIVE  
CORRECTION**

The New Mexico Regulation and Licensing Department, Construction Industries Division, gives Notice of a Minor, Nonsubstantive Correction to 14.7.9 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:

In Section 9, renumbered second subsection "I." to subsection "J." and renumbered remaining subsection accordingly.

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

**GOVERNOR,  
OFFICE OF****EXECUTIVE ORDER 2020-059****RENEWING THE STATE OF  
PUBLIC HEALTH EMERGENCY  
INITIALLY  
DECLARED IN EXECUTIVE  
ORDER 2020-004, OTHER  
POWERS INVOKED IN  
THAT ORDER, AND ALL  
OTHER ORDERS AND  
DIRECTIVES CONTAINED IN  
EXECUTIVE ORDERS TIED  
TO THE ONGOING PUBLIC  
HEALTH EMERGENCY**

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

By the time the first COVID-19 cases had been confirmed in New Mexico, on March 11, 2020, COVID-19 had already spread globally and throughout the United States. At that time, more than 100,000 people had been infected globally and there were more than 1,000 cases in the United States, spread out over 39 states. The President of the United States declared a national state of emergency for COVID-19 on March 13, 2020. As of August 27, 2020 the Centers for Disease Control and Prevention ("CDC") reported

over 5.7 million people have been infected in the United States, with over 175,000 related deaths, and the New Mexico Department of Health has report over 24,900 positive COVID-19 cases and 764 related deaths in New Mexico.

Public health organizations have implemented emergency measures intended to slow the spread of COVID-19. For example, on January 20, 2020, the CDC activated its Emergency Operations Center in response to the COVID-19 outbreak. The WHO declared a Public Health Emergency of International Concern shortly thereafter. All of our sister states have declared a state of emergency and implemented significant measures and deployed substantial resources to fight the spread of COVID-19.

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

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

1. In consultation with the New Mexico Department of Health, I have determined

that the statewide public health emergency proclaimed in Executive Order 2020-004, and renewed in Executive Orders 2020-022, 2020-026, 2020-030, 2020-036, 2020-053, and 2020-55 shall be renewed and extended through September 18, 2020.

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

3. All other Executive Orders with a duration that was tied to the COVID-19 public health emergency or that was not explicitly stated shall continue with the same effect, including any orders appropriating emergency funding and the following orders: Executive Order 2020-012; Executive Order 2020-016; Executive Order 2020-020; Executive Order 2020-021; Executive Order 2020-025; Executive Order 2020-037 ; Executive Order 2020-039; and Executive Order 2020-056.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Executive Order shall take effect August 29, 2020 and shall remain in effect until September 18, 2020 unless renewed or until the Governor rescinds it.

**DONE AT THE EXECUTIVE OFFICE THIS 28TH DAY OF AUGUST 2020**

**ATTEST:  
/S/ MAGGIE TOULOUSE  
OLIVER  
SECRETARY OF STATE**

**WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO**

**MICHELLE LUJAN GRISHAM  
GOVERNOR**

**HEALTH,  
DEPARTMENT OF  
PUBLIC HEALTH ORDER  
NEW MEXICO DEPARTMENT  
OF HEALTH  
CABINET SECRETARY  
KATHYLEEN M. KUNKEL**

**AUGUST 28, 2020**

**Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending the March 23, 2020, April 6, 2020, April 11, 2020, April 30, 2020, May 5, 2020, May 15, 2020, May 27, 2020, June 1, 2020, June 12, 2020, June 15, 2020, June 30, 2020, July 13, 2020, and July 30, 2020 Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19**

**PREFACE**

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 (“COVID-19”). Continued social distancing and self-isolation measures are necessary to protect public health given the potentially devastating effects that could result from a rapid increase in COVID-19 cases in New Mexico. While this Order continues some loosened restrictions on mass gatherings and business operations, the core directive underlying all prior public health initiatives remains intact; all New Mexicans should be staying in their homes for all but the most essential activities and services. When New Mexicans are not in their homes, they must strictly adhere to social distancing

protocols and wear face coverings to minimize risks. These sacrifices are the best contribution that each of us can individually make to protect the health and wellbeing of our fellow citizens and the State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans to stay in their homes for all but the most essential activities.

It is hereby **ORDERED** that:

1. All current guidance documents and advisories issued by the Department of Health remain in effect.

2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:

A. March 13, 2020 Public Health Emergency Order to Temporarily Limit Nursing Home Visitation Due to COVID-19;

B. April 30, 2020 Public Health Emergency Order Modifying Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries; and

C. March 24, 2020 Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19.

3. The July 30, 2020 Public Health Emergency Order Amending the March 23, 2020, April 6, 2020, April 11, 2020, April 30, 2020, May 5, 2020, May 15, 2020, May 27, 2020, June 1, 2020, June 12, 2020, June 15, 2020, June 30, 2020, and July 13, 2020 Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19 is hereby amended as follows:

**ORDER**

**WHEREAS**, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

**WHEREAS**, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through September 18, 2020;

**WHEREAS**, COVID-19 continues to spread in New Mexico and nationally. Since, Executive Order 2020-004 was issued, confirmed COVID-19 infections in New Mexico have risen to over 24,900 and confirmed cases in the United States have risen to more than 5.8 million, with significant recent spikes in cases in some of our neighboring states;

**WHEREAS**, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

**WHEREAS**, social distancing and the consistent and proper use of face coverings in public spaces are the most effective ways New Mexicans can minimize the Spread of COVID-19 and mitigate the potentially devastating impact of this pandemic in New Mexico; and

**WHEREAS**, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-IOA-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

**NOW, THEREFORE**, I, Kathyleen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance as defined in the New Mexico Public Health Act, NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

The following definitions are adopted for the purposes of this Order:

Definitions: As used in this Public Health Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) “Essential business” means any business or non-profit entity falling within one or more of the following categories:

- a. Health care operations including hospitals, walk-in-care health facilities, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, drug and alcohol recovery support services, and medical supplies and equipment manufacturers and providers;
- b. Homeless shelters, food banks, and other services providing care to indigent or needy populations;
- c. Childcare facilities;
- d. Grocery stores, supermarkets, food banks, farmers’ markets and vendors who sell food, convenience stores, and other businesses that generate the majority of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, feed, and other animal supply stores, fresh meats, fish, and poultry, and any other household consumer products;
- e. Farms, ranches, and other food cultivation, processing, or packaging operations;
- f. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, airport operations, public transportation, airlines, taxis, private transportation providers, transportation network companies, water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, gas stations, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers,



data centers, technology support operations, and telecommunications systems;

g. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;

h. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades;

i. Veterinary and livestock services, animal shelters and facilities providing pet adoption, grooming, daycare, or boarding services;

j. Media services;

k. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bike repair products;

l. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;

m. Hardware stores;

n. Laundromats and dry cleaner services;

o. Funeral homes, crematoriums and cemeteries;

p. Banks, credit unions, insurance providers, payroll services, brokerage services, and investment management firms;

q. Businesses providing mailing and shipping services;

r. Laboratories and defense and

national security-related operations supporting the United States government, a contractor to the United States government, or any federal entity;

s. Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and

t. Logistics, and also businesses that store, transport, or deliver groceries, food, materials, goods or services directly to residences, retailers, government institutions, or essential businesses.

(2) "Close-contact business" includes barbershops, hair salons, gyms, group fitness classes, tattoo parlors, nail salons, spas, massage parlors, esthetician clinics, tanning salons, guided raft tours, guided balloon tours, and personal training services.

(3) "Food and drink establishments" include restaurants, breweries, wineries, distillers, cafes, coffee shops, or other similar establishments that offer food or drink. For purposes of this section, "breweries" are those businesses licensed pursuant to NMSA 1978, § 60-6A-26.1 (2019); "distillers" are those businesses licensed pursuant to NMSA 1978, § 60-6A-1 (2019); and "wineries" are those businesses licensed pursuant to NMSA 1978, § 60-A-11 (2019).

(3) "Houses of worship" means any church, synagogue, mosque, or other gathering space where persons congregate to exercise their religious beliefs

(4) "Close-contact recreational facilities" include indoor movie theaters, indoor museums with interactive displays or exhibits and other similar venues, bowling alleys, miniature golf, arcades, amusement parks, aquariums, casinos, concert venues, professional sports venues, event venues, bars, dance clubs, performance venues, go-kart courses, automobile racetracks, adult entertainment venues, and

other places of recreation or entertainment. For purposes of this section, a "bar" is defined as any business that generated more than half of its revenue from the sale of alcohol during the preceding fiscal year.

(5) "Outdoor recreational facilities" include outdoor golf courses, public swimming pools, outdoor tennis courts, summer youth programs, youth livestock shows, horseracing tracks, botanical gardens, outdoor zoos, and New Mexico state parks.

(6) "Places of lodging" means all hotels, motels, RV parks, and short-term vacation rentals.

(7) "Retail space" means any business that sells goods or services directly to consumers or end-users and includes the following "essential businesses" identified in the categories above: l(d), l(k), l(m), and l(n).

(8) "Mass gathering" means any public gathering, private gathering, organized event, ceremony, parade, organized amateur contact sport, or other grouping that brings together more than ten (10) individuals in a single room or connected space, confined outdoor space or an open outdoor space. "Mass gathering" does not include the presence more than ten (10) individuals where those individuals regularly reside. "Mass gathering" does not include individuals who are public officials or public employees in the course and scope of their employment.

(9) "COVID-Safe Practices" ("CSPs") are those directives, guidelines, and recommendations for businesses and other public operations that are set out and memorialized in the document titled "All Together New Mexico: COVID-Safe Practices for Individuals and Employers". That document may be obtained at the following link <https://cv.muhealth.org/covid-safe-practices/>.

**I HEREBY DIRECT AS FOLLOWS:**

(1) Except as provided elsewhere in this Order, all “mass gatherings” are hereby prohibited under the powers and authority set forth in the Public Health Act. An indoor or outdoor parade of any sort is a mass gathering; parades are therefore prohibited under this Order.

(2) “Essential businesses” may open but must comply with the pertinent “COVID-Safe Practices (CSPs)” section(s) of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers” and any identified occupancy restrictions. “Essential businesses” identified as a “retail space” may not exceed 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department. Further, an “essential business” identified as a “retail space” may not allow a person who is without a mask or multilayer cloth face covering to enter the premises except where that person is in possession of a written exemption from a healthcare provider.

(3) “Close contact businesses” may operate at up to 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department.

(4) “Close-contact recreational facilities” must remain closed

(5) “Food and drink establishments” may provide dine-in service, but they may not exceed more than 25% occupancy of the maximum occupancy in any enclosed space on the premises, as determined by the relevant fire marshal or fire department. “Food and drink establishments” choosing to provide indoor dining must ensure that there is at least six feet of distance between tables. No more than six patrons may be seated at any single table. No bar or counter seating is permitted. Dine-in services shall be provided

only to patrons who are seated at table, and patrons may not consume food or beverage while standing. “Food and drink establishments” may also provide dine-in service in outdoor seating areas up to 75% occupancy, where applicable. Tables in outdoor seating areas must be spaced at least six feet apart. No more than six patrons may be seated at any single table. Patrons must be seated in order to be served food or drink unless ordering food for carryout. No bar or counter seating is permitted. “Food and drink establishments” may provide carryout service, or delivery service if otherwise permitted by law.

(6) “Houses of worship” may hold services and other functions, indoors or outdoors, or provide services through audiovisual means. “Houses of worship” may not exceed 40% of the maximum occupancy of any enclosed building, as determined by the relevant fire marshal or fire department.

(7) “Outdoor recreational facilities” may operate provided they comply with the pertinent “All Together New Mexico: COVID-Safe Practices for Individuals and Businesses.” Further, state parks shall only be open to New Mexico residents and may open for day use only. Camping areas, visitor centers, and any other large enclosed indoor spaces at state parks shall remain closed. As a condition of entering a state park, all visitors must demonstrate proof of residency through one of the following means: a New Mexico license plate on their vehicle; a New Mexico driver’s license or ID card; a valid New Mexico vehicle registration; a federal document attesting to residency; or a military identification. In addition, public swimming pools are limited to lane-swimming and lessons only. Play and splash areas shall be closed. Horseracing tracks may not allow spectators.

(8) “Places of lodging” shall not operate at more than 50%

of maximum occupancy. Healthcare providers who are engaged in the provision of care to New Mexico residents or individuals utilizing “places of lodging” for extended stays, as temporary housing, or for purposes of quarantining shall not be counted for purposes of determining maximum occupancy.

(9) Any business that is not identified as an “essential business”, “close contact business”, “food and drink establishment”, “house of worship”, “close-contact recreational facility”, “outdoor recreational facility”, or “place of lodging” may open provided that the total number of persons situated within the business does not exceed 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department.

(10) Any entity, including businesses and houses of worship, operating pursuant to this public health order must comply with the pertinent “COVID-Safe Practices (CSPs)” section(s) of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers” and also any identified occupancy restrictions.

(11) Private educational institutions serving children and young adults from pre Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall adhere to the face covering and other COVID-Safe Practices requirements for in person instruction described in the document “Reentry Guidance” published by New Mexico’s Public Education Department on June 20, 2020 and as updated from time to time thereafter, and shall operate with a maximum occupancy of 25% of any individual enclosed indoor space, such as any classroom, as determined by the relevant fire marshal or fire department, with the occupancy restriction herein to govern in the event of any discrepancy with the “Reentry Guidance.”

(12) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when eating or drinking.

(13) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the Department of the Environment, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(14) In order to minimize the shortage of health care supplies and other necessary goods, grocery stores and other retailers are hereby directed to limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual. NMSA 1978, § 12-10A-6 (2012).

**I FURTHER DIRECT** as follows:

(1) This Public Health Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Public Health Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.

(3) Nothing in this Public Health Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Public Health Order shall take effect on August 29, 2020 and remain in effect through September 18, 2020.

**DONE AT THE EXECUTIVE OFFICE THIS 28TH DAY OF AUGUST 2020**

**ATTEST:**  
**/S/ MAGGIE TOULOUSE OLIVER**  
**SECRETARY OF STATE**

**WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO**

**/S/ KATHLEEN M. KUNKEL**  
**SECRETARY OF THE STATE OF NEW MEXICO DEPARTMENT OF HEALTH**

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

# 2020 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXXI, Issues 1-24

<b>Issue</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
<b>Issue 1</b>	<b>January 6</b>	<b>January 14</b>
<b>Issue 2</b>	<b>January 16</b>	<b>January 28</b>
<b>Issue 3</b>	<b>January 30</b>	<b>February 11</b>
<b>Issue 4</b>	<b>February 13</b>	<b>February 25</b>
<b>Issue 5</b>	<b>February 27</b>	<b>March 10</b>
<b>Issue 6</b>	<b>March 12</b>	<b>March 24</b>
<b>Issue 7</b>	<b>March 26</b>	<b>April 7</b>
<b>Issue 8</b>	<b>April 9</b>	<b>April 21</b>
<b>Issue 9</b>	<b>April 23</b>	<b>May 5</b>
<b>Issue 10</b>	<b>May 7</b>	<b>May 19</b>
<b>Issue 11</b>	<b>May 28</b>	<b>June 9</b>
<b>Issue 12</b>	<b>June 11</b>	<b>June 23</b>
<b>Issue 13</b>	<b>July 6</b>	<b>July 14</b>
<b>Issue 14</b>	<b>July 16</b>	<b>July 28</b>
<b>Issue 15</b>	<b>July 30</b>	<b>August 11</b>
<b>Issue 16</b>	<b>August 13</b>	<b>August 25</b>
<b>Issue 17</b>	<b>August 27</b>	<b>September 15</b>
<b>Issue 18</b>	<b>September 17</b>	<b>September 29</b>
<b>Issue 19</b>	<b>October 1</b>	<b>October 13</b>
<b>Issue 20</b>	<b>October 15</b>	<b>October 27</b>
<b>Issue 21</b>	<b>October 29</b>	<b>November 10</b>
<b>Issue 22</b>	<b>November 13</b>	<b>November 24</b>
<b>Issue 23</b>	<b>December 3</b>	<b>December 15</b>
<b>Issue 24</b>	<b>December 17</b>	<b>December 29</b>

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.

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