

New Mexico Register

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

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Notices of Rulemaking and Proposed Rules

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION DIVISION

NOTICE OF PUBLIC HEARING FOR PROPOSED RULEMAKING

The New Mexico Oil Conservation Commission (Commission) gives notice of the following public hearing to be held commencing at 9:00 a.m. on June 3, 2022:

Case No. 22719: APPLICATION OF OIL CONSERVATION DIVISION TO AMEND RULES 19.15.2 AND 19.15.7 NMAC

Summary of Proposed Rule. The New Mexico Oil Conservation Division (OCD) proposes to amend 19.15.2 and 19.15.7 NMAC to make changes concerning procedural matters including the electronic submission of documents. The proposed rule changes include:

19.15.2 NMAC (General Provisions). OCD proposes to amend 19.15.2 to create an online process for the submittal of documents on the OCD's website and to require the filing of forms and other documents through the online portal. Also, OCD proposes to eliminate the specific locations of district offices and specific boundaries of districts within the rules and instead recognize the authority of the OCD Director to create organizational units and require information on such units to be placed on the website.

19.15.7 NMAC (Forms and Reports). OCD proposes to amend 19.15.7 to provide for the creation and filing of electronic forms and documents and to clarify the filing requirements for oil and gas operators working on federal and tribal lands.

Purpose of Proposed Rule. The proposed rule changes are intended to align the Commission's rules with the current and proposed procedures and practices of the OCD, particularly those related to the electronic

submission of documents to the OCD and updates to provisions concerning OCD's structure and the potential for future changes in response to operational priorities.

Legal Authority. The proposed rule changes are authorized by the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, and specifically Section 70-2-6 (authorizing the OCC to exercise jurisdiction, authority, and control of and over all persons, matters, and things necessary or proper to enforce the statute), Section 70-2-11 (authorizing the OCC to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), and Section 70-2-12 (enumerating the powers of the OCC and OCD). The public hearing is governed by the OCC's rule on rulemaking proceedings, 19.15.3 NMAC.

Availability of proposed rules. The full text of the proposed rule changes is available on the OCD Rules page at the Oil Conservation Division's website at <http://www.emnrd.nm.gov/ocd>, or by contacting the Commission Clerk, Florene Davidson at florene.davidson@state.nm.us.

Public Hearing. The Commission will conduct a public hearing on the proposed rule changes that will be held online and by telephone on June 3, 2022, at 9:00 a.m., and will be continued to the following day(s) if not completed. The public hearing will be transcribed and recorded. To access the public hearing on-line via the Webex platform and by telephone:

<https://nmemnrd.webex.com/nmemnrd/onstage/g.php?MTID=e0e0fcc48144a18f367f3ee30741a7c9b>

To receive a call back, provide your phone number when you join the event, or call the number below and enter the access code.

United States Toll
+1-408-418-9388
Show all global call-in numbers

Access code: 2497 646 1072

Written comments. Any person may submit written comments on the proposed rule changes by mail or delivery to the Commission Clerk, Florene Davidson, 3rd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or e-mailed to florene.davidson@state.nm.us. All written comments must be received by the Commission Clerk no later than 9:00 A.M. on June 3, 2022, unless the Commission or the Commission Chair extends this deadline.

Proposed Modifications, Technical Testimony, and Cross Examination.

A person who intends to propose a modification to the proposed rules, to present technical testimony at the public hearing, or to cross-examine witnesses at the public hearing must file a Pre-Hearing Statement conforming to the requirements of 19.15.3.11(B) NMAC, no later than May 20, 2022, at 5:00 p.m. The Pre-Hearing Statement must be filed by mail, e-mail, or delivery to the Commission Clerk, Florene Davidson, 3rd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, florene.davidson@state.nm.us. A person who presents technical testimony at the public hearing will be subject to cross-examination by the members of the OCC, the OCC's counsel, and other persons who filed Pre-Hearing Statements.

Oral Comments. A person who did not file a Pre-Hearing Statement may present non-technical testimony or make an unsworn statement at the public hearing. A person who wants to present non-technical testimony or make an unsworn statement at the public hearing must inform the commission. A person who presents non-technical testimony will be subject to cross-examination by the members of the Commission, the Commission's counsel, and other persons who filed Pre-Hearing Statements. A person may offer

exhibits at the public hearing if the exhibits are relevant to the proposed rules and the person files the original exhibit and five copies conforming to the requirements of 19.15.3.12(C) NMAC prior the end of the public hearing. A person may file exhibits by mail, email, or delivery to the Commission Clerk, Florene Davidson, 3rd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, florene.davidson@state.nm.us. Exhibits must be submitted by June 1, 2022, at 5:00 p.m.

Persons with Disabilities. A person with a disability who needs a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service, such as a summary or other accessible form of document, in order to attend or participate in the public hearing, must contact the Commission Clerk, Florene Davidson, at (505) 476- 3458 or florene.davidson@state.nm.us, or through the New Mexico Relay Network at 1-800-659-1779, no later than May 18, 2022.

Technical Information. There is no technical information for the proposed rule changes.

GAME AND FISH DEPARTMENT

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission ("Commission") will be hosting a meeting and rule hearings on Friday June 3, 2022 beginning at 9:00 a.m. at the Eagle Nest Lake State Park Visitor Center, 42 Marina Way, Eagle Nest, NM 87718. The purpose of this meeting is to hear and consider action as appropriate on the following: presentation of proposed changes to the Bighorn Sheep, Pronghorn, and Javelina rules.

Synopsis:

The proposal is to amend the Bighorn Sheep Rule 19.31.17 NMAC,

Pronghorn Rule 19.31.15 NMAC, and Javelina Rule 19.31.21 NMAC, all of which will become effective April 1, 2023. The most recent version of each rule will expire on March 31, 2023.

PROPOSED CHANGES TO THE BIGHORN SHEEP RULE: 1) opening the Jemez population for hunting Aug. 10-24 and Sept. 1-15, likely beginning in the 2024 season; 2) splitting the Hatchet Mountains hunt area into the Little Hatchets and Big Hatchets hunt areas and shifting hunt dates to September 15-30 and October 1-15; 3) creating 2 hunt windows in the Peloncillos (Nov. 1-15 & Nov. 16-30) and Ladrones (Dec. 1-15 & Dec. 16-31); 4) creating a 3rd hunt window in the Rio Grande Gorge population, Nov. 1-15; 5) including the Double E Wildlife Management Area as open to hunters that hold a valid license for that GMU; 6) making small adjustments to season dates in some areas.

PROPOSED CHANGES TO THE PRONGHORN RULE: 1) modifying the definition of a muzzle-loader to include only those muzzle-loading firearms that do not have a scope (for all big game species); 2) shifting hunt structure slightly to begin later in August and have some hunts begin in September and October; 3) creating a pronghorn hunt on Melrose Air Force Range in GMU 32; 4) decreasing license numbers in the combined hunts in GMUs 2, 7, 9, 10 from 15 bow licenses to 10 and from 15 any sporting arm licenses to 5; 5) GMU 15: eliminate the 2nd any legal sporting arm hunt but reallocate the 5 licenses to the first any legal sporting arm hunt; 6) GMU 16: eliminate the 2nd any legal sporting arm hunt but reallocate the 10 licenses to the remaining hunts; 6) decreasing each hunt in GMU 57 by 5 licenses each and moving these licenses to adjacent GMU 58 that has more public access; 7) allowing pronghorn hunting on Prairie Chicken Areas in the SE part of the state; 9) adjusting licenses on McGregor Range from 5 MB non-military and 10 MB military to 7 MB of each.

PROPOSED CHANGES TO THE JAVELINA RULE: 1) including a population management hunt option; 2) expanding the Wildlife Management Areas where javelina will be hunted, including the Double E, River Ranch, and Red Rock properties; 3) increasing the bootheel licenses by 10% and increasing the statewide licenses by 20%; 4) modifying season dates for both the bootheel and the statewide hunts: archery - January 1-31 annually; any legal sporting arm - February 1-March 31 annually; 5) removing the ability to hunt javelina during a deer or elk hunt.

A full text of changes for all rules will be available on the Department's website at: www.wildlife.state.nm.us.

Interested persons may submit comments on the proposed changes as follows: Bighorn Sheep Rule: DGF-Bighorn-Rule@state.nm.us; Pronghorn Rule: DGF-Pronghorn-Rule@state.nm.us; Javelina Rule: DGF-Javelina-Rule@state.nm.us. Individuals may also submit written comments to the physical address below. Comments are due by 8:00 a.m. on June 3, 2022. The final proposed rules will be voted on by the Commission during a public meeting on June 3, 2022. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearings to be held on June 3, 2022.

Full copies of text of the proposed new rules, 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/. 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 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.

GENERAL SERVICES, DEPARTMENT OF

NOTICE OF RULE HEARING

The State Purchasing Division of the General Services Department ("GSD/SPD" or "SPD") hereby gives notice that SPD will conduct a public hearing to obtain public input on the following rulemaking actions:

Repeal and Replacement of Rule 1.4.1 NMAC and change in numbering of Rule 2.40.2 NMAC to 1.4.10 NMAC.

The hearing is scheduled to occur on Thursday, June 2, 2022, at 9:30 a.m. at the Joseph Montoya Building Bid Room, 1100 St. Francis Drive, Santa Fe, New Mexico 87505.

Authority: Section 14-11-7 NMSA 1978 as amended.

Purpose: The purpose of the Repeal and Replacement is to update 1.4.1 NMAC to comport with recent statutory changes as well as to update certain parts that have become meaningless with new technology ("telegraphing" etc.). The purpose of

the change to 2.40.2 to 1.4.10 NMAC is in order to place that rule in the numbering context of other GSD rules since the Contracts Review Bureau was moved from the Department of Finance and Administration to GSD/SPD in recent statute.

Proposed Repeal and Replacement changes:

This is a Repeal and Replacement of Section 1.4.1 NMAC effective June 21, 2022, as follows:

1.4.1 PURPOSE: This Repeal and Replacement of 1.4.1 NMAC makes the following changes:

1) Various typographical and formulaic changes in keeping with the proscribed State Records and Archives format as well as cleanup of repetitive or misused language ("offeror" for "bidder" and vice versa, etc.);

2) The removal of certain definitions which are already contained in statute and the inclusion of new definitions for "Competitive process" and "Sealed" as well as a clarification for the definition of "Bidder";

3) 1.4.1.11 was clarified to better comport with statute and case law;

4) Subsection D of 1.4.1.16 was clarified to encompass electronic bid filings and the fact that SPD has moved to more electronic based processes (several similar changes were also made to reflect this change);

5) Subsection B of 1.4.1.17 was clarified to encompass electronic notifications of bids (several similar changes were also made to reflect this change);

6) 1.4.1.17 was changed to reference statute in lieu of repeating it (several similar changes were also made in this regard);

7) 1.4.1.18 had clarifying changes made to the language without substantive change;

8) Subsection H of 1.4.1.24 was clarified to reflect current electronic processes;

9) 1.4.1.25 was changed to reflect statute instead of repeating it, especially as these preferences recently change and could foreseeably change in future;

10) 1.4.1.26 was changed for the same reasons;

11) Subsection 2 of Subsection C of 1.4.1.30 was rewritten to better reflect the actual process that takes place in evaluating a request for proposals;

12) Subsection B of 1.4.1.32 was clarified to better reflect actual SPD and agency processes;

13) 1.4.1.33 contains additional language to recommend that pre-proposal conferences not be made mandatory so as to eliminate prospective offerors but should be held if truly needed;

14) 1.4.1.41 was clarified to make "Best and Final Offers" more acceptable;

15) 1.4.1.43 contains some clarifying language as does 1.4.1.45;

16) 1.4.1.47 contains clarifying language since Contracts Review Bureau was moved from the Department of Finance and Administration to GSD/SPD;

17) 1.4.1.48 through 1.4.1.52 had language changes in order to make them reflective of statute rather than repeating statute especially since small purchase amounts are sometimes changed by the legislature;

18) 1.4.1.54 through 1.4.1.57 contain the most substantive changes in the replacement as they encompass the statutory requirements for local public bodies to post sole source procurements on the State Purchasing Agent's website (see 13-1-126.1 NMSA 1978);

19) 1.4.1.59 was changed to reflect statute instead of repeating it in regard to emergency procurements;

20) 1.4.1.64 was changed to reflect the required retention periods as set forth by State Records and Archives instead of repeating it;

21) Subsection B of 1.4.1.87 was changed to better reflect

the actual processes of SPD (as was Subsection C of 1.4.1.89);

22) 1.4.1.94 adds language to make it the responsibility of every entity to keep the SPD CPO website up-to-date with the most current information for that entity and also clarifies that only an “employee” can serve as an entity’s CPO as well as stating that such duties can be delegated under certain circumstances.

Summary of full text: The full documents’ texts can be found on the State Purchasing website. Interested individuals may provide comments at the public hearing and/or submit written or electronic comments to Paul Kippert, via email at paul.kippert@state.nm.us or mail to Paul Kippert, General Services Department, State Purchasing Division, PO Box 6850, Santa Fe, New Mexico 87502.

Written comments must be received no later than 5:00 pm on June 2, 2022 prior to the public hearing. However, the submission of written comments as soon as possible is encouraged. Persons may also submit written comments at the public hearing. All comments will be posted on the agency’s website within 3 days of receipt.

Copies of the proposed rule are available for download on the State Purchasing Division’s website at <https://www.generalservices.state.nm.us/statepurchasing/> and available at the State Purchasing Division located at General Services Department, State Purchasing Division, Joseph Montoya Building, Room 2016, 1100 St. Francis Drive, Santa Fe, New Mexico 87505. A copy of the proposed rule may also be requested by contacting Paul Kippert at (505) 827-0915.

Individuals with disabilities who require this information in an alternative format or need any form or auxiliary aid to attend or participate in the public hearing are asked to contact Paul Kippert at (505) 827-

0915 to provide requested special accommodations.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public video/telephonic rulemaking hearing on June 7, 2022. The hearing will begin at 10:30 a.m. and will be held via Microsoft Teams. The purpose of the hearing is to take public comment regarding proposed amendments to **5.7.34 NMAC, TEACHER PREPARATION AFFORDABILITY SCHOLARSHIP PROGRAM**

Join via Microsoft Teams:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZDIlMzFLOWUtMGMxNy00OWRiLWl3OTQtMmJjOTMwMjE2Zjhh%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22c327f958-5970-4536-8f6b-03d48b60d29e%22%7d

Or call in (audio only)
+1 (505) 312-4308
Phone Conference ID: 430 187 897#

Amendment:
5.7.34.8 NMAC, STUDENT
ELIGIBILITY AND SELECTION
OF AWARD RECIPIENTS

Purpose:
The proposed amendment aligns the eligibility criteria in the rule to be consistent with the Statute. The Statute indicates an eligible student “is enrolled or enrolling, whereas 5.7.34 NMAC currently provides eligibility to an enrolled student and does not contain the language “or enrolling”. This amendment will ensure extension of eligibility to students completing the prerequisites to enter the teacher preparation program.

Summary of proposed changes:

The amendment to Section 5.7.34.8 NMAC adds the language “or enrolling” to the student eligibility requirements.

Details for Obtaining a Copy, Public Hearing and Comments:

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

A public hearing will be held on June 7, 2022 from 10:30 a.m. until 11:00 a.m. via Microsoft Teams. Any person who is or may be affected by this proposed rule may participate. **Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@state.nm.us. Written comments must be received no later than 4:00 p.m. on June 3, 2022.** Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978 and Chapter 193, Laws of 2019.

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

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public video/telephonic rulemaking hearing on June 7, 2022. The hearing will begin at 11:00 a.m. and will be held via Microsoft Teams. The purpose of the hearing is to take public comment regarding proposed rulemaking adopting a new rule **5.7.37 NMAC NEW MEXICO OPPORTUNITY SCHOLARSHIP PROGRAM.**

Join via Microsoft Teams:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZjVhNzI1NjUtZWm4OC00YWE1LWJjODAtMWExMDlmYmMzMGUw%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22c327f958-5970-4536-8f6b-03d48b60d29e%22%7d

Or call in (audio only)
 +1 (505) 312-4308
 Phone Conference ID: 411 429 44#

Purpose:

The Department proposes adoption of new rule 5.7.37 NMAC. The new proposed rule establishes regulations and procedures for the New Mexico Opportunity Scholarship Program created by S.B.140, 55th Leg., 1st Sess. (N.M. 2022). The purpose of the program is to provide financial support to qualified New Mexico students who are enrolled at an eligible New Mexico public post-secondary educational institution or tribal college. The scholarship is intended to help defray the cost of tuition and fees.

Summary of proposed rule:

The proposed rule defines recent graduate learners and returning students learners and includes a section which details the requirements for initial and continuing eligibility for each. The section also details

the provisions for students with disabilities seeking approval of reduced credit hours, the probationary process for students who have not met the eligibility requirements and the petition process for students who are seeking to reinstate the scholarship following termination. The proposed rule includes sections which establish the duration of the scholarship and the calculation of award amounts. In addition, the proposed rule includes a section which provides procedures for administration of the program by New Mexico public post-secondary educational institutions or tribal colleges and procedures for administration of the program by the Department. Lastly, the proposed rule provides criteria for termination of the scholarship.

Details for Obtaining a Copy, Public Hearing and Comments:

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

A public hearing will be held on June 7, 2022, from 11:00 a.m. until 12:00 p.m. via Microsoft Teams. Any person who is or may be affected by this proposed rule may participate. **Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@state.nm.us. Written comments must be received no later than 4:00 p.m. on June 3, 2022.** Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978 and Chapter 42, Laws of 2022.

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

PUBLIC REGULATION COMMISSION

NOTICE OF PROPOSED RULEMAKING DOCKET NO. 21-00177-UT

The New Mexico Public Regulation Commission (the “commission”) hereby gives notice of its initiation of a proposed rulemaking to amend, or alternatively to repeal and replace, rules **17.5.440 NMAC, “Extensions, Improvements, Additions, and Cooperative Agreements Between or Among Utilities” and 17.9.592 NMAC, “Location of Large Capacity Plants and Transmission Lines.”**

Summary of the full text of the proposed rule and short explanation of its purpose: The commission intends to amend rule 17.5.440 NMAC to bring it up to date with current circumstances, to improve the reliability of reporting under the rule, to provide commission staff with procedural guidance in relation to the reporting requirements under the rule, to give the commission more information and insight in to public utility projects for which the public utility seeks rate base treatment, and to give the commission more regulatory tools to protect the public interest. The commission intends to amend rule 17.9.592 NMAC to require public utilities to notify the commission, in the manner of a report pursuant to rule 17.5.440, when it seeks an exemption from siting approval requirements.

Legal authority authorizing the proposed rule and the adoption of the rule: The commission has the authority to promulgate and adopt the proposed rule under the New Mexico Constitution, Article XI, Sec. 2, the New Mexico Public Regulation Commission Act, Sections 8-8-15 (2001) and 8-8-4 (1998) NMSA 1978; the Public Utility Act, Section 62-3-1 et seq., Section 62-6-4 (2003) NMSA 1978, and Section 62-9-3 (2005) NMSA 1978.

How a copy of the full text of the proposed rule can be obtained: A copy of the full text of the proposed rule and instructions for accessing the complete rulemaking record can be obtained from the rulemaking page on the commission's website at <https://www.nm-prc.org/rulemaking-proceedings> or by calling Isaac Sullivan-Leshin of the commission's office of general counsel at (505) 670-4830.

How a person can comment on the proposed rule, where comments will be received and when comments are due: Any person wishing to comment on the proposed rules may do so by submitting written initial comments no later than **June 3, 2022**. Any person wishing to respond to initial comments may do so by submitting written response comments no later than **June 30, 2022**. Any person wishing to reply to response comments may do so by submitting written reply comments no later than **July 22, 2022**. Comments shall be filed in accordance with NMPRC rules of procedure 1.2.2 NMAC. Comments must refer to docket no. 21-00177-UT.

All written comments will be posted on the commission's website within three days of their receipt by the records bureau.

The record closure date for this proceeding is **August 5, 2022**. From that date through the completion of this proceeding, rulemaking participants will be forbidden from communicating with the commission

or its representatives concerning substantive issues in this proceeding.

When and where a public rule hearing will be held and how a person can participate in the hearing: A public hearing on the proposed rules shall be held beginning at **1:00 p.m. on July 15, 2022**. Any member of the public who wishes to make a comment at the hearing shall contact Isaac Sullivan-Leshin at (505) 670-4830 or isaac.sullivan-leshin@state.nm.us by no later than 12:00 p.m. on July 14, 2022 to sign up as a hearing participant. The commission's office of general counsel shall email a Zoom invitation to all hearing participants on July 14, 2022. The invitation shall include a call-in number for those participants who are unable to access the hearing via computer.

The hearing will be held in order to receive oral comments. Any commenter may be limited to five minutes to speak, subject to the discretion of the commission or its designee. The commission or its designee may also determine that a spokesperson should 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. A court reporter will prepare a transcript of the hearing for filing the rulemaking docket, docket no. 21-00177-UT. Any person with a disability requiring special assistance in order to participate in the hearing should contact Renada Peery-Galon at (505) 467-9116 at least 48 hours prior to the commencement of the hearing.

Technical information that served as a basis for the proposed rule and how the information can be obtained: None.

REGULATION AND LICENSING DEPARTMENT BODY ART PRACTITIONERS BOARD

NOTICE OF PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Board of Body Art Practitioners will hold a rule hearing on Monday, June 6, 2022, at 10:00 a.m. Following the rule hearing, the Board will convene a regular board meeting consider and adopt the rules and take care of regular business. The meeting will be held via Cisco Webex Meetings.

<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=ef036fa4cfbe2839bf3d27e25f1e871ed>

To join the meeting by phone: 1-415-655-0002 United States Toll

Access Code: 2497 068 4153

The purpose of the rule hearing is to consider proposed changes to Title 16 Chapter 36 NMAC 1978: Amendments to the rules below:

16.36.1 NMAC – General Provisions
16.36.2 NMAC – Licensure Requirements for Body Art Tattoo Practitioner
16.36.3 NMAC – Requirements for Establishments
16.36.5 NMAC – Standards of Practice
16.36.9 NMAC – Licensure Requirements for Permanent Cosmetics Practitioner
16.36.10 NMAC – Licensure Requirements for Body Piercing-Scarification Practitioner

To obtain and review copies of the proposed changes and public comments, you may go to the Board's website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/body-art-practitioners-overview/ba-board-information/ba-board-meetings/> or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public written comments on the proposed amendments. Please submit written comments on the proposed changes to Jennie James, Board Administrator, via electronic mail at: NMBody.Art@state.nm.us, or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Friday, June 3, 2022. Written comments received prior to the rule hearing will be posted to the RLD website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/body-art-practitioners-overview/ba-rules-and-laws/>. Persons will also be given the opportunity to present their written or oral comments at the public rule hearing.

The agenda for the board meeting will be posted and available at least 72 hours before the meeting on the Board website at <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/body-art-practitioners-overview/ba-board-information/ba-board-meetings/>. Copies of the rules or the agenda may also be obtained by contacting Jennie James, Board Administrator at (505) 476-4622.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Jennie James, Board Administrator (505) 476-4622.

Statutory Authority: The Body Art Safe Practice Act, Sections 61-17B-1 thru 61-17B-18 NMSA 1978 among other provisions, specifically authorizes the Board to “adopt and file rules necessary to carry out the provisions of the Body Art Safe Practice Act”.

Purpose of the Proposed Rules:

The Board is engaged in this rulemaking activity to amend, or repeal and replace, existing rule language in certain parts of the current Body Artists and Operators rules to comply with the Executive Order 2021-060, Eliminating and Reducing

Unnecessary Regulatory Burdens and Costs. Additional amendments were made to clarify the requirements for training and licensure.

16.36.1 NMAC – General Provisions

The amendment to this part is to define permanent cosmetics practitioner.

16.36.2 NMAC – Licensure Requirements for Body Art Tattoo Practitioners

The amendment to this part is to comply with Executive Order 2021-060, Eliminating and Reducing Unnecessary Regulatory Burdens and Costs.

16.36.3 NMAC – Requirements for Establishments

The amendment to this part is to update the basic safety and sanitation requirements.

16.36.5 NMAC – Standards of Practice

The amendment to this part is to add jewelry requirements for a newly pierced area based on the Association of Professional Piercers jewelry material requirements.

16.36.9 NMAC – Licensure Requirements for Permanent Cosmetics Practitioner

The amendment to this part is to comply with Executive Order 2021-060, Eliminating and Reducing Unnecessary Regulatory Burdens and Costs. Additional amendments were made to clarify the requirements for training and licensure.

16.36.10 NMAC – Licensure Requirements for Body Piercing-Scarification Practitioner

The amendment to this part is to comply with Executive Order 2021-060, Eliminating and Reducing Unnecessary Regulatory Burdens and Costs. Additional amendments were made to clarify the requirements for training and licensure.

SUPERINTENDENT OF INSURANCE, OFFICE OF THE

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance (“OSI” or “Superintendent”) will hold a public video/telephone hearing to permanently adopt the emergency amendments to Sections 7, 8, 10, and 11 of 13.10.36 NMAC, published in Issue 9 of the NM Register on May 3. This hearing will commence on **June 27, 2022 at 9:00 a.m.**

PURPOSE OF THE PROPOSED RULES: OSI is amending this rule to create necessary procedures for distribution of funding authorized by the state to lower health care costs for consumers, and minimize coverage disruptions as the federal medicaid continuous coverage requirement expires as the COVID-19 public health emergency ends.

STATUTORY AUTHORITY
Section 59A-23F-12 NMSA 1978.

TO ATTEND THE HEARING:
Join via Video: <https://us02web.zoom.us/j/2916274744>
Join via telephone: 1-312-626-6799
Meeting ID: 291 627 4744

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

Copies of the Notice of Proposed Rulemaking and proposed new rules are available by electronic download from the OSI eDocket <https://edocket.osi.state.nm.us/guest/case-view/5757> or by requesting a copy by calling (505) 476-0333. Note: Due to

the COVID-19 pandemic, the physical offices of the OSI remain closed to the public until further notice.

Written comments will be accepted through 4:00 p.m. June 27, 2022. Responses to written comments or oral comments will be accepted through 4:00 p.m. on July 8, 2022. All comments shall be filed electronically through the OSI eDocket <https://edocket.osi.state.nm.us/guest/case-view/5757> at or received by mail to:

OSI Records and Docketing, NM
Office of Superintendent of Insurance
1120 Paseo de Peralta, P.O. Box 1689,
Santa Fe, NM 87504-1689.

For help submitting a filing, please
contact OSI-docketfiling@state.nm.us.

The below docket number must be
indicated on filed comments.

Docket No. 2022-0036

IN THE MATTER OF
PERMANENTLY ADOPTING THE
EMERGENCY AMENDMENTS TO
RULE 13.10.36 NMAC HEALTH
CARE AFFORDABILITY FUND

All filings must be received between
the hours of 8:00 a.m. and 4:00 p.m.
Monday through Friday except on
state holidays. The Superintendent
will consider all oral comments and
will review all timely submitted
written comments and responses.

SPECIAL NEEDS: Any person
with a disability requiring special
assistance to participate in the hearing
should contact Melissa Gutierrez at
505-476-0333 no later than ten (10)
business days prior to the hearing.

DONE AND ORDERED this 3rd day
of May, 2022
/S/RUSSELL TOAL

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

Adopted Rules

Effective Date and Validity of Rule Filings

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

MINING SAFETY BOARD

The New Mexico Mining Safety Board reviewed at its 3/29/2022 hearing to repeal rule 19.6.2 NMAC, Emergency Notification (filed 8/29/2008) and replace it with 19.6.2 Emergency Notification adopted 4/21/2022 and effective 5/03/2022.

The New Mexico Mining Safety Board reviewed at its 3/29/2022 hearing, to repeal rule 19.6.4 NMAC Certification of Coal Mine Officials (filed 8/29/2008) and replace it with 19.6.4 NMAC Certification of Coal Mine Officials adopted 4/21/202 and effective 5/3/2022

MINING SAFETY BOARD

TITLE 19 NATURAL RESOURCES AND WILDLIFE CHAPTER 6 MINE SAFETY PART 2 EMERGENCY NOTIFICATION

19.6.2.1 ISSUING AGENCY: New Mexico Mining Safety Board.
[19.6.2.1 NMAC - Rp, 5/3/2022]

19.6.2.2 SCOPE: All persons subject to Section 69-5-1 et seq and Sections 69-8-1 et seq. NMSA 1978 and all mines as defined in Subsection D of 69-8-2 NMSA 1978.
[19.6.2.2 NMAC - Rp, 5/3/2022]

19.6.2.3 STATUTORY AUTHORITY: Section 69-5-1 et seq and Sections 69-8-1 et seq., NMSA 1978.
[19.6.2.3 NMAC - Rp, 5/3/2022]

19.6.2.4 DURATION: Permanent.
[19.6.2.4 NMAC - Rp, 5/3/2022]

19.6.2.5 EFFECTIVE DATE: May 3 2022, unless a later date is cited at the end of a section.
[19.6.2.5 NMAC - Rp, 5/3/2022]

19.6.2.6 OBJECTIVE: The objective of 19.6.2 NMAC is to establish regulations to implement the requirements for emergency notification plans, mine accident emergency operations center and accident notifications as directed in Chapter 69, Article 5 NMSA 1978.
[19.6.2.6 NMAC - Rp, 5/3/2022]

19.6.2.7 DEFINITIONS:
A. "Accident" means accident as defined in Subsection A of Section 69-8-2 NMSA 1978.
B. "Annual tonnage of coal" means the clean coal tons reported on the form 7000-2 for the previous calendar year.
C. "Board" means the state mining safety board.
D. "CFR" means Code of Federal Regulations.

E. "Days" means calendar days.
F. "Deputy state mine inspector" means a senior employee of the New Mexico bureau of mine safety who has knowledge and understanding of the 19.6 NMAC mine safety rules.

G. "Extended absence" means the state mine inspector cannot perform his/her duties due to illness, medical condition, is on family medical leave (FMLA) or other circumstances for a period of 30 days or longer.

H. "Hours worked" means hours reported to mine safety and health administration (MSHA) on the 7000-2 form or for an occupational safety and health administration (OSHA) regulated site on the OSHA form 300-A, for the

previous calendar year.

I. "Inspector" means the state mine inspector

J. "Mine" means the mine as defined in Subsection E of Section 69-8-2 NMSA 1978.

K. "Operator" means operator as defined in Subsection G of Section 69-8-2 NMSA 1978.

L. "Service" means providing any document, paper or pleading to a person either personally or by certified mail, return receipt requested.

M. "Vacant" means there is not a state mine inspector because the incumbent state mine inspector has resigned, retired, been terminated or is deceased and a new state mine inspector has not been appointed or assumed the office.
[19.6.2.7 NMAC - Rp, 5/3/2022]

19.6.2.8 REQUIREMENT TO FILE EMERGENCY NOTIFICATION PLAN:

A. All operators of existing mines must prepare an emergency notification plan and submit the plan to the state mine inspector for approval. All operators of new or reopened mines shall submit an emergency notification plan to the state mine inspector prior to opening or reopening the mine.

B. Each emergency notification plan must contain procedures for notifying the state mine inspector within 30 minutes of an accident.

C. Any changes made by a mine operator to an approved emergency notification plan shall be submitted by the operator, within no less than seven working days from date of the change, to the state mine inspector for review and approval. The inspector shall no less than annually, from the date of approval of an operator's emergency notification

plan, notify the operator to ensure that the plan on file with the state mine inspector is current.

D. The inspector shall retain a copy of each mine operator's approved emergency notification plan at the mine accident emergency operations center.

[19.6.2.8 NMAC - Rp, 5/3/2022]

19.6.2.9 ESTABLISHMENT OF MINE ACCIDENT EMERGENCY OPERATIONS CENTER:

A. The state mine inspector shall establish and maintain the mine accident emergency operations center as the primary state government communications for dealing with mine accidents that:

(1) provides emergency assistance requested by the mine operator or the mine safety and health administration for mine accidents or emergencies; and

(2) is accessible 24 hours a day, seven days a week, at a statewide telephone number established and designated by the inspector.

B. Upon receipt of an emergency call regarding an accident, the mine accident emergency operations center shall immediately notify the state mine inspector or their designee, who will ensure that the emergency notification plan for the appropriate mine is complied with.

C. In the event of an accident or recovery operation in or about a mine, the state mine inspector may, upon request of the mine operator or the mine safety and health administration, coordinate the assignment of mine rescue teams to assist with needed rescues.

[19.6.2.9 NMAC - Rp, 5/3/2022]

19.6.2.10 REQUIREMENTS TO NOTIFY THE MINE ACCIDENT EMERGENCY OPERATIONS CENTER:

A. Whenever an accident occurs in or about a mine or the machinery connected to a mine, the operator of the mine shall give notice 30 minutes of ascertaining the occurrence of the accident to the mine accident emergency operations center at the statewide telephone number established by the state mine inspector stating the facts and circumstances of the accident and providing the names and telephone numbers of at least two persons the operator designates who are knowledgeable about the accident or about the emergency operations at the mine.

B. Nothing in this section shall be construed to relieve the operator of the mine from any reporting or notification requirement under federal law. Notification of any other federal, state or local agency does not relieve the operator of its obligation to provide notification under Subsection A of 19.6.2.10 NMAC.

[19.6.2.10 NMAC - Rp, 5/3/2022]

19.6.2.11 FAILURE TO PROVIDE TIMELY NOTICE:

A. The state mine inspector shall impose a civil penalty of up to one hundred thousand dollars (\$100,000) on the operator of a mine if it is determined that the operator failed to give immediate notice as required in 19.6.2.10 NMAC. The inspector may waive imposition of the civil penalty at any time if the inspector finds that the failure to give immediate notice was caused by circumstances outside the control of the operator.

B. In determining the amount of the penalty, the inspector shall consider all relevant factors including whether notice was provided at all to the inspector or, if notice was provided, the lateness of such notice and the seriousness of the accident. The inspector shall utilize the penalty structure approved by the mining safety board.

(1) Penalty points for coal mining operators based on coal production.

Annual tonnage of coal mine failing to provide timely notice	Penalty points
0 to 15,000	0
Over 15,000 to 30,000	1
Over 30,000 to 50,000	2
Over 50,000 to 100,000	3
Over 100,000 to 200,000	4
Over 200,000 to 300,000	5
Over 300,000 to 500,000	6
Over 500,000 to 800,000	7
Over 800,000 to 1.1 million	8
Over 1.1 million to 2 million	9
Over 2 million	10

(2) Penalty points for coal mining operators based on the coal production in New Mexico of the controlling entity.

Annual tonnage of coal produced in New Mexico of controlling entity	Penalty points
0 to 100,000	0
Over 100,000 to 700,000	1
Over 700,000 to 1.5 million	2
Over 1.5 million to 5 million	3
Over 5 million to 10 million	4
Over 10 million	5

(3) Penalty points for metal/non-metal operators based on hours worked.

Annual hours worked at a M/NM mine failing to provide timely notice	Penalty points
0 to 10,000	0
Over 10,000 to 20,000	1
Over 20,000 to 30,000	2
Over 30,000 to 60,000	3
Over 60,000 to 100,000	4
Over 100,000 to 200,000	5
Over 200,000 to 300,000	6
Over 300,000 to 500,000	7
Over 500,000 to 700,000	8
Over 700,000 to 1 million	9
Over 1 million	10

(4) Penalty points for metal/non-metal operators based on annual hours worked in New Mexico by controlling entity of a M/NM mine.

Annual hours worked in New Mexico by controlling entity of a M/NM mine	Penalty points
0 to 60,000	0
Over 60,000 to 400,000	1
Over 400,000 to 900,000	2
Over 900,000 to 3 million	3
Over 3 million to 6 million	4
Over 6 million	5

(5) Penalty points based on operator negligence.

Negligence		
Categories	Penalty points	
	Persons endangered	No endangerment
Low negligence - The operator failed to report the accident within the required 30 minutes but did report within one hour.	10	5
Moderate negligence - The operator failed to report the accident for more than one hour and less than four hours.	15	7
High negligence - The operator failed to report the accident for more four hours and less than 12 hours.	20	10
Reckless disregard - The operator failed to report the accident for greater than 12 hours, or the operator was previously fined for failure to report an accident within one year of the occurrence.	25	12

(6) Points based on type of accident.

Type of accident (as prescribed in Subsection A of 69-8-2 NMSA 1978. <i>There could be more than one category where the penalty points are accrued i.e., a fire at a mine that burns for more than 30 minutes and results in a fatality, would equal 40 penalty points.</i>	Penalty points	
	Persons endangered	No endangerment
Fatality	25	N/A
An injury at a mine that has a reasonable potential to cause death	20	N/A
An entrapment of an individual that has a reasonable potential to cause death	10	N/A
An unplanned inundation of a mine by a liquid or gas	10	5
An unplanned ignition or explosion of gas or dust	15	5
An unplanned mine fire not extinguished within 10 minutes of discovery in an underground mine or 30 minutes at a surface facility of an underground mine	15	7
An unplanned ignition or explosion of blasting agent or explosive	20	10
An unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use; or, an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage.	10	N/A
A coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour.	15	N/A
An unstable condition at an impoundment, refuse pile, or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area; or, failure of an impoundment, refuse pile, or culm bank.	10	N/A
Damage to hoisting equipment in a shaft or slope which endangers an individual.	10	N/A
An event at a mine that causes death or bodily injury to an individual not at the mine at the time the event occurs	20	N/A

(7) Penalty amounts based on total points.

Penalty conversion table	
Penalty points	Penalty
0 to 15 points	\$5,000
16 to 25 points	\$10,000
26 to 35 points	\$20,000
36 to 45 points	\$50,000
46 to 55 points	\$65,000
56 to 65 points	\$85,000
66 to 70 points	\$95,000
71 or more points	\$100,000

C. If the state mine inspector determines that notice was not timely provided, the inspector shall within 90 days after notification of an accident or, if notice was not provided to the inspector, after ascertaining that an accident did occur at a mine, mail a notice of violation with a proposed penalty to the operator.

(1) The operator shall pay the penalty within 30 days after receipt of the notice.

(2) If the operator wishes to challenge the violation or request that the penalty be adjusted or waived, the operator must submit a written petition to the inspector within 20 days after receipt of the notice. Filing of

a petition stays the requirement to pay the penalty. The operator may also submit written documentation in support of his petition and may request a meeting with the inspector to discuss the circumstances of the violation.

(3) Within 60 days after receipt of a petition, the inspector shall issue a final order upholding, amending or rescinding the notice of violation and penalty. The inspector may consider actions of the operator in response to the violation when considering amending the penalty. The inspector's final order shall include a statement that the operator may file an appeal of the final order with the board. Unless the inspector's final order is appealed to the board in accordance with Subsection E of 19.6.2 NMAC, if the final order contains a penalty, the operator shall pay the penalty within 30 days after receipt of the final order.

D. In determining whether to adjust or waive imposition of the penalty, the inspector may consider factors such as, but not limited to:

- (1) whether the mine was idled for any reason at the time of the accident;
- (2) whether the mine operator encountered communications problems that made it impossible to provide timely notice;
- (3) whether medical personnel determined that an injury was not considered life threatening immediately after an accident; if injury becomes life threatening, then notice requirements would be triggered when operator learns of a change in status from a medical authority;
- (4) whether a fatality of mine personnel that occurs after an accident is associated with a specific accident;
- (5) whether the need to provide emergency medical treatment or emergency rescue and recovery efforts reasonably precluded the mine operator from timely providing notice; and
- (6) whether the penalty creates an undue financial hardship on the mine.

E. The operator may appeal the inspector's final order to the board pursuant to these rules.

(1) The operator shall file a written notice of appeal of the inspector's final order within twenty (20) days after service of the final order. Unless a timely written appeal is made, the inspector's final order shall be final and not subject to judicial review. The filing of a timely notice of appeal shall stay enforcement of the inspector's final order until the board issues its written decision on the appeal.

(2) The operator shall file the written notice of appeal with the chair of the board or the chair's designee, and include the order number and the name of the operator.

(3) If a timely written notice of appeal is made, the board shall consider the appeal at a hearing held no sooner than 30 days and no more than 90 days after receipt of the written notice of appeal. The board shall notify the operator and the inspector of the date, time and place of the hearing at which the appeal will be considered.

(4) No board member with any financial interest affected or potentially affected by the outcome of an adjudicatory hearing may serve as a hearing officer in that hearing or otherwise participate in the hearing. All board members shall adhere with the Governmental Conduct Act.

(5) The board shall review the record compiled before the inspector and shall allow any party to submit arguments at the hearing.

(6) Within 20 days following the hearing the board shall render a written decision affirming, modifying or reversing the inspector's final order, and stating the reasons for that action. This decision shall be signed by the board chair or the chair's designee, and shall be served on both parties within 30 days after the decision is rendered and signed. A person who is adversely affected by a decision of the board pursuant to this section may appeal

to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

[19.6.2.11 NMAC - Rp, 5/3/2022]

19.6.2.12 INVESTIGATION TO PROVIDE TIMELY NOTICE OF AN ACCIDENT:

A. The state mine inspector shall lead the investigation if a timely notice of an accident was or was not provided and determine if a civil penalty should be imposed as required in 19.6.2.11 NMAC,

B. In the event the position of the state mine inspector is vacant, or during an extended absence of the state mine inspector, in order to provide a timely determination of compliance of emergency notification, a deputy state mine inspector shall lead the investigation and determine if a civil penalty should be imposed as outlined in [19.6.2.12 NMAC - Rp, 5/3/2022]

HISTORY OF 19.6.2 NMAC:

Pre-NMAC History: None

History of Repealed Material:

19.6.2 NMAC - Emergency Notification filed 8/29/2008, Repealed effective 5/3/2022.

NMAC History:

11.8.2 NMAC, Emergency Notification (filed 7/18/2006) was renumbered and amended to 19.6.2 NMAC, Emergency Notification, effective 9/30/2008.

19.6.2 NMAC - Emergency Notification filed 8/29/2008, was Replaced by 19.6.2 NMAC - Emergency Notification effective 5/3/2022.

MINING SAFETY BOARD

TITLE 19 NATURAL RESOURCES AND WILDLIFE CHAPTER 6 MINE SAFETY PART 4 CERTIFICATION OF COAL MINE OFFICIALS

19.6.4.1 ISSUING

AGENCY: New Mexico Mining Safety Board.

[19.6.4.1 NMAC - Rp, 5/3/2022]

19.6.4.2 SCOPE: All persons subject to NMSA 1978, Article 14, Qualifications and Duties of Coal Mine Officials.
[19.6.4.2 NMAC - Rp, 5/3/2022]

19.6.4.3 STATUTORY AUTHORITY: Section 69-5-1 *et seq.*, Section 69-8-1 *et seq.*, and Section 69-14-1 *et seq.*, NMSA 1978.
[19.6.4.3 NMAC - Rp, 5/3/2022]

19.6.4.4 DURATION: Permanent.
[19.6.4.4 NMAC - Rp, 5/3/2022]

19.6.4.5 EFFECTIVE DATE: May 3, 2022, unless a later date is cited at the end of a section.
[19.6.4.5 NMAC - Rp, 5/3/2022]

19.6.4.6 OBJECTIVE: The objective of 19.6.4 NMAC is to establish rules pertaining to the certification of coal mine officials. Officials include, but are not limited to, mine examiners, underground mine foreman and surface mine foreman. Officials must obtain certification from the state mine inspector as required in Section 69-14-1 NMSA 1978. NMSA Chapter 69, Article 14 also requires certain qualifications, that testing must be conducted, requires recertification and lists discipline procedures.
[19.6.4.6 NMAC - Rp, 5/3/2022]

19.6.4.7 DEFINITIONS:

A. "Board" means the state mining safety board.

B. "Certificate" means a document issued by the state mine inspector, or certifying agency from another state, allowing the holder to be employed as a coal mine official in the state of origin.

C. "CFR" means Code of Federal Regulations.

D. "Days" means calendar days.

E. "Deputy state mine inspector" means a senior employee of the New Mexico bureau of mine safety who has knowledge and understanding of the 19.6 NMAC mine safety rules.

F. "Extended absence" means the state mine inspector cannot perform their duties due to illness, medical condition, is on family medical leave (FMLA) or other circumstances for a period of 30 days or longer.

G. "Inspector" means the state mine inspector.

H. "Mining engineering graduate" means a person having a B.S. degree in mining or mineral engineering from an accredited college or university.

I. "Official" means coal mine official, including underground coal mine foreman, underground coal mine examiner, general underground coal mine foreman, or surface coal mine foreman Table in Subsection G of 19.6.4.9 NMAC.

J. "Revoke" means to permanently invalidate a certification.

K. "Service" means providing any document, paper or pleading to a person either personally or by certified mail, return receipt requested.

L. "Suspend" means to invalidate a certification for a specified period of time.

M. "Vacant" means there is not a state mine inspector because the incumbent state mine inspector has resigned, retired, been terminated or is deceased and a new state mine inspector has not been appointed or assumed the office.
[19.6.4.7 NMAC - Rp, 5/3/2022]

19.6.4.8 REQUIREMENT FOR CERTIFICATION BY STATE MINE INSPECTOR:

The state mine inspector shall certify, recertify or discipline persons to act as mine foremen and mine examiners. No mine operator shall employ any person as underground mine foreman, mine examiner or surface mine foreman unless that person has been certified by the state mine inspector for such position.
[19.6.4.8 NMAC - Rp, 5/3/2022]

19.6.4.9 METHODS AND REQUIREMENTS OF CERTIFICATION:

A. The state mine inspector may recognize the foreman's or mine examiner's certificate issued by another state and issue certificates accordingly when:

(1) the state mine inspector reviews the certification requirements of another state and determines that the requirements are equivalent or more stringent than New Mexico's, and are pertinent to the mining conditions found in New Mexico's coal mines; or

(2) an agreement of reciprocity is signed between the state mine inspector and the director of the certification agency from another state.

B. Persons with four or more years of experience in or about underground coal mines, and providing underground foreman certification from another state program or persons with four or more years of experience in or about surface coal mines, and providing surface foreman certification from another state program, meet the requirements for testing.

C. The state mine inspector shall hold written examinations, at times, dates and places to be given out at least sixty days in advance, to all persons desiring to secure mine foreman certificates or mine examiner certificates. Alternatively, at the discretion of the state mine inspector, such examinations may be administered by appointment.

D. The state mine inspector shall require that any applicant for examination to the position of mine foreman or mine examiner submit a completed application at least 30 days prior to the examination date and shall meet the experience requirements of this section as summarized in Table in Subsection G of 19.6.4.9 NMAC. The state mine inspector may require documentation from an applicant supporting their qualification and competency. Every person desiring to secure an underground coal mine foreman's certificate and not already in such position or not holding such certificate from another state shall first

have regularly performed the duties of an underground coal mine examiner for six months and shall have at least four years of underground coal mine experience to participate in the underground coal mine foreman's examination. Every person desiring to secure a surface coal mine foreman's certificate, and not already holding such certificate from another state, shall have at least four years of surface coal mine experience to participate in the surface coal mine foreman's examination. A person who holds a certificate for surface coal mine foreman who wishes to take the underground coal mine foreman test must have a minimum of four years of experience in underground coal mine workings. A person who holds an underground coal mine foreman certificate and who wishes to participate in the surface coal mine foreman examination must have at least two years of surface coal mine experience. A person who holds an underground coal mine foreman certificate and who wishes to participate in the general underground coal mine foreman examination must have at least two years of surface mine experience or two years of surface experience at an underground mine. Every person desiring to secure an underground coal mine examiner's certificate and not already in such position or not holding such certificate from another state recognized by the state mine inspector, shall have at least two years of underground coal mine experience to participate in the underground coal mine examiner's examination.

E. The state mine inspector may allow a mining engineering graduate or a person with other credentials that attest to advanced competency including applicable experience at non-coal mines to participate in the foreman's or examiner's examination if the candidate meets at least one-half of the experience requirements and all other prerequisites listed in Subsections B and D of this section prior to taking the examination.

F. All candidates for certification or recertification must achieve a cumulative score of eighty percent or higher on the corresponding written exam.

G. Table in Subsection G of 19.6.4.9 NMAC is incorporated into this section as a guide to the prerequisites and areas of responsibility for coal mine officials.

Certification Title	Qualification	Authorization
Underground Coal Mine Examiner	Two-years underground mining experience, or One-year underground mining experience and advanced competency, or Equivalent experience and certification from another state	Underground areas at underground coal mines.
Underground Coal Mine Foreman	Four-years underground mining experience with six months examiner experience, or Two-years underground mining experience with six months examiner experience and advanced competency, or Equivalent experience and certification from another state.	Underground areas at underground coal mines.
General Underground Coal Mine Foreman	Current NM certification as underground coal mine foreman and two-years of experience at surface areas of underground coal mines.	Underground areas at underground coal mines. Surface areas at underground coal mines.
Surface Coal Mine Foreman	Four-years surface mining experience, or Two-years surface mining experience and advanced competency, or Equivalent experience and certification from another state, or Current NM certification as underground coal mine foreman and two-years of experience at surface coal mines or surface areas of underground coal mines	Surface coal mines Surface areas at underground coal mines

[19.6.4.9 NMAC - Rp, 5/3/2022]

19.6.4.10 FEES FOR CERTIFICATION AND EXAMINATION: The state mine inspector, after consultation with the mining safety board, may impose fees for examination and certification of officials. Current fees will be posted with examination notice given out as required in Subsection C of 19.6.4.9 NMAC.

[19.6.4.10 NMAC - Rp, 5/3/2022]

19.6.4.11 CERTIFICATION PERIOD AND RECERTIFICATION PROCESS:

A. Certification of officials shall be issued for a period of five years. All officials certified by the state mine inspector prior to June 15, 2007 shall have their certification period extended five years. Each official is required to have retraining as a qualified/certified person on an annual basis from the mine in which they are employed as required in 30 CFR 75.160, 30 CFR 75.161 and 30 CFR 77.107 and 30 CFR 77.107-1. Failure to have re-training as a qualified/certified person on an annual basis may result in suspension of certification. Should a certified official fail to meet the annual training requirement for any reason; or should a certified official be absent from mine employment in New Mexico for a period of one year or more and upon resumption of mine employment in New Mexico; the certified official may appeal to the state mine inspector for reinstatement of active certification. The state mine inspector may require testing, remedial training, interviews, evidence of applicable training, or other criteria to assure competency before re-activating said certification.

B. Each official has the responsibility to notify the state mine inspector of any change in address or change in mine employment within 30 days of such change. Failure to provide current contact information may result in suspension of certification.

C. Certified persons may apply for recertification within 12 months prior to the end of the certification period. Every certification shall automatically expire on the last day of the certification period if the official has not recertified prior to that date. The state mine inspector may extend the certification period for an official for no more than six months to facilitate the recertification process. Recertification will require the applicant to submit an application and appropriate documentation as required by the state mine inspector.

D. Recertification may be done by taking an exam every five years, prior to certification expiration, or an organization may submit an alternative plan for the inspector's approval as follows:

(1) officials taking an exam every five years will follow the same process required for original certification; or

(2) an organization may submit an alternative plan, for the state mine inspector's approval; the alternative plan may be carried out over the five year period; the alternative plan shall include the subjects to be covered, the minimum amount of time per subject, the methods of instruction, and the methods of participant evaluation during process completion; following completion, the applicant shall provide the state mine inspector with verification that all training for the recertification period is current; and

(3) applicants shall submit an application, pay the applicable fee, and provide all appropriate documentation as required by the state mine inspector, before receiving recertification.

E. Underground coalmine examiners may fulfill the recertification by successfully completing the examination for underground coal mine foreman certification or recertification. [19.6.4.11 NMAC - Rp, 5/3/2022]

19.6.4.12 REFUSAL TO CERTIFY OR RECERTIFY AND SUSPENSION OR REVOCATION OF CERTIFICATION:

A. The inspector may refuse to certify or recertify or may suspend or revoke any certification held or applied for under 19.6.4 NMAC upon grounds that the applicant or certified person:

(1) gave false or forged evidence to the inspector to obtain certification;

(2) is grossly negligent or incompetent in duties as a certified person;

(3) has failed to maintain certification;

(4) has violated or aided or abetted any person in a violation of the Federal Mine Safety and Health Act of 1977 or the New Mexico mine safety laws; or

(5) has been disciplined by a state mine regulatory authority in another state that certifies mine personnel.

B. If the inspector contemplates taking any of the actions described in Subsection A of 19.6.4.12 NMAC for any of the reasons provided in that subsection, the inspector shall provide written notice to the applicant or certified person. The notice shall include a statement that the inspector has sufficient evidence that, if not rebutted or explained, will justify the inspector in taking the contemplated action, that indicates the general nature of the evidence and that provides the applicant or certified person at least 20 days to submit written evidence to rebut or explain the allegations.

C. If, after the response period ends, the state mine inspector takes any action of a type specified in Subsection B of 19.6.4.12 NMAC, the inspector shall serve upon the applicant or certified person a written notice of the action containing a statement that the applicant or certified person may file a petition for review with the mining safety board pursuant to the Mining Safety Act 69-8-1 NMSA 1978.

[19.6.4.12 NMAC - Rp, 5/3/2022]

19.6.4.13 APPEAL TO MINING SAFETY BOARD OF CERTIFICATION ACTIONS BY INSPECTOR TO MINING SAFETY BOARD:

An appeal of an inspector's action may be made to the board by the person affected by the action.

A. A person affected by the inspector's action shall file a written petition for review of the action within twenty days after service of the action. Unless a timely written appeal for review is made, the action of the inspector shall be final and not subject to judicial review.

B. The petition shall be filed in writing with the chair of the board or the chair's designee, and include the action number and the name of the appellate.

C. If a timely petition is made, the board shall consider the petition at a hearing held no sooner than thirty days and no more than ninety days after receipt of the written petition. The board shall notify the petitioner and the inspector of the date, time and place of the hearing at which the petition will be considered.

D. No board member with any financial interest affected or potentially affected by the outcome of an adjudicatory proceeding may serve as a hearing officer in that proceeding or otherwise participate in the hearing. All board members shall adhere with the Governmental Conduct Act.

E. The board shall review the record compiled before the inspector and shall allow any party to submit arguments at the hearing.

F. Within 20 days following the hearing the board shall render a written decision affirming, modifying or reversing the action of the inspector, and stating reasons for that action. The decision shall be signed by the board chair or the chair's designee, and shall be served on both parties within 30 days after the decision is rendered and signed. A person who is adversely affected by a decision of the board pursuant to this section may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978. [19.6.4.13 NMAC - Rp, 5/3/2022]

19.6.4.14 CERTIFICATION OF COAL MINE OFFICIALS IN THE EVENT THE POSITION OF STATE MINE INSPECTOR IS VACANT: In the event the position of the state mine inspector is vacant, or during an extended absence of the state mine inspector, in order to provide timely certification and prevent a lapse between recertification of coal mine officials, the certification and recertification, or refusal to certify or recertify and suspension or revocation of certification, as required in 19.6.4.9 NMAC and 19.6.4.12

NMAC shall be completed by a deputy state mine inspector. [19.6.4.14 NMAC - N, 5/3/2022]

HISTORY OF 19.6.4 NMAC: 19.6.4 NMAC - Certification Of Coal Mine Officials filed 8/29/2008, Repealed effective 5/3/2022.

Other History: 19.6.4 NMAC - Certification Of Coal Mine Officials filed 8/29/2008, was Replaced by 19.6.4 NMAC - Certification Of Coal Mine Officials effective 5/3/2022.

SUPERINTENDENT OF INSURANCE, OFFICE OF THE

This is an emergency amendment to 13.10.36 NMAC, which went into effect on May 1, 2022, Sections 7, 8, 10, and 11. These amendments will be effective on June 1, 2022.

13.10.36.7 DEFINITIONS: Terms are as defined in the Insurance Code, and as supplemented below.

A. "Advance state payments" means marketplace affordability program payments by the fund to a participating health insurance issuer on a monthly basis to lower premium and state out-of-pocket assistance for consumers.

B. "Affordability criteria" means the factors used to determine the amount of premium assistance or state out-of-pocket assistance that will be provided from the fund on behalf of an eligible individual.

[C.] "Attachment range" means the amount of claims costs incurred by a participating health insurance issuer for a covered person's covered benefits in a plan year, above and below which the claims costs for benefits are eligible for reinsurance payments under the small group reinsurance program.

D. "Coinsurance rate" means the reimbursement percentage paid by the fund to a health insurance issuer participating in the small group reinsurance program for claims incurred for a

covered person's covered benefits in a plan year which are in the attachment range:

E] C. "Eligible plan" means a health plan sold on the New Mexico health insurance exchange (the "exchange" or "marketplace") that meets the requirements for the state premium assistance program.

[F] D. "Federal poverty level or FPL" means the federal poverty level issued annually by the U.S department of health and human services at aspe.hhs.gov/poverty-guidelines/.

[G] E. "Income criteria" means parameters to establish eligibility for marketplace affordability programs.

[H] E. "Modified adjusted gross income or MAGI" [means household size and income calculated to determine eligibility for financial assistance on the New Mexico health insurance exchange.] means modified adjusted gross income as defined in 42 CFR § 435.60.

[I] G. "Marketplace affordability program" means a fund program that reduces premiums and OOP costs for individuals and families who purchase individual or family coverage on the exchange.

[J] H. "OOP" means out-of-pocket.

[K] I. "Participating health insurance issuer" means a health insurance issuer who is authorized to sell a QHP on the exchange or in the fully-insured small group market who has confirmed in writing its intention to participate in a specified fund program prior to the commencement of the plan year.

[L] J. "Plan year" means the year for which a participating health insurance issuer underwrites qualifying health insurance coverage.

[M] K. "Premium assistance" means a fund program that pays a participating health insurance issuer to cover a portion of the premium obligation of a person who meets premium assistance affordability criteria.

[N] L. "QHP" means a qualified health plan.

[Θ] M. ["Reinsurance payment"] means an amount paid to a participating health insurance issuer under the small group reinsurance program.] **"Small business health insurance premium relief initiative"** means a program to reduce premiums for small businesses that purchase QHPs in the small group health insurance market.

[P] N. ["Small group reinsurance program"] means a program to reduce premium rates for small businesses that purchase coverage in the fully-insured small group market through the purchase of reinsurance for claim costs that fall in the attachment range.] **"Small group QHP purchaser"** means an employer who purchases one or more QHPs for any of its employees or owners through the small business health options program or directly from a health insurance issuer selling QHPs in the small group health insurance market.

[Q] Q. "State benchmark plan" means a qualified health plan that has been approved for sale on the exchange and that is identified by the superintendent as the plan to be used in developing affordability criteria.

[R] P. "State out-of-pocket assistance program" means a fund program that reduces OOP costs for households that meet eligibility and income criteria established by the superintendent.
[13.10.36.7 NMAC – N, 5/1/2022; A/E, 6/1/2022]

13.10.36.8 APPROPRIATIONS REQUESTS: This rule governs appropriation requests.

A. Annually, the superintendent will submit appropriation requests to the legislative finance committee for each fund program. OSI will post proposed program parameters associated with the budget request on the agency's website upon submission to the legislative finance committee.

B. The request for each fund program shall meet these minimum standards:

(1) for the affordability program, sufficient funding to provide premium

reductions for individuals under four hundred percent of the FPL and OOP cost reductions for individuals under [two hundred fifty] three hundred percent of the FPL;

(2) for the small business affordability program, sufficient funding to realize premium reductions for qualified health plans across the small group market; and

(3) for the uninsured program, sufficient funding to expand coverage to eligible individuals under two hundred percent of the FPL before expanding further up the income scale.
[13.10.36.8 NMAC – N, 5/1/2022; A/E, 6/1/2022]

13.10.36.10 MINIMIZING COVERAGE DISRUPTIONS AFTER THE FEDERAL MEDICAID CONTINUOUS COVERAGE REQUIREMENT EXPIRES:

This rule governs the agency's efforts to ensure a smooth transition into a QHP offered on the New Mexico health insurance exchange for individuals who no longer qualify for medicaid after the expiration continuous coverage requirement in the federal "families first coronavirus response act".

A. Temporary medicaid transition premium relief program. The superintendent may issue a bulletin establishing a program that fully covers the cost of the first month's premium for any QHP sold on the individual health insurance exchange for eligible individuals and families. The premium relief will be available to all members of a household that meet the eligibility requirements in Subsection B of this section. The payment may be used to effectuate coverage.

B. Eligibility for medicaid transition premium relief program. To qualify, a person must:

(1) be a resident of the state of New Mexico who is eligible to purchase a QHP on the New Mexico health insurance exchange;

(2) have lost medicaid coverage or expect to lose medicaid coverage within 60 days of

submitting an application to the New Mexico health insurance exchange;

(3) no longer be enrolled in medicaid at the time their QHP coverage begins;

(4) be eligible for federal premium tax credits; and

(5) have an expected household income below four hundred percent of the federal poverty level during the 2022 plan year.

C. Duration. The program shall be available beginning on a date established by the superintendent and continue until the marketplace affordability program begins.
[13.10.36.10 NMAC – N/E, 6/1/2022]

13.10.36.11 SMALL BUSINESS HEALTH INSURANCE PREMIUM RELIEF INITIATIVE: This rule governs the agency's small business health insurance premium relief initiative, which applies to fully-insured small group health benefit plans that meet QHP standards and are sold on or off the exchange.

A. Premium reduction percentage bulletin. Annually, based on available funding, the superintendent will issue a bulletin establishing a premium reduction percentage that will apply to all QHPs sold in the small group health insurance market. Health insurance issuers participating in the market shall discount charges to small group QHP purchasers by the percentage established by the superintendent and show the amount of the discount in all invoices to the purchaser. The superintendent may allow issuers to apply the discount directly or through a credit on the following month's premium. The bulletin will establish the percentage reduction, reporting requirements, timetable and process for issuer reimbursement, and other requirements. The superintendent may issue additional guidance, if needed.

B. Reporting requirements and annual verification of accurate payments. Health insurance issuers selling QHPs in the small group health

insurance market must report data related to enrollment, premiums, and reimbursement from the health care affordability fund to the office of superintendent of insurance on a regular basis, based on the requirements of the bulletin. Following each calendar year, on a date established by the superintendent, issuers must report annualized data requested by the agency to verify the accuracy of payments made from the fund. The superintendent will require issuers to replenish the fund if it is determined that any overpayment has been issued.

C. Payments to participating issuers. On a regular basis, as established in the bulletin, the office of superintendent of insurance will make payments from the health care affordability fund to issuers for the remainder of the gross premium that that would otherwise be owed by small group QHP purchasers if the small business health insurance premium relief initiative were not in effect. The data received by OSI pursuant to Subsection B of Section 10 of this rule serves as the basis for OSI's regular payments to issuers from the health care affordability fund. Issuers must invoice the agency according to the bulletin's instructions in order to receive payment.

D. Notification of small group QHP purchasers. The superintendent will specify a date before the initiative goes into effect by which health insurance issuers must notify their small group QHP purchasers about the premium reductions provided by the initiative. Issuers subject to the rule should reflect the premium reduction amount in all invoices.

E. Treatment as third-party payment. For the purposes of the federal risk adjustment program and federal medical loss ratio requirements, the state payment under this section should be considered a third-party payment that is part of the gross premium.

[13.10.36.11 NMAC – N/E, 6/1/2022]

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Other Material Related to Administrative Law

**GOVERNOR,
OFFICE OF THE**

(Publisher's note: This executive order was not posted until 4/15. According to REGISTER schedule, this order is published in issue 9, after effective date of this order has expired. –meo)

EXECUTIVE ORDER 2022-016

**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 March 31, 2022 the Centers for Disease Control and Prevention ("CDC") reported over 79.9 million people have been infected in the United States, with

over 977,000 related deaths, and the New Mexico Department of Health has reported 517,858 positive COVID-19 cases and 7,274 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 subsequently declared a state of emergency and implemented significant measures and deployed substantial resources to fight the spread of COVID-19; many, if not most, have kept such states of emergency in place.

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

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

1. In consultation with the New Mexico Department of Health, I have determined that the statewide public health emergency

proclaimed in Executive Order 2020-004, and renewed in Executive Orders 2020-022, 2020-026, 2020-030, 2020-036, 2020-053, 2020-55, 2020-059, 2020-064, 2020-073, 2020-080, 2020-085, 2021-001, 2021-004, 2021-010, 2021-011, 2021-012, 2021-023, 2021-030, 2021-044, 2021-049, 2021-054, 2021-058, 2021-061, 2021-067, 2022-004, 2022-007, and 2022-012 shall be renewed and extended through May 1, 2022.

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

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

This Order supersedes any previous orders, proclamations, or directives in conflict. This Order shall take effect on April 1, 2022 and shall remain in effect until April 30, 2022 unless renewed, modified, or rescinded.

ATTEST:
DONE AT THE EXECUTIVE
OFFICE
THIS 1ST DAY OF APRIL 2022

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

/ S /
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE
/ S /
MICHELLE LUJAN-GRISHAM
GOVERNOR

HEALTH, DEPARTMENT OF

(Publisher's note: This public health order was not posted until 4/18. According to REGISTER schedule, this order is published in issue 9, after effective date of this order has expired. –meo)

PUBLIC HEALTH ORDER NEW MEXICO DEPARTMENT OF HEALTH ACTING SECRETARY DAVID R. SCRASE, M.D.

April 15, 2022

**Public Health Emergency Order
Clarifying that Current Guidance
Documents, Advisories, and
Emergency Public Health Orders
Remain
in Effect; and Amending Prior
Public Health Emergency Orders
to
Impose Certain Public Health
Measures**

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"). While vaccines are the most effective method to prevent the spread of COVID-19, masks, social distancing and self-isolation measures continue to be necessary to protect New Mexicans who are ineligible to receive a COVID-19 vaccine or who choose not to receive a vaccine. All New Mexicans should continue to adhere to social distancing protocols when required to protect our State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans continue social distancing measures.

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. December 15, 2020 Amended Public Health Emergency Order Implementing Additional Contact Tracing Information Requirements for All Laboratories and Submitters Submitting Notifiable Condition COVID- 19 Test Results to the New Mexico Epidemiology and Response Division;

B. January 8, 2021 Emergency Order Implementing Administration and Reporting Requirements for All COVID-19 Vaccine Providers;

C. April 5, 2021 Amended Public Health Emergency Order Temporarily Limiting Long-Term Care Facilities Visitation Due to COVID-19;

D. February 26, 2021 Public Health Emergency Order Implementing Administration Requirements for all COVID-19 Vaccine Providers and Requiring Accurate Information be Provided by Individuals Registering to Receive the COVID-19 Vaccine; and

E. December 2, 2021 Amended Public Health Emergency Order Requiring All School Workers Comply with Certain Health Requirements and Requiring Congregate Care Facility Workers, Hospital Workers, and Employees of the Office of the Governor Be Fully Vaccinated and Receive Booster Vaccines.

3. The March 18, 2022 Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health

Emergency Orders to Impose Certain Public Health Measures 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 April 30, 2022;

WHEREAS, confirmed cases in the United States have risen to more than 79 million and confirmed COVID-19 infections in New Mexico have risen to over 519,000;

WHEREAS, COVID-19 is a deadly virus and has taken the lives of over 1,000,000 Americans and over 7,400 New Mexicans;

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, vaccination, 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 12-10A-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, David R. Scrase, M.D., Acting 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 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.

I HEREBY DIRECT AS FOLLOWS:

(1) Unless a healthcare provider instructs otherwise, all individuals ages 2 years and older shall wear a mask or multilayer cloth face covering in all public hospitals, profit or nonprofit private hospitals, general hospitals, special hospitals, nursing homes, assisted living facilities, adult day cares, hospice facilities, rehabilitation facilities, State correctional facilities, juvenile justice facilities, residential treatment centers, the

New Mexico State Veterans' Home, and community homes except when eating or drinking. Nothing in this Order shall be construed as prohibiting any business, house of worship, non-profit entity, or other entity from imposing more stringent requirements.

(2) Any business, establishment, or non-profit (other than those which are a healthcare operation, utility, or indigent care services) which members of the public regularly visit must report to the New Mexico Environment Department when there is an occurrence of a rapid response. The New Mexico Environment Department shall monitor when an entity has four (4) or more rapid responses within a fourteen (14) day period. For purposes of this directive, rapid responses will be counted on a rolling basis. Businesses, establishments, or non-profits with four or more rapid responses shall not be required to cease operations. However, the rapid responses must be reported to the Environment Department so that the public may be made aware of the positive cases.

(3) All businesses, establishments, and non-profit entities must adhere to the pertinent COVID-Safe Practices

(4) Private educational institutions serving children and young adults from pre-Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall continue to adhere to the face covering requirements contained in the New Mexico Public Education Department's "COVID-19 Response Toolkit for New Mexico's Public Schools", available at <https://webnew.ped.state.nm.us/reentry-district-and-school-guidance/>, until the school district, governing local education agency, or private educational institution elects otherwise. Public and private educational institutions shall adhere to the other COVID-Safe Practices requirements for in-person instruction contained in

the COVID-19 Response Toolkit for New Mexico's Public Schools and may operate up to maximum capacity. Public and private educational institutions shall follow the reporting, testing, and closure requirements set forth by the Public Education Department in the COVID-19 Response Toolkit for New Mexico's Public Schools.

I FURTHER DIRECT as follows:

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

(2) This 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 Public Health Act.

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

(4) This Order shall take effect immediately and remain in effect through May 16, 2022.

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

(6) Any and all State officials authorized by the Department of Health may enforce this Public Health Order by issuing a citation of violation, which may result in civil administrative penalties of up to \$5,000 for each violation under NMSA 1978, Section 12-10A-19.

ATTEST:
DONE AT THE EXECUTIVE
OFFICE
THIS 15TH DAY OF APRIL 2022

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

/ S /

**MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE**

/ S /

**DAVID R. SCRASE, M.D.
ACTING SECRETARY OF THE
NEW MEXICO DEPARTMENT
OF HEALTH**

**TRANSPORTATION,
DEPARTMENT OF**

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The New Mexico Department of Transportation, ITS Bureau, gives Notice of a Minor, Nonsubstantive Correction to 18.24.1 NMAC.

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

Section 7: In subsection A, there was missing a paragraph (2). The remaining paragraphs (3) – (8) were renumbered to (2) – (7) to conform to correct legislative style.

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

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

2022 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXIII, Issues 1-24

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