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New Mexico Register

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

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Telephone: (505) 476-7941; Fax: (505) 476-7910; E-mail: staterules@state.nm.us.

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New Mexico Register

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Notices of Rulemaking and Proposed Rules

ENVIRONMENT DEPARTMENT

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board (“Board”) will hold a public hearing on November 17, 2023 at 9:00 a.m. in the Large Conference Room of the Marquez Building, 525 Camino de Los Marquez, Santa Fe, New Mexico 87505. The purpose of the hearing is to consider the matter of EIB 23-52(R), proposed amendments to the Air Quality Control Regulations codified in the New Mexico Administrative Code (NMAC) at 20.2.77 NMAC (New Source Performance Standards), 20.2.78 NMAC (Emission Standards for Source Categories of Hazardous Air Pollutants), and 20.2.82 NMAC (Maximum Achievable Control Technology Standards for Hazardous Air Pollutants). The proponent of these regulatory amendments is the New Mexico Environment Department (NMED). The purpose of the public hearing is to consider and take possible action on a petition from NMED to amend 20.2.77 NMAC, 20.2.78 NMAC and 20.2.82 NMAC by incorporating by reference the new rules, corrections, revisions, and amendments to the federal New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP) and Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants (MACT) which were promulgated by the U.S. Environmental Protection Agency (EPA) and published in the Federal Register from the most recent date of incorporation by reference (January 15, 2017) through June 28, 2023. The proposed amendments include updates to Section 3 of 20.2.78 NMAC and 20.2.82 NMAC to incorporate the

New Mexico Legislature’s 2021 statutory amendment to Subsection (D) of 74-2-5 NMSA 1978. The proposed revised regulations and the list of federal standards to be incorporated by reference may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino de los Marquez, Santa Fe, New Mexico, on NMED’s website at <https://www.env.nm.gov/public-notice/>, or by contacting Armando Paz at 505-629-3242 or armando.paz@env.nm.gov. You may also contact Armando Paz if you are interested in attending an informational open house on the proposed incorporation by reference. The hearing will be conducted in accordance with 20.1.1 NMAC Rulemaking Procedures Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality control Act Section 74-2-6 NMSA 1978, and other applicable procedures. All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally and in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall: (1) Identify the person for whom the witness(es) will testify; (2) Identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background; (3) Summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness; (4) List and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and (5) Attach the text of any recommended modification to the proposed new and revised regulations. Notices of intent to present technical testimony at the hearing must be received in the Office of the Board not later than 5:00 pm on October 27, 2023, and should reference the

docket number, EIB 23-52(R) and the date of the hearing. Notices of intent to present technical testimony shall be submitted to: Pamela Jones, Board Administrator Environmental Improvement Board P.O. Box 5469 Santa Fe, NM 87502; Phone (505) 660-4305; Fax (505) 827-2836; email: pamela.jones@env.nm.gov. Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with that testimony as long as the exhibit is not unduly repetitious of the testimony. A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing or submit it at the hearing. Persons having a disability who need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing should contact Pamela Jones no later than October 27, 2023 at (505) 660-4305 or pamela.jones@env.nm.gov. The Board may make a decision on the proposed revised regulations at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

ENVIRONMENT DEPARTMENT

JUNTA DE MEJORA AMBIENTAL DE NUEVO MÉXICO AVISO DE AUDIENCIA DE REGLAMENTACIÓN

La Junta de Mejora Ambiental de Nuevo México (“Junta”) llevará a cabo una audiencia pública el 17 de noviembre de 2023 a las 9:00 a.m. en la Gran Sala del Conferencias del Edificio Márquez, 525 Camino de los Márquez, Santa Fe, Nuevo México 87505. El propósito de la audiencia es considerar el asunto de EIB 23-

52(R), enmiendas propuestas a las Regulaciones de Control de Calidad del Aire codificadas en el Código Administrativo de Nuevo México (NMAC, por sus siglas en inglés) en 20.2.77 NMAC (Estándares de Desempeño de Fuentes Nuevas), 20.2.78 NMAC (Estándares de Emisión para Categorías de Fuentes de Contaminantes Atmosféricos Peligrosos) y 20.2.82 NMAC (Estándares Tecnológicos de Control Máximo Alcanzable para Contaminantes Atmosféricos Peligrosos). El proponente de estas enmiendas reglamentarias es el Departamento de Medio Ambiente de Nuevo México (NMED, por sus siglas en inglés). El propósito de la audiencia pública es considerar y tomar una posible acción sobre una petición de NMED para enmendar 20.2.77 NMAC, 20.2.78 NMAC y 20.2.82 NMAC incorporando por referencia las nuevas reglas, correcciones, revisiones y enmiendas a los Estándares Federales de Desempeño de Nuevas Fuentes (NSPS, Por Sus Siglas En Inglés), Estándares Nacionales de Emisión de Contaminantes Atmosféricos Peligrosos (NESHAP, por sus siglas en inglés) y Estándares de Tecnología de Control Máximo Alcanzable para Categorías de Fuentes de Contaminantes Atmosféricos Peligrosos (MACT, por sus siglas en inglés) que fueron promulgados por la Agencia de Protección Ambiental de EE. UU. (EPA, por sus siglas en inglés) y publicados en el Registro Federal desde la fecha más reciente de incorporación por referencia (15 de enero de 2017) hasta el 28 de junio de 2023. Las enmiendas propuestas incluyen actualizaciones a la Sección 3 de 20.2.78 NMAC y 20.2.82 NMAC para incorporar la enmienda estatutaria de 2021 de la Legislatura de Nuevo México a la Subsección (D) de 74-2-5 NMSA 1978. Los reglamentos revisados propuestos y la lista de estándares federales que se incorporarán por referencia pueden ser revisados durante el horario regular de atención al público en la Oficina de Calidad del Aire de NMED, 525 Camino

de los Márquez, Santa Fe, NM, en el sitio web de NMED en <https://www.env.nm.gov/public-notice/>, o comunicándose con Armando Paz llamando al 505-629-3242 o armando.paz@env.nm.gov. También puede comunicarse con Armando Paz si está interesado en asistir a una jornada de puertas abiertas informativa sobre la incorporación propuesta por referencia. La audiencia se llevará a cabo de acuerdo con 20.1.1 Procedimientos de reglamentación de NMAC de la Junta de Mejora Ambiental, la Ley de Mejora Ambiental, Sección 74-1-9 NMSA 1978, la Ley de Control de Calidad del Aire, Sección 74-2-6 NMSA 1978, y otros procedimientos aplicables. A todas las personas interesadas se les dará una oportunidad razonable en la audiencia para presentar las pertinentes pruebas, datos, puntos de vista y argumentos, de forma oral y por escrito, presentar pruebas e interrogar a los testigos. Las personas que deseen presentar testimonio técnico deben presentar ante la Junta un aviso por escrito de la intención de hacerlo. El aviso de intención deberá: (1) Identificar a la persona para la que declarará el testigo o testigos; (2) Identificar cada testigo técnico que la persona pretende presentar y declarar las calificaciones del testigo, incluidas una descripción de su educación y experiencia laboral; (3) resumir o incluir una copia del testimonio directo de cada testigo técnico y establecer la duración anticipada del testimonio de ese testigo; (4) Enumerar y describir, o adjuntar, cada prueba instrumental que se anticipa que ofrecerá esa persona en la audiencia; y (5) Adjuntar el texto de cualquier modificación recomendada a los propuestos reglamentos nuevos y revisados. Los avisos de intención de presentar testimonio técnico en la audiencia deben recibirse en la Oficina de la Junta a más tardar a las 5:00 p.m. del 27 de octubre de 2023, y deben hacer referencia al número de expediente, EIB 23-52(R) y la fecha de la audiencia. Los avisos de intención de presentar testimonio técnico se enviarán a: Pamela Jones, administradora de la

Junta de Mejora Ambiental P.O. Box 5469 Santa Fe, NM 87502; Teléfono (505) 660-4305; fax (505) 827-2836; correo electrónico: pamela.jones@env.nm.gov. Cualquier miembro del público puede testificar en la audiencia. No se requiere aviso previo para presentar un testimonio no técnico en la audiencia. Cualquiera de esos miembros también puede ofrecer pruebas instrumentales en relación con ese testimonio siempre que las pruebas instrumentales no sean indebidamente repetitivas del testimonio. Cualquier miembro del público que desee presentar una declaración por escrito para que conste en acta, en lugar de proporcionar un testimonio oral en la audiencia, deberá presentar la declaración por escrito antes de la audiencia o presentarla en la audiencia. Las personas con una discapacidad que necesiten un lector, amplificador, intérprete calificado de lenguaje de señas o cualquier otra forma de ayuda o servicio auxiliar para asistir o participar en la audiencia deben comunicarse con Pamela Jones a más tardar hasta el 27 de octubre de 2023, llamando al (505) 660-4305 o en pamela.jones@env.nm.gov. La Junta puede tomar una decisión sobre los reglamentos revisados propuestos al final de la audiencia, o la Junta puede convocar una reunión después de la audiencia para considerar la adopción de medidas sobre la propuesta.

ENVIRONMENT DEPARTMENT

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.2.91 NMAC EIB 23-56 (R)

The New Mexico Environmental Improvement Board (“EIB”) will hold a joint public hearing with the Albuquerque-Bernalillo County Air Quality Control Board (“AQCB”)

beginning on November 13, 2023, at 9:00 am and continuing through November 16, 2023, to consider EIB 23-56 (R) - In the Matter of Proposed Amendments to 20.2.91 NMAC – New Motor Vehicle Emissions Standards (“20.2.91 NMAC”). The hearing will last as long as required to hear all testimony, evidence, and public comment, and is expected to last approximately three days. The EIB may begin deliberation on the proposed rule on November 15th or the following day.

The in-person hearing will be held in the <https://www.sbnm.org/statebarcenter>, 5121 Masthead Street, NE in Albuquerque, New Mexico. Detailed information concerning the time and location can be found on the New Mexico Environment Department (“NMED”) calendar at <https://www.env.nm.gov/events-calendar/> no later than October 20, 2023. For more information, please contact the EIB Administrator at (505) 660-4305 or pamela.jones@env.nm.gov. Additional meeting and access details, including if the hearing has a virtual component, will be available in the calendar entry corresponding to the hearing start date.

The purpose of the public hearing is for the EIB to consider and take possible action on a petition by NMED requesting the EIB to adopt amendments to 20.2.91 NMAC (<https://www.env.nm.gov/opf/wp-content/uploads/sites/13/2023/07/2023-07-07-EIB-23-56-EPD-CCB-ACT-II-Petition-final.pdf>), which will update New Mexico’s standards to align with California’s standards for low-emission and zero-emission light- and medium-duty vehicles. The proposed rules also require new emission standards and reporting requirements identical to California’s for heavy-duty vehicles delivered for sale in New Mexico. This regulation is part of a broader state effort to address greenhouse gas emissions in keeping with Governor Lujan Grisham’s Executive Order 2019-003 On Addressing

Climate Change and Energy Waste Prevention (https://www.governor.state.nm.us/wp-content/uploads/2019/01/EO_2019-003.pdf). The EIB is authorized to adopt the proposed amendments pursuant to the Environmental Improvement Act, Paragraph (4) of Subsection A of Section 74-1-8 NMSA 1978, and the Air Quality Control Act, Sections 74-2-1 through 74-2-17 NMSA 1978.

The proposed regulation amends 20.2.91 NMAC, New Motor Vehicle Emission Standards, that the EIB originally adopted in 2022 during a joint hearing with the AQCB. To assure that the rule applies to the jurisdictions of both the EIB and the AQCB – statewide – and meets the identity requirements of Section 177 of the Clean Air Act, the EIB and the AQCB will hold a joint hearing and possible deliberation to consider the proposed amendments to 20.2.91 NMAC and 20.11.104 NMAC (<https://www.dropbox.com/scl/fo/9mlsyv00cgfk2qw5s5k88/h?dl=0&rlkey=70dg126euv69evv6woll1rtsr>), respectively. The EIB and the AQCB may independently make a final decision on the proposed rule for their respective jurisdictions at the conclusion of the hearing or may convene later meetings for that purpose. The hearing will be conducted in accordance with: 20.1.1 NMAC, *Rulemaking Procedures – Environmental Improvement Board*; the *Environmental Improvement Act*, Section 74-1-9 NMSA 1978; the *Air Quality Control Act*, Section 74-2-6 NMSA 1978; and other applicable procedures.

The Petition, Statement of Reasons, Amended Rule, and related documents may be viewed on NMED’s docketed matters website under the Environmental Improvement Board dropdown menu, in the section for EIB 23-56 (R) - In the Matter of Proposed Amendments to 20.2.91 NMAC – New Motor Vehicle Emission Standards. NMED’s docketed matters website is at <https://www.env.nm.gov/opf/docketed-matters/>.

Additional information is available on NMED’s Clean Transportation webpage at <https://www.env.nm.gov/transportation/>. Paper copies of the petition, the statement of reasons, and the proposed rule are available at all NMED’s offices statewide. Interested persons may contact Bonney Hughes at (505) 479-2207 or cleancarsnm@env.nm.gov with questions.

PUBLIC PARTICIPATION

Hearings and meetings of the Boards are open to the public and all interested persons are encouraged to participate. All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally and in writing; to introduce exhibits; and to examine witnesses.

TECHNICAL TESTIMONY

Any person who wishes to present technical evidence at the hearing shall file a notice of intent at least 20 days prior to the hearing date to the Board Administrator including the docket number and the name of the regulation, EIB 23-56 (R)- In the Matter of Proposed Amendments to 20.2.91 NMAC – New Motor Vehicle Emission Standards. The notice of intent to present technical testimony shall: (1) identify the person for whom the witness(es) will testify; (2) identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background; (3) if the hearing will be conducted at multiple locations, indicate the location or locations at which the witnesses will be present; (4) include a copy of the direct testimony of each technical witness in narrative form; (5) include the text of any recommended modifications to the proposed regulatory change; and (6) list and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

ENTRY OF APPEARANCE

Any person who wishes to be treated

as an interested participant and to cross-examine witnesses at the hearing shall file and serve upon all parties an entry of appearance at least 20 days prior to the hearing date. A timely notice of intent shall be considered an entry of appearance. The entry of appearance must identify the person wishing to be treated as an interested participant and any individual who may appear on behalf of that person.

PUBLIC COMMENT

Those wishing to submit comments prior to the hearing may submit relevant evidence, data, views, and arguments to the EIB Administrator: <https://nmed.commentinput.com/?id=TuMmsArBj>; pamela.jones@env.nm.gov, telephone (505) 660-4305, or Environmental Improvement Board Administrator, New Mexico Environment Department- Harold Runnels Building, P.O. Box 5469, Santa Fe, NM 87502. Those submitting non-technical public comment at the hearing or a non-technical written statement in lieu of oral testimony at or before the hearing should reference docket number EIB 23-56 (R). Any person wishing to submit a non-technical written comments for the record in lieu of oral testimony must file such a statement prior to the close of the hearing.

ACCESSIBILITY

If any person requires assistance, an interpreter, or an auxiliary aid to participate in this process, please contact the Board Administrator at least 14 days prior to the hearing date at 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502, telephone (505) 660-4305, or email pamela.jones@env.nm.gov (TDD or TTY users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

Notice of Nondiscrimination

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or

activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us. If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above. You may also visit NMED's website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.

ENVIRONMENT DEPARTMENT

JUNTA DE MEJORA AMBIENTAL DE NUEVO MÉXICO AVISO DE AUDIENCIA DE REGLAMENTACIÓN PARA CONSIDERAR LAS ENMIENDAS PROPUESTAS A 20.2.91 NMAC EIB 23-56 (R)

La Junta de Mejora Ambiental de Nuevo México ("EIB" por sus siglas en inglés) llevará a cabo una audiencia pública junto con la Junta de Control de Calidad del Aire (AQCB, por sus siglas en inglés) del condado de Bernalillo-Albuquerque a partir del 13 de noviembre de 2023, a las 9:00 a. m. y continuará

hasta el 16 de noviembre de 2023, para considerar la EIB 23-56 (R) - En el Asunto de las Enmiendas Propuestas a 20.2.91 NMAC - Nuevos estándares de emisiones de vehículos motorizados (20.2.91 NMAC). La audiencia durará el tiempo necesario para poder escuchar todos los testimonios, pruebas y comentarios del público, y se espera que dure aproximadamente tres días. La EIB podrá iniciar la deliberación sobre la regla propuesta el 15 de noviembre o al día siguiente.

La audiencia en persona se llevará a cabo en el <https://www.sbnm.org/statebarcenter>, 5121 Masthead Street, NE en Albuquerque, Nuevo México. Puede encontrar información detallada sobre la hora y la ubicación en el calendario del Departamento de Medio Ambiente de Nuevo México (NMED, por sus siglas en inglés) en <https://www.env.nm.gov/events-calendar/> a más tardar el 20 de octubre de 2023. Para obtener más información, comuníquese con la administradora de la EIB llamando al (505) 660-4305 o en pamela.jones@env.nm.gov. Los detalles adicionales de la reunión y el acceso, incluido si la audiencia tiene un componente virtual, estarán disponibles en la entrada del calendario correspondiente a la fecha de inicio de la audiencia.

El propósito de la audiencia pública es que la EIB considere y tome una posible acción sobre la petición de NMED solicitando a la EIB que adopte enmiendas a 20.2.91 NMAC (<https://www.env.nm.gov/opf/wp-content/uploads/sites/13/2023/07/2023-07-07-EIB-23-56-EPD-CCB-ACT-II-Petition-final.pdf>), que actualizará los estándares de Nuevo México para alinearlos con los estándares de California para vehículos ligeros y medianos de bajas emisiones y cero emisiones. Las reglas propuestas también requieren nuevos estándares de emisión y requisitos de informes idénticos a los de California para vehículos pesados entregados para la venta en Nuevo México. Esta regulación es parte de

un esfuerzo estatal más amplio para abordar las emisiones de gases de efecto invernadero de conformidad con la Orden Ejecutiva 2019-003: Abordar el cambio climático y la prevención de residuos energéticos (https://www.governor.state.nm.us/wp-content/uploads/2019/01/EO_2019-003.pdf). La EIB está autorizada a adoptar las enmiendas propuestas de conformidad con la Ley de Mejora Ambiental, Párrafo (4) de la Subsección A de la Sección 74-1-8 NMSA 1978, y la Ley de Control de Calidad del Aire, Secciones 74-2-1 a 74-2-17 NMSA 1978.

La regulación propuesta modifica 20.2.91 NMAC, Nuevos Estándares de Emisión de Vehículos Motorizados, que la EIB adoptó originalmente en 2022 durante una audiencia conjunta con la AQCB. Para garantizar que la regla se aplique a las jurisdicciones tanto de la EIB como de la AQCB en todo el estado y cumpla con los requisitos de identidad de la Sección 177 de la Ley de Aire Limpio, la EIB y la AQCB llevarán a cabo una audiencia conjunta y una posible deliberación para considerar las enmiendas propuestas a a 20.2.91 NMAC y 20.11.104 NMAC (<https://www.dropbox.com/scl/fo/9mlyv00cgfk2qw5s5k88/h?dl=0&rlkey=70dg126euu69evv6woll1rtsr>), respectivamente. La EIB y la AQCB pueden tomar de forma independiente una decisión final sobre la regla propuesta para sus respectivas jurisdicciones al final de la audiencia o pueden convocar reuniones posteriores para tal fin. La audiencia se llevará a cabo de acuerdo con: 20.1.1 NMAC, *Procedimientos de Reglamentación – Junta de Mejora Ambiental*; la *Ley de Mejoramiento Ambiental*, Sección 74-1-9 NMSA 1978; la Ley de Control de Calidad del Aire, Sección 74-2-6 NMSA 1978; y otros procedimientos aplicables.

La Petición, la Declaración de Motivos, la Regla Modificada y los documentos relacionados se pueden ver en el sitio web de asuntos registrados de NMED en el menú desplegable de la Junta de Mejora

Ambiental, en la sección de EIB 23-56 (R) - En el Asunto de las Enmiendas Propuestas a 20.2. 91 NMAC – Nuevos Estándares de Emisión de Vehículos Motorizados. El sitio web de asuntos registrados de NMED se encuentra en <https://www.env.nm.gov/opf/docketed-matters/>. Hay información adicional disponible en la página web sobre el Transporte Limpio de NMED en <https://www.env.nm.gov/transportation/>. Las copias en papel de la Petición, la Declaración de Motivos y la regla propuesta están disponibles en todas las oficinas de NMED en todo el estado. Las personas interesadas pueden comunicarse con Bonney Hughes llamando al (505) 479-2207 o en cleancarsnm@env.nm.gov si tienen preguntas.

PARTICIPACIÓN PÚBLICA

Las audiencias y reuniones de las Juntas están abiertas al público y se anima a participar a todas las personas interesadas. Todas las personas interesadas tendrán una oportunidad razonable en la audiencia para presentar relevantes pruebas, datos, puntos de vista y argumentos, de forma oral y por escrito; presentar pruebas instrumentales; e interrogar a los testigos.

TESTIMONIO TÉCNICO

Cualquier persona que desee presentar evidencia técnica en la audiencia deberá presentar un aviso de intención por lo menos 20 días antes de la fecha de la audiencia a la administradora de la Junta incluyendo el número de expediente y el nombre de la regulación, EIB 23-56 (R)- En el Asunto de las Enmiendas Propuestas a 20.2.91 NMAC – Nuevos Estándares de Emisión de Vehículos Motorizados. El aviso de intención de presentar testimonio técnico deberá: (1) identificar a la persona en nombre de la cual testificarán los testigos; (2) identificar cada testigo técnico que la persona tiene la intención de presentar e indicar las calificaciones de ese testigo, incluida una descripción de su historial académico y laboral; (3) si la audiencia se llevará a cabo en varias ubicaciones, indicar la

ubicación o ubicaciones en los que estarán presentes los testigos; (4) incluir una copia del testimonio directo de cada testigo técnico en forma narrativa; (5) incluir el texto de cualquier modificación recomendada al cambio regulatorio propuesto; y (6) enumerar y adjuntar todos las pruebas instrumentales que se anticipa que esa persona ofrecerá en la audiencia, incluida cualquier declaración propuesta de razones para la adopción de reglas.

REGISTRO DE COMPARECENCIA

Cualquier persona que desee ser tratada como parte interesada y desea interrogar a los testigos en la audiencia deberá presentar y notificar a todas las partes un registro de comparecencia al menos 20 días antes de la fecha de la audiencia. Un aviso de intención de forma oportuna se considerará un registro de comparecencia. El registro de comparecencia debe identificar a la persona que desea ser tratada como parte interesada y a todo individuo que pueda comparecer en nombre de esa persona.

COMENTARIOS PÚBLICOS

Aquellas personas que deseen enviar comentarios antes de la audiencia pueden enviar relevantes pruebas, datos, puntos de vista y argumentos a la administradora de la EIB: <https://nmed.commentinput.com/?id=TuMmsArBj>; pamela.jones@env.nm.gov, teléfono (505) 660-4305, o Administradora de la Junta de Mejora Ambiental, Departamento de Medio Ambiente de Nuevo México - Edificio Harold Runnels, P.O. Box 5469, Santa Fe, NM 87502. Quienes presenten comentarios públicos no técnicos en la audiencia o una declaración no técnica por escrito en lugar de testimonio oral en la audiencia o antes de la audiencia deben hacer referencia al número de expediente EIB 23-56 (R). Cualquier persona que desee presentar comentarios no técnicos por escrito para el registro en lugar de un testimonio oral debe presentar dicha declaración antes del cierre de la audiencia.

ACCESIBILIDAD

Si alguna persona requiere asistencia, un intérprete o un dispositivo auxiliar para participar en este proceso, comuníquese con la administradora de la Junta al menos 14 días antes de la fecha de la audiencia en 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502, teléfono (505) 660-4305, o correo electrónico pamela.jones@env.nm.gov (los usuarios de TDD o TTY pueden acceder al número a través de New Mexico Relay Network, 1-800-659-1779 (voz); usuarios de TTY: 1-800-659-8331).

Aviso de no discriminación

El NMED no discrimina por motivos de raza, color, nacionalidad, discapacidad, edad o sexo en la administración de sus programas o actividades, como lo exigen las leyes y reglamentos aplicables. El NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de las consultas relativas a los requisitos de no discriminación implementados por 40 C.F.R. Partes 5 y 7, incluyendo el Título VI de la Ley de Derechos Civiles de 1964, con sus enmiendas; la Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, el Título IX de las Enmiendas de Educación de 1972, y la Sección 13 de las Enmiendas de la Ley Federal de Control de Contaminación del Agua de 1972. Si tiene alguna pregunta sobre este aviso o cualquiera de los programas, políticas o procedimientos de no discriminación del NMED, o si cree que ha sido discriminado con respecto a un programa o actividad del NMED, puede ponerse en contacto con: Kate Cardenas, coordinadora de no discriminación, NMED, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@env.nm.gov. También puede visitar nuestro sitio web en <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> para saber cómo y dónde presentar una queja por discriminación.

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 hearing on Friday October 27, 2023 beginning at 9:00 a.m. at the Farmington Civic Center, 200 W. Arrington St., Farmington, NM 87401. The purpose of this meeting is to hear and consider action as appropriate on the presentation of proposed changes to the Bear and Cougar Rule 19.31.11 NMAC.

Synopsis

The proposal is to amend the Bear and Cougar Rule 19.31.11 NMAC which will become effective April 1, 2024. The most recent version of the rule will expire on March 31, 2024.

PROPOSED CHANGES TO THE BEAR AND COUGAR RULE

Allow licensed deer or elk hunters who draw WMA hunts to harvest a bear or cougar during their hunt if the zone is open and they possess a Bear and/or Cougar License.

Bears

- Increase bear harvest limits in BMZs 1 and 10 based on population estimates from new NMDGF research from 2019-2021;
- Adjust BMZs 5, 6, and 7 such that GMU 57 will be moved from BMZ 7 into BMZ 5, and GMUs 56 and 58 will be moved from BMZ 7 into BMZ 6, thus dissolving BMZ 7 into those zones. Harvest limit allocations from those GMUs in previous BMZ 7 will be re-allocated to the new BMZs of which they are a part;
- Increase number of permits for bear draw permit BER-1-104 from 32 permits to 60 permits to increase opportunity. Draw hunters will still be subject to the existing harvest limit structure;

- Increase number of permits for bear draw permit BER-1-103 from 5 permits to 10 permits, in recognition of the expanded hunt area resulting from the Department's acquisition of the LBar property. Draw hunters will still be subject to the existing harvest limit structure;
- Move the season start date for BMZs 12 and 13 from September 1st back to August 16th.

Cougars

Reduce harvest limits for CMZ Q based on research studies and statistical modelling efforts.

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 for the Bear and Cougar Rule to: DGF-Bear-Cougar-Rules@state.nm.us. Individuals may also submit written comments to the physical address below. Comments are due by 1:00 p.m. on October 25, 2023. The final proposed rules will be voted on by the Commission during a public meeting on October 27, 2023. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearings to be held on October 27, 2023.

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.

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 hearing on Friday October 27, 2023 beginning at 9:00 a.m. at the Farmington Civic Center, 200 W. Arrington Drive, Farmington, NM 87401. The purpose of this meeting is to hear and consider action as appropriate on the presentation of proposed changes to the Furbearers Rule 19.32.2.

Synopsis

The proposal is to amend the Furbearers Rule 19.32.2 NMAC which will become effective April 1, 2024. The most recent version of the rule will expire on March 31, 2024.

PROPOSED CHANGES TO THE FURBEARERS RULE

With the public-land trapping restrictions imposed by legislation and the Director's ability to impose seasonal bag limit(s) for any species should the need arise, no substantive changes are proposed at this time. As such, we propose that the Furbearer

Rule no longer be on a 4-year renewal cycle, and subsequently be opened only as needed.

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 for the Furbearers Rule to: DFG-Furbearer-Rules@state.nm.us. Individuals may also submit written comments to the physical address below. Comments are due by 1:00 p.m. on October 25, 2023. The final proposed rules will be voted on by the Commission during a public meeting on October 27, 2023. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearings to be held on October 27, 2023.

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.

GAMING CONTROL BOARD

NOTICE OF PROPOSED RULEMAKING

The Gaming Control Board hereby gives notice that the Board will conduct a public comment hearing on the described rules below.

The public comment hearing will be held on Monday, October 30, 2023 from 9:00 am to 12:00 pm at the Gaming Control Board, 4900 Alameda Blvd. NE, Albuquerque, NM 87113.

The public comment hearing allows members of the public an opportunity to submit data, testimony, and arguments in person on the proposed rule changes detailed below. All comments will be recorded by a court reporter and/or audio recording.

Subsection G of 15.1.10.7 NMAC
Definitions:

Purpose: To help nonprofits better allocate money in light of recent stator changes to Section 60-2E-47 NMSA 1978 of the Gaming Control Act.

Summary of Full Text: The Definitions section provides definitions of commonly used terms in the Gaming Control Regulations. Specifically, this rule will only be revised as to Subsection G in that the definition of "allowable gaming expenses" by removing all of the sub-subsections and simply defining "allowable gaming expenses as "license fees, including renewals and gaming machine license fees".

15.1.10.25 NMAC - Payment of Winnings:

Purpose: Revising the maximum jackpot amounts to conform to recently passed legislation. The revisions are also designed to protect nonprofit clubs from having to produce payouts in excess of the jackpots that are supposed to be set on their machines by requiring that the intended maximum jackpots be posted on the machines and making distributors responsible for the difference should the machines produce a jackpot above that requested by the nonprofit organization.

Summary of Full Text: The maximum payout allowed for any gaming machine located within a nonprofit organization is raised from \$4,000 to \$10,000. A section is also added to require the posting of the intended jackpot amount on each machine and to make distributors liable for the excess amount should any machine display a jackpot above the intended amount.

15.1.10.45 NMAC - Nonprofit Contracts:

Purpose: To keep the Board informed of agreements concerning requested jackpot amounts on machines located in nonprofit organizations for purposes of ensuring that machines are being set at the jackpots requested by the nonprofits so they may avoid having to pay jackpots above what they had intended and above what they can afford.

Summary: Language will be added to the current Rule requiring lease agreements between distributors and nonprofits to state the machines and their max amounts set. Lease agreements between distributors and nonprofit organizations already require approval by the Board.

Subsection D of 15.1.10.32 NMAC - Use of Gaming Receipts by Nonprofit Operator Licensee:

Purpose: Revising the amount of net take nonprofits give to charitable

organizations in Subsection D to conform with recently passed legislation modifying Section 60-2E-47 NMSA 1978 of the Gaming Control Act.

Summary: The Rule will be revised to change sixty percent to twenty percent.

15.1.5.23 NMAC - Application Fees:

Purpose: The purpose is to update application fees as they have not changed since the inception of the agency.

Summary: The Rule will be revised to raise application fees as follows:

Manufacturer license application fees will be raised from \$10,000 to \$15,000

Associated Equipment Manufacturer license application fees will be raised from \$2,500 to \$5,000

Distributor license application fees will be raised from \$5,000 to \$7,500

Authority: Section 60-2E-7 NMSA1978 and Section 60-2E-8 NMSA 1978.

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

Copies of the proposed rules are available on the Gaming Control Board's website at www.gcb.nm.gov/regulations or can be obtained by emailing GCB-PIO@gcb.nm.gov.

The proposed rules are also available on the New Mexico Sunshine Portal. Interested individuals may provide comments at the public hearing.

Before the public hearing, written comments may be sent to GCB-PIO@gcb.nm.gov, or by regular mail at Attn: Michelle Pato - proposed rule, The Gaming Control Board, 4900 Alameda Blvd. NE, Albuquerque, NM 87113. The deadline to receive written comment is Monday, October 30, 2023. All written public comments will be posted on the website throughout the written comment period at: www.gcb.nm.gov/regulations.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 841-9700.

**HUMAN SERVICES
DEPARTMENT
CHILD SUPPORT
ENFORCEMENT DIVISION**

**NOTICE OF PUBLIC RULE
HEARING**

The Human Services Department through the Child Support Enforcement Division (CSED), (n/k/a the Child Support Services Division, CSSD) is proposing a repeal and replacement of rule 8.50.108 NMAC - Establishment and Modification of Support Order, (specifically sections 7, 8, 9, 10, 11, 13, 14 and 15). The purpose of replacing this rule is to establish the basic child support guideline schedule by rule and provide an explanation of when a self-support reserve should be applied.

A repeal and replacement of rule 8.50.109 NMAC - Medical Support, (specifically sections 7, 8, 9, 10, 11, 12, 13, 15 and 16). The purpose of replacing this rule is to remove the need for the IV-D agency to include a cash medical support obligation when child(ren)'s health care coverage is provided by a public entity. Health care coverage for child(ren) by a public entity satisfies health care coverage requirements.

There are proposed amendments to rule 8.50.125.10 NMAC - Collections of Fees/Recoupments; 8.50.125.12 NMAC Distribution of Collections through Federal Income Tax Refund Offset and 8.50.125.15 NMAC Assigned Medical Support Collections to update the fee schedule, clarify distribution of tax refund offsets and removes language pertaining to cash medical support collection.

The Human Services Department is authorized to propose and adopt rules under the Public Assistance Act, Section 27-2-1; Domestic Affairs Act Section 40-4-11.1 and 40-4C-3 NMSA 1978 (1992 Repl.).

Summary of proposed changes include:

8.50.108 NMAC Repeal/replace to comply with federal regulations, state statutes, as well as NMAC rule requirements. (Specifically, sections 7, 8, 9, 10, 11, 13, 14, 15).

8.50.108.7 NMAC Adding and defining “self-support reserve”.

8.50.108.8 NMAC Deleting and adding gender neutral language and adding language about health care coverage through a public entity and adding child(ren).

8.50.108.9 NMAC Adding language to consider labor market data when imputing income; adding language about the basic child support schedule and references to appendix. Adding language for statement of deviation. Deleting “will” and adding “may”.

8.50.108.10 NMAC Adding new title “Child Support Guideline Schedule and Self-Support Reserve” and the incorporation of Appendix 1 as the child support guideline schedule. Adding information about the basic support schedule, self support reserve, and shared responsibility arrangements. Deleting Default Judgment language and text and moving it to 8.50.108.11.

8.50.108.11 NMAC Adding title and text for Default Judgment. Deleting title and text of Furnishing Consumer Reports for Certain Purposes Relating to Child Support to move to 8.50.108.15.

8.50.108.13 NMAC Deleting and adding gender neutral language and adding new language.

8.50.108.14 NMAC Deleting language referring to money

collected. Deleting “in favor” adding language for legal action, mutually agreed upon, between and the IV-D agency.

8.50.108.15 NMAC Add new section for Furnishing Consumer Reports for Certain Purposes Relating to Child Support that was moved from section 8.50.108.11.

8.50.109 NMAC Repeal/replace to comply with federal regulations, state statutes, as well as NMAC rule requirements. (Specifically, sections 7, 8, 9, 10, 11, 12, 13, 15, 16 and 17).

8.50.109.7 NMAC Updating definition of “cash medical support” to remove language of payment toward the cost of health care coverage provided by a public entity and broadening definition of “health care coverage”.

8.50.109.8 NMAC Adding language of of what is medical support includes. Removing language that IV-D agency will request a provision of cash medical support. Adding and deleting wording in reference to children and minor child(ren), Medicaid health coverage. Adding health care coverage. Clarifying reasonableness of cost and removing language pertaining to reasonable of cost.

8.50.109.9 NMAC Adding and deleting wording of paternity to parentage; order to orders and an to a support order. Removing wording - child or medical.

8.50.109.10 NMAC Removing child support order and replacing with support order. Adding the words “the” and child(ren) instead of children. Removing “not including Title XIX Medicaid”. Deleting wording of child support award, children, employers, party. Adding in child(ren), employer(s), parent, and minor child(ren).

8.50.109.11 NMAC Adding and deleting wording in reference to parents, parties, medical, health, dependent child and minor child(ren).

8.50.109.12 NMAC Adding language that the medical support obligor maintains recertification requirements as letter “I”. Deleting wording of children, health care coverage plan. Adding minor child(ren), qualified health care coverage plan and medical support. Deleting and relettering subsections.

8.50.109.13 NMAC Removing children and adding child(ren).

8.50.109.15 NMAC Removing language that “IV-D agency will request a provision of cash medical support only if the children are actively enrolled in Title XIX Medicaid”. Deleting “court” and adding support.

8.50.109.16 NMAC Remove language pertaining to distribution and clarifying cash medical support distribution to the custodial parent. Adding language that IV-D agency will not pursue cash medical support on cases where the child(ren) receive health care coverage through a public entity.

8.50.109.17 NMAC Removing children and adding minor child(ren).

8.50.125.10 NMAC Deleting language related to fee types. Removing “tax intercept related”. Adding “parental kidnapping locator”; “bad check” and “recoupment” to fees. Re-numbering.

8.50.125.12 NMAC Clarifying: distribution rules for collections made effective on or before January 23, 2023 in former assistance cases. Clarifying: distribution rules for collections made effective on or after January 23, 2023 in former assistance cases. Adding: Re-numbering and adding information to subsection B.

8.50.125.15 NMAC Deleting: language pertaining to the collection and distribution a specific dollar amount of medical support with an assignment to the state as recovery for Title XIX (Medicaid).

Adding language that cash medical support for reimbursement of the Title XIX will no longer be pursued.

The register for these proposed amendments and changes to these rules will be available September 12, 2023 on the HSD website at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx>. If you do not have Internet access, a copy of the proposed rules may be requested by contacting CSSD at (505) 709-5755.

A public hearing to receive testimony on these proposed rules will be held at 10 am - 11 am (MST) October 12, 2023 at 1474 Rodeo Rd, Santa Fe, NM in the HSD/ASD large conference room. This meeting is also available online:

Please join my meeting from your computer, tablet or smartphone. <https://meet.goto.com/447636325>
You can also dial in using your phone. Access Code: 447-636-325
United States: +1 (872) 240-3212
Get the app now and be ready when your first meeting starts: <https://meet.goto.com/install>

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATTN: Child Support Services Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling (505) 709-5755. Electronic comments may be submitted to john.lujan2@hsd.nm.gov Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. The public comment period is from September 12, 2023 to October 12, 2023, all comments must be received no later than 5:00 p.m. (MDT) on October 12, 2023. All written comments will be posted on the HSD website within 3 days of receipt.

If you are a person with a disability and you require this information in an

alternative format or require a special accommodation to participate in the public hearing, please contact the Division toll free at 1-800-432-6217. The Department's TDD system may be accessed toll-free at 1-800-659-8331. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the CSSD upon request by providing copies directly to a requestor or by making them available on the CSSD website or at a location within the county of the requestor.

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rules 8.291.400, *Affordable Care, Eligibility Requirements*, 8.200.400, *General Recipient Rules, General Medicaid Eligibility*, and 8.200.410, *General Recipient Rules, General Recipient Requirements*.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: September 12, 2023
Hearing Date: October 13, 2023
Adoption Date: Proposed as January 1, 2024
Technical Citations: 42 CFR 435.926 and 42 CFR 435.406

Background

Continuous Medicaid eligibility for children under age six

The Department currently provides 12 months of continuous enrollment for children from birth until

turning age 19. The Department's Turquoise Care (TC) 1115 Waiver renewal request proposes to provide continuous Medicaid enrollment for children for up to six years from the time of application approval or recent renewal until turning age six. Continuous Medicaid enrollment for young children will yield improvements in access to essential care while reducing unnecessary costs associated with enrollment lapses. Objectives, as outlined in the TC 1115 Waiver request for continuous Medicaid enrollment, are to minimize coverage gaps to help maintain consistent access to care, including early childhood screenings, primary and preventive services, and treatment, decreasing the need for higher-cost services associated with delaying care, easing the stress and burden on families and caregivers as they navigate Medicaid coverage, and reducing the Department's administrative costs associated with application reprocessing. The Department is proposing through these rules to implement continuous Medicaid enrollment for children from birth up to age six.

Deferred Action for Childhood Arrivals (DACA)

The federal Health and Human Services (HHS) Department recently issued proposed rules that modify the definition of "lawfully present" to remove an exception that excludes DACA recipients from the definition of "lawfully present" used to determine eligibility to enroll in Medicaid under the Children's Health Insurance Program Reauthorization Act of 2009 referred to as the CHIPRA 214 option.

The HHS proposed rule changes interpretation of "lawfully present" to treat DACA recipients the same as other deferred action recipients. DACA recipients would be considered "lawfully present" to the same extent as other deferred action recipients for purposes of the CHIPRA 214 option and can be determined eligible for Medicaid. Including DACA recipients in the definition of "lawfully present" is expected to

lower the number of people who are uninsured and make affordable health care available to more people. The Department is proposing through these rules to implement the HHS required changes for CHIPRA 214 states that allow DACA recipients who reside in New Mexico to enroll in Medicaid if meeting financial and non-financial eligibility requirements.

The HHS proposed rules make additional changes to the definition of “lawfully present” that have been incorporated into the proposed rules.

The Department is proposing to amend the rule as follows:

8.291.400 NMAC

Section 11 is modified to include continuous eligibility for up to six years for children from birth until turning age six. A child enrolled for less than 12 months before turning age six is eligible for 12 months of continuous eligibility. The continuous eligibility period begins on the effective date of the individual’s eligibility or most recent redetermination or renewal of eligibility.

8.200.400 NMAC

Section 12 is modified to include continuous eligibility for up to six years for children from birth until turning age six. A child enrolled for less than 12 months before turning age six is eligible for 12 months of continuous eligibility. The continuous eligibility period begins on the effective date of the individual’s eligibility or most recent redetermination or renewal of eligibility.

8.200.410 NMAC

Section 11

Subparagraph (m) of Paragraph (1) of Subsection B pertaining to COFA migrants has been moved to a newly created lawfully present section.

Paragraph (3) of Subsection B pertaining to children under age 21 and pregnant individuals has been

moved to a newly created lawfully present Subsection C.

Subsection C has been created for lawfully present individuals. New Mexico covers lawfully present individuals who are lawfully residing in the United States. An individual is lawfully residing in the United States if they are lawfully present and otherwise meet the eligibility requirements in the state plan. Lawfully present includes the following three groups of individuals for Medicaid coverage: children under age 21 and pregnant individuals, COFA migrants, and DACA individuals.

Additional changes were made to lawfully present children under age 21 and pregnant individuals to correspond with the HHS proposed rules. The following changes were made:

- 1) (ii) of Subparagraph (d) of Paragraph (1) of Subsection C was revised to change “currently under” to “granted”.
- 2) (iv) of Subparagraph (d) of Paragraph 1 of Subsection C was revised to add under family unity individuals who are granted benefits under section 1504 of the Legal Immigration and Family Equity (LIFE) Act Amendments of 2000.
- 3) (vi) of Subparagraph (d) of Paragraph 1 of Subsection C was revised to remove the exception for DACA individuals.
- 4) (vii) of Subparagraph (d) of Paragraph 1 of Subsection C was revised to add pending visa petitions rather than only approved visa petitions.
- 5) Subparagraph (e) of Paragraph (1) of Subsection C was revised to remove the 180-day application pending period for an applicant under age 14.
- 6) Subparagraph (f) of Paragraph (1) of Subsection C was removed as duplicative language to Subparagraph (e) of Paragraph (1) of Subsection C. Subsequent lettering was updated due to this removal.

- 7) Subparagraph (f) (formerly Subparagraph (g)) of Paragraph (1) of Subsection C was revised to include approved applications for special immigrant juvenile status.
- 8) Subparagraph (h) of Paragraph (1) of Subsection C was removed because it references individuals lawfully present in American Samoa and is not relevant to residing in New Mexico.
- 9) The term “non-citizen” is being updated per the HHS proposed rules to remove the hyphen and use the term “noncitizen” to align with terminology used by the Department of Homeland Security. This term has been updated throughout these rules.

Amendments were made throughout the rule to align with formatting requirements.

The register and the proposed rule are available on the HSD website at: <https://www.hsd.state.nm.us/lookingforinformation/register/> and <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notice-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD at (505) 827-1337.

The Department proposes to implement these rules effective January 1, 2024. A public hearing to receive testimony on this proposed rule will be held on October 13, 2023, at 8:30 a.m. The hearing will be held at the Administrative Services Division (ASD), 1474 Rodeo Rd, Santa Fe, NM 87505 and **via conference call. Conference phone number: 1-800-747-5150. Access Code: 2284263.**

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box

2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: HSD-madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on October 13, 2023. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-1337. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico

Administrative Code (NMAC) rule 8.310.10 NMAC, *Health Care Professional Services, Health Home Services* to include substance use disorder (SUD) within recipient eligibility criteria.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: September 12, 2023
Hearing Date: October 13, 2023
Adoption Date: Proposed as January 1, 2024
Technical Citations: New Mexico State Plan Amendment NM-21-0005

The Department is proposing to amend the rule as follows:

8.310.10 NMAC

Section 8 is amended to include the Departments current mission statement.

Section 12 is amended to reflect substance use disorder (SUD) as an allowable diagnosis for recipient eligibility.

The register for these proposed amendments to this rule will be available September 12, 2023 on the HSD web site at <https://www.hsd.state.nm.us/lookingforinformation/registers/> or at <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/>. If you do not have Internet access, a copy of the proposed rule may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement this rule effective January 1, 2024. A public hearing to receive testimony on this proposed rule will be held on October 13, 2023, at 9:30 a.m. The hearing will be held at the

Administrative Services Division (ASD), 1474 Rodeo Rd, Santa Fe, NM 87505 and **via conference call. Conference phone number: 1-800-747-5150. Access Code: 2284263.**

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: HSD-madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on October 13, 2023. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-1337. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rule 8.314.5 NMAC, *Long Term Care Services - Waivers, Developmental Disabilities Home and Community-Based Services Waiver*.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: September 12, 2023
Hearing Date: October 13, 2023
Adoption Date: Proposed as February 1, 2024
Technical Citations: 42 CFR Part 441

The Department is proposing to amend the rule as follows:

Throughout the rule the following changes have been made:

All references of the “Outside Reviewer” have been removed and replaced with the “Third Party Accessor (TPA)”.

Changes have been made to align with formatting requirements.

Section 7

Subsection A

HSD is proposing to add language to clarify the definition of activities for daily living (ADLs).

Subsection E

HSD is proposing to remove the subsection regarding the definition of Clinical Documentation as it is being renamed to Supporting Documentation in Subsection I. Subsequent sections are being

renumbered due to addition/deletion of items.

Subsection F

HSD is proposing to remove the subsection regarding Clinical Justification in Definitions as justification documentation policy will be added in later section 15. Subsequent sections are being renumbered due to addition/deletion of items.

Subsection E

HSD is proposing to add language defining the developmental disabilities support division (DDSD), as they are the Operating agency for the daily administration of the 1915c waiver programs. Subsequent sections are being renumbered due to addition/deletion of items.

Subsection I

HSD is proposing to add the definition of Supporting Documentation, replacing Clinical Documentation to clarify and remain consistent with language throughout the rule. Subsequent sections are being renumbered due to addition/deletion of items.

Subsection J

HSD is proposing to add the definition of the Third Party Assessor as they are the contractor that will perform level of cares and medical eligibility. Subsequent sections are being renumbered due to addition/deletion of items.

Section 8

Subparagraph (j) of Paragraph (1) of Subsection B

HSD proposes adding language clarifying unacceptable intervention of public or private humiliation.

Subparagraph (k) of Paragraph (1) of Subsection B

HSD proposes removing privacy violations language and replacing with the application of water mist, noxious taste, smell, or skin agents as an unacceptable intervention.

Subparagraph (l) of Paragraph (1) of Subsection B

HSD proposes to remove the unacceptable intervention of restricting exit and replacing with privacy violations previously from Subparagraph (k) of Paragraph (1) of Subsection B and expanding on the definition.

Subparagraph (m) of Paragraph (1) of Subsection B

HSD proposes to remove the unacceptable intervention of water mist as it is being moved to Subparagraph (k) of Paragraph (1) of Subsection B and replacing with the unacceptable intervention of restricting exit of a home and expanding on the language.

Subparagraph (n) of Paragraph (1) of Subsection B

HSD proposes to remove this item as the language mentioned in the item, the unacceptable intervention of application of noxious tastes, smells, etc., has been combined with Subparagraph (k) of Paragraph (1) of Subsection B.

Paragraph (4) of Subsection B

HSD proposes to expand on direct support personnel (DSP) by adding the full spelling of direct support personnel.

Paragraph (8) of Subsection B

HSD proposes to remove the word ‘super’ to correct it being placed there in error.

Section 10

Subparagraph (d) of Paragraph (2) of Subsection D

HSD proposes to add the required qualification of having a high school diploma or GED and a minimum of 6 years of direct experience related to the delivery of social services to people with disabilities.

Subsection H

HSD proposes to expand on the language regarding living supports provider direct support personnel to include subcontractor or employee.

Subsection I

HSD proposes to expand on the language regarding customized community supports provider direct support personnel to include subcontractor or employee.

Subsection J

HSD proposes to expand on the language regarding community integrated employment provider direct support personnel to include subcontractor or employee.

Section 11

Paragraph (1) of Subsection C

HSD Proposes to add subcontractor to language regarding employees of a developmental disabilities waiver (DDW) provider.

Section 14

Paragraph (11) of Subsection B

HSD proposes to add crisis supports as a service option that are available outside of the annual resource allotment (ARA).

Section 15

HSD proposes clarifying language that DDW covered services must be based on assessed need.

Subsection A

HSD proposes removing the existing subsection regarding budget levels that the OR approved and replace with language detailing the documentation justification of services.

Subsection C

HSD proposes removing language regarding budget levels.

Paragraph (2) of Subsection C

HSD proposes to add amounts and units of respite available per individual service plan (ISP) year to eligible recipients must comply with limits outlined in the DDS issued service standards.

Paragraph (3) of Subsection C

HSD proposes to add amounts and units of adult nursing services available per ISP year to eligible

recipients must comply with limits outlined in the DDS issued service standards.

Paragraph (4) of Subsection C

HSD proposes to add amounts and units of therapy services available per ISP year to eligible recipients must comply with limits outlined in the DDS issued.

Subparagraph (a) of Paragraph (5) of Subsection C

HSD proposes to add clarifying language stating the recipient lives in the same residence as the direct support personnel for family living services.

Subparagraph (b) of Paragraph (5) of Subsection C

HSD proposes to add language clarifying amounts and units of supported living services available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards. As well as clarifying documentation requirements.

Subparagraph (c) of Paragraph (5) of Subsection C

HSD proposes adding the language of approval for supported living intensive medical supports requires a IMLS parameter tool with a score of 20 or above. As well as subsequent item is being renumbered due to the addition.

Paragraph (6) of Subsection C

HSD proposes adding the language of amounts and units of customized community supports (CCS) available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards.

Paragraph (7) of Subsection C

HSD proposes adding language stating requests from eligible recipients for community integrated employment (CIE) intensive services must include a letter of justification and the eligibility recipient's work hours or proposed schedule.

Subparagraph (a) of Paragraph (7)

of Subsection C

HSD proposes adding language stating requests to utilize the DDW for job development must have prior written approval by DDS.

Subparagraph (b) of Paragraph (7) of Subsection C

HSD proposes adding language stating requests to utilize the DDW for short term job coaching must have prior written approval by DDS.

Subparagraph (e) of Paragraph (7) of Subsection C

HSD proposes to remove reference to job aid. As well as subsequent items are being renumbered due to the removal.

Paragraph (8) of Subsection C

HSD proposes to add language clarifying the amounts and units for support consultation available to the recipient as it is subject to DDS services standards as well as guidance on requesting units over limits.

Subparagraph (c) of Paragraph (8) of Subsection C

HSD proposes to adjust language referring to direct support personnel to be DSP.

Subparagraph (a) of Paragraph (10) of Subsection C

HSD proposes to add language allowing the purchase and installation of grab bars for environmental modification services.

Subparagraph (d) of Paragraph (10) of Subsection C

HSD proposes to add language clarifying the amounts and units for environmental modification services available to the recipient as it is subject to DDS services standards as well as documentation requirements. Subsequent item is being renumbered due to the addition.

Paragraph (11) of Subsection C

HSD proposes to add language of Crisis Supports must be prior authorized by the DDS Bureau of Behavioral Supports (BBS).

Paragraph (12) of Subsection C
HSD proposes to add language of reimbursement is allowable for eligible ride share programs identified through ISP. Amounts and units of non-medical transportation available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards.

Paragraph (14) of Subsection C
HSD proposes to add the language of amounts and units of assistive technology available to eligible recipients per ISP year must comply with limits outlined in the DDS issued service standards.

Paragraph (15) of Subsection C
HSD proposes to add the language of requests from eligible recipients for independent living transition services must include DDS verification of eligibility form. Amounts and units of independent living transition services available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards.

Paragraph (16) of Subsection C
HSD proposes to add the language of amounts and units of remote support technology available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards.

Paragraph (17) of Subsection C
HSD proposes to add the language of amounts and units of preliminary risk screening and consultation (PRSC) available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards.

Paragraph (18) of Subsection C
HSD proposes to add the language of amounts and units of socialization and sexuality education (SSE) available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards.

Paragraph (19) of Subsection C
HSD proposes to add the language of requests for customized in-home

living supports for over 11 hours a day must be approved the DDS.

Section 17

Subsection F

HSD proposes to remove this section as the Jackson lawsuit has been dismissed. Subsequent subsections are being renumbered due to the deletion.

The register for these proposed amendments to this rule will be available September 12, 2023 on the HSD web site at <https://www.hsd.state.nm.us/lookingforinformation/registers/> or at <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/>. If you do not have Internet access, a copy of the proposed rule may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement this rule effective February 1, 2024. A public hearing to receive testimony on this proposed rule will be held on October 13, 2023, at 10:30 a.m. The hearing will be held at the Administrative Services Division (ASD), 1474 Rodeo Rd, Santa Fe, NM 87505 and **via conference call.** **Conference phone number: 1-800-747-5150. Access Code: 2284263.**

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on October 13, 2023. Written and recorded comments will be given the

same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-1337. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing

The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing for the following proposed rulemaking on Tuesday, October 17, 2023, from 1:30 p.m. to 2:30 p.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501: **Repeal of 6.10.8 NMAC, Compulsory School Attendance Repeal and replace of 6.12.4 NMAC, Tobacco, Alcohol, and Drug Free Schools**

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

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

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

6.10.8 NMAC, Compulsory School Attendance

Explanation: The purpose of the proposed rulemaking is to repeal a rule that was promulgated because of the Compulsory School Attendance Act, which was repealed in 2019. The Compulsory School Attendance Act was replaced with the Attendance for Success Act.

Summary: The proposed repeal removes the rule, which was based on the repealed Compulsory Attendance Act, from the New Mexico Administrative Code.

Statutory Authority: Sections 9-24-8, 22-2-1, 22-2-2, and 22-12A-1 et seq. NMSA 1978.

6.12.4 NMAC, Tobacco, Alcohol, and Drug Free Schools

Explanation: The purpose of the proposed rulemaking is to update existing rule to reflect contemporary terminology regarding tobacco delivery devices and to add language detailing enforcement of the rule.

Summary: The proposed repeal and replace of this rule is to add language to include electronic tobacco delivery devices, e-cigarettes, and nicotine liquid containers to existing rule.

Statutory Authority: Sections 9-24-8, 22-2-1, 22-2-2, and 22-5-4.4 NMSA 1978.

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

Public Comment

Interested parties may provide comment at the public hearing or may submit written comments by mail or e-mail.

Mailing Address

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

E-Mail Address

Rule.Feedback@ped.nm.gov

Written comments must be received no later than 5 p.m. (MDT) on Tuesday, October 17, 2023. The PED encourages the early submission of written comments.

Public Comment Period

The public comment period is from Tuesday, September 12, 2023, to Tuesday, October 17, 2023, at 5:00 p.m. (MDT). The PED will review all feedback received during the public comment period and issue communication regarding a final decision of the proposed rulemaking at a later date.

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

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Denise Terrazas at (505) 470-5303 as soon as possible before the date set for the public hearing. The PED requires at least 10 calendar days advance notice to provide any special accommodations requested.

REGULATION AND LICENSING DEPARTMENT HOME INSPECTORS BOARD

CANCELLATION NOTICE OF PROPOSED RULEMAKING AND SPECIAL MEETING

Public Notice. The New Mexico Home Inspectors Board (NMHIB) gives notice that the public rule hearing scheduled September 11, 2023, at 9:00 a.m. (MDT) has been cancelled. This rule hearing will be rescheduled and noticed at a later date.

REGULATION AND LICENSING DEPARTMENT HOME INSPECTORS BOARD

NOTICE OF PUBLIC RULE HEARING AND BOARD MEETING

The Regulation and Licensing Department (Department) in consultation with the New Mexico Home Inspectors Board (Board), and pursuant to Board authority at Section 61-24D-3(F) NMSA 1978, will hold a rule hearing on Monday, October 16, 2023, at 9:00 a.m., to include a Special meeting of the Board to discuss and consider adoption of the proposed rules listed below. The rule hearing and subsequent Board meeting will be held at the Regulation and Licensing Department, 5500 San Antonio Drive NE, Albuquerque, NM 87109.

The hearing and subsequent board meeting may also be accessed via Cisco Webex Meetings by using the following link: <https://nmrld.webex.com/nmrld/j.php?MTID=mc253da2b0dbb5ba27a3e44f361b68196>

Join by meeting number

Meeting number (access code):2495 847 9640

Meeting password: Tu7KNtrB54 (88756867 from video systems)

Join by phone
 +1-415-655-0002 United States Toll
 Global call-in numbers

Join from a video system or
 application

Dial 24958479640@nmrld.webex.
 com

You can also dial 173.243.2.68 and
 enter your meeting number.

The purpose of the rule hearing is
 to receive public comments related
 to proposed amendments of the
 following rules that address changes
 to Board rules:

- 1) Title 16 Chapter 66 Part 1 -
 General Provisions
 - a. 16.66.1.7 Definitions
- 2) Title 16 Chapter 66 Part 2 –
 Fees
 - a. 16.66.2.8 Fees
- 3) Title 16 Chapter 66 Part 3 –
 Applications and Licenses
 - a. 16.66.3.8 Application
 for Licensure by Training and
 Examination
 - b. 16.66.3.9 Application
 for Licensure by Experience and
 Examination
 - c. 16.66.3.10 Application for
 Licensure by Credentials
 - d. 16.66.3.11 Examinations
 - e. 16.66.3.12 Expedited
 Licensure for Military Service
 Members Spouses, Children and
 Veterans
 - f. 16.66.3.13 Initial License
 Length (Rules in Effect Until
 December 31, 2021)
 - g. 16.66.3.14 Licensure
 Procedure
 - h. 16.66.3.15 Criminal
 Convictions
- 4) Title 16 Chapter 66 Part 4 –
 License Renewals and Reactivation
 - a. 16.66.4.8 License Renewal
 - b. 16.66.4.10 Reactivation of
 Expired or Inactive Licenses
- 5) Title 16 Chapter 66 Part 5 –
 Continuing Education
 - a. 16.66.5.8 Continuing
 Education
 - b. 16.66.5.10 Continuing
 Education Audits

- 6) Title 16 Chapter 66 Part 8 –
 Disciplinary Proceedings
 - a. 16.66.8.8 Grounds for
 Disciplinary Action
 - b. 16.66.8.9 Complaints and
 Responses
 - c. 16.66.8.10 Review of
 Complaint

On September 12, 2023 copies of the
 proposed rules may be obtained by
 going to the Boards and Commissions
 Division, Home Inspectors Board
 website at: [https://www.rld.nm.gov/
 boards-and-commissions/individual-
 boards-and-commissions/home-
 inspectors/board-information/](https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/home-inspectors/board-information/), or by
 contacting the Board Administrator
 for the Board, Roxanne Romo, at
 (505) 222-9820.

The Department and the Board will
 begin accepting public comments
 on the proposed rules beginning
 September 12, 2023. Please submit
 written comments on the proposed
 changes to Roxanne Romo, Board
 Administrator, via electronic mail
 at: home.inspectors@rld.nm.gov, or
 by regular mail at 5500 San Antonio
 Drive NE, Albuquerque, NM 87109
 no later than October 16, 2023 8:00
 a.m.

Written comments received during the
 public comment period will be posted
 to the Board’s website page linked
 above. Any person in attendance will
 be given the opportunity to present
 their comments at the rule hearing.

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
 or the special board meeting, please
 contact Ms. Roxanne Romo, Board
 Administrator (505) 222-9820 at
 least 7 days prior to the rule hearing
 and special board meeting. Public
 documents, including the proposed
 rules, meeting agenda and minutes,
 can be provided in various accessible
 formats.

Purpose of Proposed Rules:

The above proposed rules by the
 Board at 16.66.1 through 16.66.5
 NMAC govern the application
 requirements and process for licensure
 and licensure renewal and establish
 the requirements for reactivation of
 licensure for individual applicants
 and licensees. The proposed
 rules intend to create consistency
 between the Board’s rules and recent
 legislative amendments to the Home
 Inspector Licensing Act, improve
 Board efficiency, and improve the
 functioning of the profession for the
 benefit of the public.

The above proposed rules by the
 Board at 16.66.8 NMAC govern
 disciplinary proceedings against
 licensees.

Summary of Proposed Changes:

The proposed amendments to the
 rules previously promulgated by the
 Board at 16.66.1 through 16.66.5
 and at 16.66.8 NMAC would (1)
 amend the requirements for board
 examination and licensure to comport
 with recent legislative amendments,
 (2) define and incorporate “ancillary
 services” “pre-inspection agreements”
 and “business relationship,” (3)
 repeal state of emergency provisions,
 (4) amend the continuing education
 provisions to require minimum Board
 meeting attendance, (5) mandate
 exclusive three-year license periods,
 (6) amend the grounds for discipline
 to include failure to comply with
 continuing education requirements
 or the Board’s code of ethics, and (7)
 require satisfactory evidence of E&O
 insurance as a condition of renewal.

**STATE PERSONNEL
 BOARD**

**NOTICE OF PROPOSED
 RULEMAKING**

Public Notice: The New Mexico
 State Personnel Board will hold a
 public hearing on Friday, October 13,
 2023, at 9:00 a.m. The meeting will
 be held in person in the Willie Ortiz
 Auditorium, 2600 Cerrillos Road,

Santa Fe, NM 87505. The meeting will additionally be broadcast live via Zoom, log-in details for the Zoom meeting will be available on the State Personnel Office website, www.spo.state.nm.us beginning Tuesday, October 10, 2023.

Purpose of Rule Hearing: The purpose of the public hearing is to receive public input on the proposed repeal and replacement of 1.7.8 NMAC – Drug and Alcohol Abuse.

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

Purpose of Amendment: The purpose of these changes is to clarify the circumstances under which state agencies may test employees for drug and alcohol use, and take related adverse employment action based on provisions of the recently enacted Lynn and Erin Compassionate Use Act, Section 26-2B-9 NMSA 1978 and the Cannabis Regulation Act, Section 26-2C-34 NMSA 1978.

Summary of Proposed Changes to 1.7.8 NMAC Drug and Alcohol Abuse: Because of the state-required formatting changes (1.24.11.9 NMAC), this rule will be repealed and replaced. The only sections being substantively amended are: *Section 1.7.8.7*, editing definitions for clarity and defining key terms such as “cannabis,” “federally funded agency,” and “marijuana metabolites”; *Section 1.7.8.8*, citing the federal regulations governing testing of transportation industry employees; *Section 1.7.8.10*, describing agency policy requirements and clarifying the role of the agency Substance Abuse Coordinator; *Section 1.7.8.11*, clarifying the circumstances under which state agencies are authorized to test employees and applicants for drug and alcohol use; *Section 1.7.8.12*, describing the methods and requirements for the collection of specimens for drug and alcohol testing; *Section 1.7.8.13*, listing drug cutoff concentrations for urine and oral fluid drug tests; *Section 1.7.8.16*,

describing the medical review process for positive drug and alcohol test results; *Section 1.7.8.19*, describing the rehabilitation process and possible sanctions for employees or applicants testing positive for drug or alcohol use.

How to Comment on the Proposed Rules: Public comment addressing the proposed rule changes can be made in person using the Public Comment sign-in sheet, by mail to Denise Forlizzi, State Personnel Office, 2600 Cerrillos Rd., Santa Fe, New Mexico 87505 or by emailing your comment to DeniseM.Forlizzi@spo.nm.gov by 5:00 p.m. Thursday, October 12, 2023. Email comments must include the subject line, “Rule Changes to 1.7.8 NMAC”, the commenter’s name and contact information.

Copies of Proposed Rules: Copies of the proposed rules are available for download on the State Personnel Office’s website at www.spo.state.nm.us. A copy of the proposed rules may also be requested by contacting Denise Forlizzi by phone at (505) 365-3691 or by email DeniseM.Forlizzi@spo.nm.gov.

Special Needs: Individuals who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Denise Forlizzi at (505) 365-3691 as soon as possible to allow adequate time to provide the requested accommodations.

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.

ARCHITECTS, BOARD OF EXAMINERS FOR

The Board of Examiners for Architects approved at its 8/25/2023 hearing, to repeal its rule 16.30.1 NMAC, General Provisions, filed 9/6/2001, and replace it with 16.30.1 NMAC, General Provisions, adopted on 8/31/2023 and effective 9/26/2023.

The Board of Examiners for Architects approved at its 8/25/2023 hearing, to repeal its rule 16.30.2 NMAC, Organization and Administration, filed 9/6/2001, and replace it with 16.30.2 NMAC, Organization and Administration, adopted on 8/31/2023 and effective 9/26/2023.

The Board of Examiners for Architects approved at its 8/25/2023 hearing, to repeal its rule 16.30.3 NMAC, Registration and Renewal, Duplicate Certificates, Seal Specifications and Document Identification, filed 9/6/2001, and replace it with 16.30.3 NMAC, Registration and Renewal, Duplicate Certificates, Seal Specifications and Document Identification, adopted on 8/31/2023 and effective 9/26/2023.

The Board of Examiners for Architects approved at its 8/25/2023 hearing, to repeal its rule 16.30.6 NMAC, Minimum Standards for the Practice of Architecture in New Mexico, filed 9/6/2001, and replace it with 16.30.6 NMAC, Minimum Standards for the Practice of Architecture in New Mexico, adopted on 8/31/2023 and effective 9/26/2023.

ARCHITECTS, BOARD OF EXAMINERS FOR

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 30 ARCHITECTS PART 1 GENERAL PROVISIONS

16.30.1.1 ISSUING AGENCY: New Mexico Board of Examiners for Architects. [16.30.1.1 NMAC - Rp, 16.30.1.1 NMAC, 9/26/2023]

16.30.1.2 SCOPE: Provisions for Part 1 apply to any person registered as an architect, or to anyone applying for registration as an architect in New Mexico. [16.30.1.2 NMAC - Rp, 16.30.1.2 NMAC, 9/26/2023]

16.30.1.3 STATUTORY AUTHORITY: Subsection C of Section 61-15-4 NMSA 1978 prescribes that "The board...may make rules not inconsistent with law." [16.30.1.3 NMAC - Rp, 16.30.1.3 NMAC, 9/26/2023]

16.30.1.4 DURATION: Permanent. [16.30.1.4 NMAC - Rp, 16.30.1.4 NMAC, 9/26/2023]

16.30.1.5 EFFECTIVE DATE: September 26, 2023, unless a different date is cited at the end of the section. [16.30.1.5 NMAC - Rp, 16.30.1.5 NMAC, 9/26/2023]

16.30.1.6 OBJECTIVE: The objective of this rule is to clearly define terminology used within Sections 61-15-1 to -13 NMSA 1978. [16.30.1.6 NMAC - Rp, 16.30.1.6 NMAC, 9/26/2023]

16.30.1.7 DEFINITIONS:
A. "Architect" means an architect registered in New Mexico as defined in Section 61-15-2 NMSA 1978.

B. "Architect-of-record" means the architect licensed by the state who is in responsible charge of the project, who designs and prepares the construction documents from which the building is constructed, and who signs and seals the required documents.

C. "Architectural services" means services for projects located in New Mexico that shall be performed by a registered architect or under the architect's responsible charge as defined in Section 61-15-2 NMSA 1978.

D. "Competence" means:

(1) in the practice of architecture, an architect shall act with reasonable care and competence and shall apply the technical knowledge and skill that is ordinarily applied by architects of good standing practicing in New Mexico;

(2) an architect shall undertake to perform professional services only when the architect, together with those whom the architect may engage as consultants, is qualified by education, training and experience or ability in the specific technical areas involved; and

(3) an architect shall take into account all applicable state and municipal building codes, laws and regulations; an architect may rely on the opinion of others (example: attorneys, engineers, building officials) as to the intent and meaning of the codes, laws and regulations.

E. "Consulting associate architect" means an

architect who is acting in an advisory capacity to a registered architect, and whose present position is subordinate to the registered architect as described in Paragraph (1) of Subsection A of Section 61-15-8 NMSA 1978.

F. "Felony conviction" means conviction of a felony with a copy of the record of conviction, certified by the clerk of the court entering the conviction, serving as conclusive evidence.

G. "Gross negligence" means:

(1) being habitually guilty of neglect toward professional responsibilities in the practice of architecture as determined by the board; or

(2) being found extremely careless and lacking in ordinary care and concern in the practice of architecture; should the board not discipline an architect for a single act of gross negligence, the board does not waive the right to invoke sanctions against the architect for repeated acts of gross negligence.

H. "Incidental practice of architecture and engineering" means:

(1) architectural work incidental to engineering shall be that architectural work provided on projects with a building construction value not greater than six hundred thousand dollars (\$600,000) and having a total occupant load not greater than 50;

(2) engineering work incidental to architecture shall be that engineering work provided on projects with a building construction value not greater than six hundred thousand dollars (\$600,000) and having a total occupant load not greater than 50;

(3) all buildings and related structures within the regulatory provisions of the New Mexico Building Codes General, Title 14, Chapter 7 NMAC will require the proper authentication of the building construction documents by all participating disciplines in accordance with their respective governing acts on projects with a building construction value greater than six

hundred thousand dollars (\$600,000) or having a total occupant load greater than 50, with the exception of:

(a) single-family dwellings not more than two stories in height;

(b) multiple dwellings not more than two stories in height containing not more than four dwelling units of wood-frame construction; provided this paragraph shall not be construed to allow a person who is not registered under the Architectural Act to design multiple clusters of up to four dwelling units each to form apartment or condominium complexes where the total exceeds four dwelling units on any lawfully divided lot;

(c) garages or other structures not more than two stories in height which are appurtenant to buildings described in Subparagraphs (a) and (b) above; or

(d) nonresidential buildings, as defined in the New Mexico Building Codes General, Title 14, Chapter 7 NMAC or additions having a total occupant load of 10 or less and not having more than two stories in height, which shall not include E-3 day care, H (hazardous) or I (institutional) occupancies;

(e) alterations to buildings or structures which present no unusual conditions, hazards or change of occupancy.

(4) the owner, user or using agency shall select the prime design professional (architect or engineer) for any project based on the requirements and nature of the project.

(5) occupant load shall be defined and determined by the method set forth in the current, adopted code.

I. "Incompetency" means:

(1) being adjudicated mentally incompetent by a court; or

(2) engaging in conduct which evidences a lack of knowledge, ability or fitness to discharge the duty and responsibility owed by the architect to a client and

to the public in order to safeguard life, health and property and to promote public welfare.

J. "Intern architect" is a person who is actively pursuing completion of the requirements for diversified training in accordance with rules of the board.

K. "Misconduct" means:

(1) knowingly preparing or stamping construction documents in violation of applicable codes, laws or regulations;

(2) stamping and signing construction documents, specifications, reports or other professional work not prepared under the architect-of-record's responsible charge, as defined herein;

(3) engaging in any conduct involving fraud or deceit related to the business or practice of architecture;

(4) making any false statement or giving any false information in connection with an application for registration or for renewal of registration;

(5) being convicted of a crime related to the practice of architecture with a copy of the record of the conviction, certified by the clerk of the court entering the conviction, serving as conclusive evidence;

(6) violating federal or state statute or rule that directly relates to the practice of architecture;

(7) being unable to practice architecture with reasonable skill and safety to clients by reason of use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition;

(8) making any substantial misrepresentation in the course of practice including, but not limited to, false, misleading or deceptive advertising or fraudulent or misleading claims;

(9) using or altering material prepared by another person without the knowledge and consent of that person;

(10) using the professional seal of another person without the knowledge and consent of that person;

(11) engaging in conduct in conflict with the Code of Conduct for Architects (16.30.4 NMAC);

(12) engaging in conduct that the architect knows or should know through professional knowledge or experience is not within the acceptable standard for professional conduct that is ordinarily applied by architects of good standing practicing in the state of New Mexico or that is set forth in the board's Minimum Standards for the Practice of Architecture in New Mexico, (16.30.6 NMAC);

(13) violating the Architectural Act, Sections 61-15-1 through 13 NMSA 1978, the rules and regulations of the board, or the architectural laws of any other state or jurisdiction;

(14) incurring a prior disciplinary action in another state or jurisdiction based upon acts or conduct by the registrant which if committed in this state would subject the registrant to disciplinary action by the board; certified copies of the record of disciplinary action shall be conclusive evidence thereof; and

(15) failing to report to the board any adverse action taken against the registrant by the licensing board of another jurisdiction or the national council of architectural registration boards (NCARB) for acts or conduct that would constitute grounds for disciplinary action by the board.

(16) Knowingly allowing an unauthorized person to use the architect's seal.

L. "NCARB" means the national council of architectural registration boards.

M. "Practice of architecture" as defined in Section 61-15-2 NMSA 1978, means rendering or offering to render architectural services. "Offering to render" is defined as soliciting or executing architectural services as defined in Section 61-15-2 NMSA 1978.

N. "Project" means the building or a group of buildings and the space within the site surrounding the buildings as defined in the construction documents (Subsection H of Section 61-15-2 NMSA 1978). Architectural and engineering stamps are required for any subsequent and physically linked construction to a project which, when seen together with the original construction, would have required architectural and engineering seals.

O. "Responsible charge" means that all architectural services have been or will be performed under the direction, guidance and restraining power of a registered architect who has exercised professional judgment with respect thereto. An architect's placing of the architect registration seal and signature on a document certifies that the architect has exercised direction, guidance and judgment on all issues pertaining to the health, safety and general welfare of the public, and accepts all legal responsibility for all architectural matters embodied within the document which shall meet the acceptable standards of architectural practice in the state of New Mexico as put forth by the board (Subsection I of Section 61-15-2 NMSA 1978).

P. "Signature" shall mean handwritten or electronic as follows:

(1) a handwritten identification that represents the act of putting one's name on a document to attest to its validity; the handwritten identification must be:

- (a) original and written by hand;
- (b) permanently affixed to the original document(s) being certified;
- (c) applied to the document by the identified registrant; or

(2) an electronic identification that is attached to or logically associated with an electronic document; the electronic identification must be:

- (a) unique to the person using it;

(b) under the sole control of the registrant using it;

(c) linked to a document in such a manner that the electronic identification is invalidated if any data in the document is changed. [16.30.1.7 NMAC - Rp, 16.30.1.7 NMAC, 9/26/2023]

HISTORY OF 16.30.1 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: BEA 68-1, Architectural Law and Rules and Regulations, 7/1/1968. BEA 69-1, Architectural Law and Rules and Regulations, 6/17/1969. BEA 70-1, Architectural Law and Rules and Regulations, 7/28/1970. BEA 74-1, Roster of Registered Architects Laws Rules Regulations, 8/30/1974. BEA 78-1, Board of Examiners for Architects, 9/19/1978. NMBEA 85-1, Architectural Act Rules and Regulations, 2/7/1985. NMBEA 86-1, Architectural Act Rules and Regulations, 4/9/1986. NMBEA 88-1, State of New Mexico Board of Examiners for Architects Rules and Regulations, 6/22/1988. NMBEA 89-1, State of New Mexico Board of Examiners for Architects Rules and Regulations, 11/28/1989. Regulation No. NMBEA 90-1, State of New Mexico Board of Examiners for Architects Rules and Regulations, 8/14/1990. NMBEA Rule 4, NCARB Examinations, 6/23/1980. NMBEA Rule 5, Definitions, 6/23/1980.

History of Repealed Material:

16 NMAC 30.1, General Provisions - Repealed, 9/6/2001.

History of 16.30.1 NMAC:

16.30.1 NMAC – General Provisions, filed 9/6/2001, was repealed and replaced by 16.30.1 NMAC – General Provisions, effective 9/26/2023.

ARCHITECTS, BOARD OF EXAMINERS FOR

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 30 ARCHITECTS PART 2 ORGANIZATION AND ADMINISTRATION

16.30.2.1 ISSUING

AGENCY: New Mexico Board of Examiners for Architects.

[16.30.2.1 NMAC - Rp, 16.30.2.1 NMAC, 9/26/2023]

16.30.2.2 SCOPE:

Provisions for Part 2 apply to any person registered as an architect, or to anyone applying for registration as an architect in New Mexico.

[16.30.2.2 NMAC - Rp, 16.30.2.2 NMAC, 9/26/2023]

16.30.2.3 STATUTORY

AUTHORITY: Subsection C of Section 61-15-4 NMSA 1978 prescribes that "The board... may make rules not inconsistent with law."

[16.30.2.3 NMAC - Rp, 16.30.2.3 NMAC, 9/26/2023]

16.30.2.4 DURATION:

Permanent.

[16.30.2.4 NMAC - Rp, 16.30.2.4 NMAC, 9/26/2023]

16.30.2.5 EFFECTIVE

DATE: September 26, 2023, unless a different date is cited at the end of the section. [16.30.2.5 NMAC - Rp, 16.30.2.5 NMAC, 9/26/2023]

16.30.2.6 OBJECTIVE:

The objective of this rule is to clearly define the organizational structure of the board, the duties of the officers, the committees, types of meetings, order of business, the number needed for quorum, to provide authority to amend the board's rules and regulations, and to define the board's responsibility for publications.

[16.30.2.6 NMAC - Rp, 16.30.2.6 NMAC, 9/26/2023]

16.30.2.7 DEFINITIONS:

[RESERVED]

[16.30.2.7 NMAC - Rp, 16.30.2.7 NMAC, 9/26/2023]

16.30.2.8 UNIFORM

LICENSING ACT: Procedures for administration of the New Mexico Architectural Act shall be governed by the provisions of the Uniform Licensing Act, Sections 61-15-1 through -31 NMSA 1978.

[16.30.2.8 NMAC - Rp, 16.30.2.8 NMAC, 9/26/2023]

16.30.2.9 OFFICERS:

The board shall annually elect a chair, vice chair, and a secretary/treasurer who shall be chosen from among its members. Officers shall hold office until their successors have been duly elected and qualified. At the last regular meeting of the fiscal year, officers shall be elected. New officers shall take office on the first day of the fiscal year.

[16.30.2.9 NMAC - Rp, 16.30.2.9 NMAC, 9/26/2023]

16.30.2.10 DUTIES OF

OFFICERS:

A. The chair shall:

(1) preside at all regular and special meetings, when present;

(2) appoint all committee members, and subcommittee members, and their chairpersons;

(3) sign with the secretary/treasurer all approved board meeting minutes, all formal certificates of registration and the annual report to the governor; and

(4) perform all other duties ordinarily pertaining to the office of chair or as herein and hereafter prescribed.

B. The vice chair shall in the absence of the chair, preside at the meeting and execute the duties of the chair.

C. The secretary/ treasurer shall:

(1) report on the financial status of the board at each regular meeting and upon request at a special meeting;

(2) recommend to the board for its

approval all proposed expenditures over the amount authorized by the legislature.

(3) approve all transfers of funds within categories and recommend to the board for its approval all budget adjustment requests between the categories or from cash reserves;

(4) present a budget for each fiscal year to recommend to the board for its approval at the last meeting of the year;

(5) when necessary, appear and represent the board at all hearings where financial issues arise;

(6) after each board meeting, identify activities that shall be completed before the next meeting and the individuals to whom assigned; and

(7) sign with the chair all approved board meeting minutes and all formal certificates of registration.

16.30.2.10 NMAC - Rp, 16.30.2.10 NMAC, 9/26/2023]

16.30.2.11 COMMITTEES:

In addition to committees listed herein, the board may vote to establish subcommittees as it deems necessary.

A. Rules and regulations committee whose responsibilities shall include:

(1) proposed statutory changes;

(2) proposed amendments or repeals or changes to board rules;

(3) review and draft responses, if appropriate, to complaints to the board; and

(4) review investigations of violations of the statute and regulations pertaining to the practice of architecture and refer complaints to the board with its recommendation for subsequent action.

B. Examination and reciprocity committee whose responsibility shall include:

(1) review of applicants for registration

to determine if they meet the requirements of Section 61-15-6 NMSA and recommending board action in accordance with the Uniform Licensing Act;

(2) reviewing and recommending board action on applications for reciprocity; and

(3) all matters pertaining to examination.

C. Finance and operations committee whose responsibilities shall include:

(1) reviewing the budget, assisting the secretary/treasurer and board staff in preparing a draft budget annually and making budget recommendations to the board;

(2) reviewing the expenditures of the agency and assisting the secretary/treasurer in making regular reports and recommendations to the board regarding expenditures;

(3) reviewing office operations with the director to determine staffing requirements and recommend personnel actions to the board; and

(4) reviewing with the director office operations to assure efficiency, economy and security in all board affairs.

D. Committee for planning and development whose responsibilities shall include:

(1) developing short and long-term goals for board consideration and approval;

(2) examining ways and methods for improving board services and functions; and

(3) monitoring the impact of architectural regulation and examining ways in which to increase its effectiveness.

E. Joint practice committee whose responsibilities shall include:

(1) attending joint practice committee meetings; and

(2) reporting to the board matters discussed at the joint practice committee meetings. [16.30.2.11 NMAC - Rp, 16.30.2.11 NMAC, 9/26/2023]

16.30.2.12 [RESERVED]
[16.30.2.12 NMAC - Rp, 16.30.2.12 NMAC, 9/26/2023]

16.30.2.13 BOARD RESPONSIBILITIES:

A. The board is responsible for providing oversight for all board functions.

B. The board shall appoint the director.

C. Publications:
(1) Roster: A roster showing the number and addresses of all registered architects shall be prepared by the board and made available or sold to the public in accordance with the Architectural Act, Subsection E of Section 61-15-5 NMSA 1978.

(2) Annual report: The chair shall submit an annual report to the governor and shall make that report available to all registrants and the public, through the board office, pursuant to Section 61-15-5 NMSA 1978.

(3) Architectural Act, rules and regulations: The board shall maintain current editions of the act that will be published as often as the board deems necessary. These shall be made available to all architects registered in the state of New Mexico and to all applicants applying for registration. In addition, notice shall be made to all registered architects when changes occur in the statutes or rules and regulation.

D. Upon the recommendation of the architectural education board member, the board may appoint a student observer to a one-year term to observe board meetings and act as a liaison to the student observer's college of architecture and other educational institutions. The student observer must be a full-time student in good standing who is studying architecture at an accredited college of architecture in New Mexico. [16.30.2.13 NMAC - Rp, 16.30.2.13 NMAC, 9/26/2023]

HISTORY OF 16.30.2 NMAC:
Pre-NMAC History: The material

in this part was derived from that previously filed with the State Records Center and Archives: BEA 68-1, Architectural Law and Rules and Regulations, 7/1/1968. BEA 69-1, Architectural Law and Rules and Regulations, 6/17/1969. BEA 70-1, Architectural Law and Rules and Regulations, 7/28/1970. BEA 74-1, Roster of Registered Architects Laws Rules Regulations, 8/30/1974. BEA 78-1, Board of Examiners for Architects, 9/19/1978. NMBEA Rule 1, Organization, 6/23/1980. NMBEA 85-1, Architectural Act Rules and Regulations, 2/7/1985. NMBEA 86-1, Architectural Act Rules and Regulations, 4/9/1986. NMBEA 88-1, State of New Mexico Board of Examiners for Architects Rules and Regulations, 6/22/1988. NMBEA 89-1, State of New Mexico Board of Examiners for Architects Rules and Regulations, 11/28/1989. Regulation No. NMBEA 90-1, State of New Mexico Board of Examiners for Architects Rules and Regulations, 8/14/1990. NMBEA Rule 2, Administration, 6/23/1980.

History of Repealed Material:
16 NMAC 30.2, Organization and Administration - Repealed, 9/6/2001.

History of 16.30.2 NMAC:
16.30.2 NMAC – Organization and Administration, filed 9/6/2001, was repealed and replaced by 16.30.2 NMAC – Organization and Administration, effective 9/26/2023.

ARCHITECTS, BOARD OF EXAMINERS FOR

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 30 ARCHITECTS PART 3 REGISTRATION AND RENEWAL, DUPLICATE CERTIFICATES, SEAL SPECIFICATIONS AND DOCUMENT IDENTIFICATION

16.30.3.1 ISSUING
AGENCY: New Mexico Board of Examiners for Architects.
 [16.30.3.1 NMAC - Rp, 16.30.3.1 NMAC, 9/26/2023]

16.30.3.2 SCOPE:
 Provisions for Part 3 apply to any person registered as an architect, or to anyone applying for registration as an architect in New Mexico.
 [16.30.3.2 NMAC - Rp, 16.30.3.2 NMAC, 9/26/2023]

16.30.3.3 STATUTORY AUTHORITY: Subsection C of Section 61-15-4 NMSA 1978 prescribes that “The board...may make rules not inconsistent with law.”
 [16.30.3.3 NMAC - Rp, 16.30.3.3 NMAC, 9/26/2023]

16.30.3.4 DURATION:
 Permanent.
 [16.30.3.4 NMAC - Rp, 16.30.3.4 NMAC, 9/26/2023]

16.30.3.5 EFFECTIVE DATE: September 26, 2023, unless a different date is cited at the end of the section.
 [16.30.3.5 NMAC - Rp, 16.30.3.5 NMAC, 9/26/2023]

16.30.3.6 OBJECTIVE:
 The objective of this rule is to clearly establish guidelines and procedures for registration and registration renewal as an architect in New Mexico and for issuance of a duplicate certificate of registration and to provide specifications and guidelines for the use of an individual seal and for document identification.
 [16.30.3.6 NMAC - Rp, 16.30.3.6 NMAC, 9/26/2023]

16.30.3.7 DEFINITIONS:
[RESERVED]
 [16.30.3.7 NMAC - Rp, 16.30.3.7 NMAC, 9/26/2023]

16.30.3.8 GENERAL QUALIFICATIONS:
A. The examination and reciprocity committee shall make its recommendations to the board regarding the qualifications of

applicants for registration. A majority vote of the board shall be required in determining those applicants qualified for registration.

B. The applicant shall be of good character and repute. Factors that the board may consider under this qualification are:

(1) misstatement or misrepresentation of fact by the applicant in connection with his or her application;

(2) violation of any of the standards of conduct required by registration holders and set forth in the statutes or rules and regulations; or

(3) practicing architecture without a valid and current registration in the jurisdiction in which the practice took place; or

(4) Convictions for any of the following felony offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license issued by the board:

(a) homicide or manslaughter;

(b) trafficking, or trafficking in controlled substances;

(c) kidnapping, false imprisonment, aggravated assault or aggravated battery;

(d) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;

(e) crimes involving adult abuse, neglect or financial exploitation;

(f) crimes involving child abuse or neglect;

(g) crimes involving robbery, larceny, extortion, burglary, bribery, fraud, forgery, embezzlement, credit card fraud, misuse of public funds, violation of the procurement code, offering or soliciting an illegal kickback, tampering with public records, perjury, identity theft, or

receiving stolen property;

(h) human trafficking;

(i) driving under the influence or driving while intoxicated;

(j) using a forged architectural registration seal pursuant to Subsection A of Sections 61-15-10, et. seq. NMSA 1978; or

(k) an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.

(5) The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

(6) The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

(7) Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual’s conduct to the extent that such conduct violated the Architecture Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

(8) In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

(a) an arrest not followed by a valid conviction;

(b) a conviction that has been sealed, dismissed, expunged or pardoned;

(c) a juvenile adjudication; or

(d) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.

C. Rules and procedures set out herein for obtaining registration in New Mexico apply equally to residents of the state and non-residents.

D. An oral interview before the board may be required of any applicant for New Mexico registration.

E. All applicants must pass the New Mexico architectural jurisprudence exam administered by the board. Failure to answer all questions may result in a failing grade. An applicant who has failed two successive architectural jurisprudence exams shall not be eligible to apply for architectural registration for a period of one year from the date of the last jurisprudence exam failed.

F. All registration and application fees are non-refundable. [16.30.3.8 NMAC - Rp, 16.30.3.8 NMAC, 9/26/2023]

16.30.3.9 REGISTRATION THROUGH EDUCATION, TRAINING AND EXAMINATION:

A. Registration standards shall be in accordance with the standards of NCARB as described in the latest editions of the NCARB Certification Guidelines and the NCARB Education Guidelines.

B. Training requirements shall satisfy the NCARB standards of training. The applicant shall provide a NCARB architectural experience program AXP record number showing enrollment in AXP. The education standard shall be in accord with the NCARB guidelines as set forth in the latest edition of the NCARB certification guidelines, the NCARB education standard and AXP guidelines. Copies of the latest editions of the NCARB certification guidelines, the NCARB education standard and the AXP guidelines are available from the board office or NCARB.

C. Application for examination:

(1) Individuals applying for registration by examination shall request application forms from the board. The application, together with the application fee, shall be sent to the board office.

(2) Applications will be accepted at any time, for review and approval by the board. Approved examination candidates will schedule examinations with NCARB. The board may require applicants for examination to appear before it for a personal interview.

(3) To pass the architect registration examination (A.R.E.), an applicant must achieve a passing grade on each division as determined by NCARB. A passing grade for any division of the A.R.E., version 4.0 or later, shall remain valid pursuant to NCARB's score validity policy in effect at the time of application. Divisions of the examination, version 4.0 or later, that were considered expired prior to the adoption of NCARB's score validity policy shall be reinstated pursuant to NCARB's score validity policy in effect at the time of application. NCARB, in its discretion, may allow a reasonable extension of such period in circumstances where completion of all divisions is prevented by a medical condition, by active duty in military service or by other like causes.

(4) In case an applicant does not qualify for examination, for reason other than failure to submit a valid application, he or she shall be informed of the cause and apprised of his or her rights under the Uniform Licensing Act, Sections 61-1-1 through 31 NMSA 1978. Should the applicant subsequently meet the requirements for examination, he or she may resubmit the application.

D. Examination materials and results shall not be considered public records pursuant to Section 61-15-5 NMSA 1978. Nothing therein shall prevent the board from reporting an applicant's scores to the architectural registration boards in other jurisdictions or to the national council of registration boards

(NCARB). The board shall give written notification to an applicant no later than 30 days after the board receives the results from NCARB.

E. Special provisions for examinees with disabilities:

(1) Any examinee requiring special examination provisions to accommodate a qualifying temporary or permanent disability as defined by the Americans with Disabilities Act, including any modification of the Architect Registration Examination administration process, must submit a written request for such provisions at least 90 days prior to the exam, including documentation justifying such request.

(2) The board shall have the right to solicit additional information within 30 days of such request. The examinee shall provide such additional information within 10 days following receipt of the board's request.

F. Upon receipt of a complete application and fee, board staff are authorized to approve and issue a registration to an applicant for whom no licensing issues are apparent from the application. Board staff shall consult with the enforcement subcommittee if disciplinary issues are present before issuing a registration. The board shall vote to ratify the issuance of all registrations issued by staff at the next regularly scheduled board meeting. In the event the board votes not to ratify a registration issued by board staff, the board shall pursue disciplinary action as required by the Uniform Licensing Act, and Section 61-15-12 NMAC 1978.

[16.30.3.9 NMAC - Rp, 16.30.3.9 NMAC, 9/26/2023]

16.30.3.10 REGISTRATION THROUGH RECIPROCITY:

A. An individual who holds a current NCARB certificate and is seeking registration through reciprocity shall return a completed application and all fees to the board for processing. The application shall be valid for one year from the time the board receives it.

B. An individual currently registered as an architect in another jurisdiction who does not hold a current NCARB certificate may apply for a New Mexico architect license upon receiving an NCARB certification acquired through the alternative path to licensure for experienced professionals.

C. An individual who does not hold a current NCARB certificate and is seeking registration through reciprocity as a broadly experienced architect must hold a current and valid registration issued by the licensing authority of another jurisdiction and either: (1) hold a degree accredited by the national architectural accrediting board, pass the necessary examination, and successfully complete the architectural experience program (AXP) offered by NCARB; or (2) hold a position of responsibility for at least the previous five years in the jurisdiction(s) of licensure with no disciplinary action during that five-year period. The term "position of responsibility" shall mean a person in responsible charge as defined in Subsection N of 16.30.1.7 NMAC. The broadly experienced category applicant shall return to the board a completed application, on a form prescribed by the board, along with other pertinent documents and application fee. Each applicant shall provide the board evidence of academic training and work experience directly related to architecture and demonstrating minimum competence as described in 16.30.6 NMAC including but not limited to, evidence of training or experience in the following areas:

- (1) design and construction documents;
- (2) construction administration;
- (3) project management; and
- (4) architectural related activities.

D. Each applicant must attest on an affidavit that the applicant:

- (1) has not performed or offered to perform, and

will not perform or offer to perform, architectural services in the state of New Mexico until such time as the applicant becomes a New Mexico registered architect;

(2) is in good standing and has disclosed all requested information on disciplinary proceedings in any other jurisdiction; and

(3) has secured a copy and has read the Architectural Act, and the New Mexico board of examiners for architects rules and regulations, and agrees to comply with the same.

E. All applicants must pass a New Mexico architectural jurisprudence exam administered by the board. An applicant who has failed two successive architectural jurisprudence exams shall not be eligible to apply for architectural registration for a period of one year from the date of the last jurisprudence exam failed.

F. Applicants for registration through reciprocity shall present a certificate of good standing from a jurisdiction in which a current and valid registration is held.

G. Comprehensive design requirements: Applicants for registration through reciprocity shall present evidence satisfactory to the board of their qualification in comprehensive design.

H. The board may require an applicant for registration through reciprocity to appear before the board for a personal interview and to complete a written or oral examination.

I. The board shall review all applications on a case-by-case basis.

J. Upon receipt of a complete reciprocity application and fee, board staff are authorized to approve and issue a registration to an applicant for whom no licensing issues are apparent from the application. As necessary, board staff shall consult with the enforcement subcommittee prior to review by the examination and reciprocity committee if licensing issues are present before issuing a registration.

When an application has apparent issues, or a denial is recommended, the application should be presented to the board prior to any staff approving and issuing a registration. The board shall vote to ratify the issuance of all registrations issue by staff at the next regularly scheduled board meeting. In the event the board votes not to ratify a reciprocity registration issued by board staff, the board shall pursue disciplinary action as required by the Uniform Licensing Act, Section 61-15-12 NMSA 1978.

[16.30.3.10 NMAC - Rp, 16.30.3.10 NMAC, 9/26/2023]

16.30.3.11 REGISTRATION

RENEWAL: Fees: Renewal fees are paid biennially. Registrants whose birth year is an even number shall be required to renew their registrations by December 31 of every even-numbered year. Registrants whose birth year is an odd numbered year shall be required to renew their registration by December 31st of every odd numbered year. New registrations shall be pro-rated on a yearly basis and shall expire on December 31st of an even or odd year designated by the last digit of the applicant's birth year. The renewal fees for two years are:

- A.** in state
\$225.00
- B.** out-of-state
\$325.00

[16.30.3.11 NMAC - Rp, 16.30.3.11 NMAC, 9/26/2023]

16.30.3.12 CONTINUING

EDUCATION: Architects registered in New Mexico will be required to show compliance with mandatory education requirements as a condition for renewing registration:

A. Purpose and scope:
(1) These rules provide for a continuing education program to insure that all architects remain informed of these technical subjects necessary to safeguard life, health, property, and promote the public welfare.

(2) Continuing education is post licensure learning that enables a registered architect

to increase or update knowledge of and competence in technical and professional subjects related to the practice of architecture to safeguard the public's health, safety and welfare.

(3) These rules apply to all architects registered in New Mexico.

B. Definitions:

(1)

“Continuing education hour” is one continuous instructional hour (minimum 50 minutes) spent in structured educational activities intended to increase or update the architect’s knowledge and competence in health, safety and welfare subjects. If the provider of the structured educational activities prescribes a customary time for completion of such an activity, then such prescribed time shall, unless the board finds the prescribed time to be unreasonable, be accepted as the architect’s time for continuing education hour purposes irrespective of actual time spent on the activity.

(2) “Health, safety and welfare in architecture” is anything that relates to the structure or soundness of a building or site or its role in promoting the health, safety or well-being of its occupants.

(3) “Health, safety and welfare subjects” are technical and professional subjects in continuing education that the board deems appropriate to protect the public and that are within the following enumerated areas necessary for the proper evaluation, design, construction and utilization of buildings and the built environment.

(a)

Building systems: structural, mechanical, electrical, plumbing, communications, security, fire protection.

(b)

Construction contract administration: contracts, bidding, contract negotiations.

(c)

Construction documents: drawings, specifications, delivery methods.

(d)

Design: urban planning, master planning, building designs, site

design, interiors, safety and security measures.

(e)

Environmental: energy efficiency, sustainability, natural resources, natural hazards, hazardous materials, weatherproofing, insulation.

(f)

Legal: laws, codes, zoning, regulations, standards, life safety, accessibility, ethics, insurance to protect owners and public.

(g)

Materials and methods: construction systems, products, finishes, furnishings, equipment.

(h)

Pre-design: land use analysis, programming, site selection, site and soils analysis, surveying.

(i)

Preservation: historic, reuse, adaptation.

(4) “Structured

educational activities” are educational activities in which at least seventy-five percent of an activity’s content and instruction time must be devoted to health, safety and welfare subjects related to the practice of architecture, including courses of study or other activities under the areas identified as health, safety and welfare subjects and provided by qualified individuals or organizations, whether delivered by direct contact or distance learning methods.

C. Requirements:

(1) In

addition to all other requirements for registration renewal, an architect must complete a minimum of 12 continuing education hours each calendar year or be exempt from these continuing education requirements as provided below. Failure to complete these requirements may result in non-renewal of the architect’s registration or other disciplinary action by the board. Architects shall be assessed an administrative fee of \$100.00 for each continuing education hour they fail to complete. In addition to the fee, the architect shall be required to make up the deficient health safety welfare continuing education hours within 60 days. A first violation of this provision shall not be reported as

disciplinary action to NCARB. Two or more violations of this provision shall be reported as disciplinary action to NCARB. Special circumstances will be reviewed by the subcommittee at its discretion.

(2) Continuing

education hours must be completed in health, safety and welfare subjects acquired in structured education activities. Continuing education hours may be acquired at any location, whether delivered by direct contact or distant learning methods. Excess continuing education hours may not be credited to a future renewal.

D. Activities: The

following list shall be used by all registrants in determining the types of activities that would fulfill continuing education requirements:

(1) continuing

education hours in attendance at short courses or seminars dealing with architectural subjects and sponsored by academic institutions;

(2) continuing

education hours in attendance at technical presentations on architectural subjects which are held in conjunction with conventions or at seminars related to materials use and functions; such presentations as those sponsored by the American institute of architects, construction specifications institute, construction products manufacturers council or similar organizations devoted to architectural education may qualify;

(3) continuing

education hours in attendance at short courses or seminars related to new technology and offered by colleges, universities, professional organizations or system suppliers;

(4) continuing

education hours spent in self-study courses such as those sponsored by the national council of architectural registration boards, American institute of architects or similar organizations;

(5) up to three

preparation hours may be credited for each class hour spent teaching architectural courses or seminars; college or university faculty may not claim credit for teaching regular curriculum courses;

(6) up to three continuing education hours spent in architectural research that is published or formally presented to the profession or public;

(7) college or university credit courses dealing with architectural subjects; each semester hour shall equal 15 continuing education hours; a quarter hour shall equal 10 continuing education hours;

(8) up to four continuing education hours in service to the public that is directly related to the practice of architecture in the area of health, safety and welfare.

E. Records and record-keeping:

(1) A registered architect shall complete and submit forms prescribed or accepted by the board certifying to the architect's having obtained the required continuing education hours. Documentation of reported continuing education hours shall be maintained by the architect for three years from the date of award.

(2) One continuing education hour shall represent a minimum of actual course time. No credit will be allowed for introductory remarks, meals, breaks or administrative matters related to courses of study.

(3) Failure to fulfill the continuing education requirements may result in non-renewal of an architect's certificate of registration and will result in the administrative or disciplinary actions set forth in Subsection C of this section. Certification of fulfillment of continuing education requirements without completion of the continuing education may result in disciplinary action.

(4) Any untrue or false statements or the use thereof with respect to course attendance or any other aspect of continuing education activity is fraud or misrepresentation and may subject the registrant to additional disciplinary action.

F. Initial registration by examination: An architect whose initial examination registration (not

reciprocity) occurs less than 12 months from December 31st shall not be required to report continuing education hours for that calendar year. An architect whose initial examination registration occurs more than 12 months prior to December 31st shall be required to complete 12 continuing education hours within the final calendar year prior to renewal.

G. Reinstatement:
Pursuant to Section 61-15-7 NMSA 1978, a former registrant may only apply for reinstatement and renewal of an expired certificate under 16.30.3.13 NMAC if delinquent continuing education hours are earned as required by Subparagraph (a) of Paragraph (3) of Subsection B of 16.30.3.11 NMAC, i.e. 12 continuing education hours each calendar year while registration is expired or be exempt from these continuing education requirements as provided below.

H. Exemptions:
A registrant shall be deemed to have complied with the foregoing continuing education requirements if the architect attests in the required affidavit that for not less than 21 months of the preceding two-year-period of registration, the architect:

(1) has served honorably on active duty in the military service (exceeding 90 consecutive days); or

(2) is a government employee working as an architect and assigned to duty outside the United States, or outside the jurisdiction established by the national council for architectural registration boards.

I. The board may consider a hardship case under extenuating circumstances to modify the requirements established by these rules.

J. Audit: A number of registrants shall be selected at random to submit substantiating information to support their continuing education claim. If any credits are disallowed by the board, then the registrant shall have 60 calendar days after notification to substantiate the original claim or obtain other continuing

education hours to meet the minimum requirements. Such continuing education hours shall not be used again in the next renewal cycle. Any registrant found to be non-compliant with the minimum continuing education hours requirement will result in the administrative or disciplinary actions set forth in Subsection C of this section. Additional audits may be conducted at the board's discretion.

K. Non-compliance:
Failure to comply with the requirements of this section shall result in non-renewal of registration and forfeit of the renewal fee. [16.30.3.12 NMAC - Rp, 16.30.3.12 NMAC, 9/26/2023]

16.30.3.13 EXPIRATION OF A CERTIFICATE:

A. Certificates of registration shall expire on December 31st as prescribed by these rules.

B. A certificate expires upon the death of a registrant. [16.30.3.13 NMAC - Rp, 16.30.3.13 NMAC, 9/26/2023]

16.30.3.14 RENEWAL OF AN EXPIRED CERTIFICATE:

A. A registrant whose license has expired for no more than one month shall be required to pay the registration fee and a late fee of fifty dollars (\$50).

B. A reinstatement applicant whose license has been expired for more than one month shall be required to:

(1) pay a registration fee and a penalty equal to one year's registration fee for each year expired but in no case shall the penalty exceed three times the annual registration fee;

(2) submit a signed and notarized reinstatement affidavit as provided by the board; and

(3) complete continuing education requirements as required by these rules; at the board's discretion, the former registrant may be required to present evidence to the board of continued proficiency, complete additional requirements, and appear personally before the board in

order that the board may determine whether to renew the lapsed certificate.

C. Reinstatement of a certificate that has been lapsed for more than three years requires submittal of an NCARB certificate and required application forms as a new applicant.
[16.30.3.14 NMAC - Rp, 16.30.3.14 NMAC, 9/26/2023]

16.30.3.15 ARCHITECT EMERITUS: Upon written request to the board, any architect registered in New Mexico may renew his or her registration as an architect emeritus for a biennial fee of twenty dollars (\$20.00) if the following requirements are met.

A. The registrant shall be 60 years of age or older and retired from the practice of architecture on the date of his or her registration renewal. Retired means that the architect no longer practices architecture in New Mexico and no longer stamps and certifies construction documents with his or her seal for projects located in New Mexico that are subject to the jurisdiction of the board.

B. The registrant shall have 10 years of continuous registration as an architect, five years as a registered architect in New Mexico, unless practicing under a specific exemption authorized by law.

C. In the event an architect emeritus wishes to reinstate a registration to practice architecture, the board may require proof of proficiency and the fulfillment of additional requirements deemed necessary, such as providing proof of continuous architectural registration elsewhere with the registration in good standing. Reinstatement of the license following the request to terminate an architect emeritus status shall include completion of continuing education requirements per Subsection B of 16.30.3.12 NMAC.
[16.30.3.15 NMAC - Rp, 16.30.3.15 NMAC, 9/26/2023]

16.30.3.16 DUPLICATE WALL CERTIFICATES: The board

may, after consideration of a written request from a registrant outlining the circumstances supporting the request, authorize the issuance of a duplicate wall certificate of registration. The fee for supplying such a certificate shall be thirty-five dollars (\$35).
[16.30.3.16 NMAC - Rp, 16.30.3.16 NMAC, 9/26/2023]

16.30.3.17 DISPLAY OF A CERTIFICATE OF REGISTRATION: The board requires that each registrant shall display his or her certificate of registration in a conspicuous location in his or her primary place of business.
[16.30.3.17 NMAC - Rp, 16.30.3.17 NMAC, 9/26/2023]

16.30.3.18 INDIVIDUAL SEAL AND DOCUMENT IDENTIFICATION:

A. Registration seal specifications: Each architect registered in the state of New Mexico shall secure a registration seal of the following design: The seal shall have two concentric circles with the outer circle measuring one and three-quarter inches in diameter and the inner circle being one and one-quarter inches in diameter. The upper portion of the annular space between the two circles shall bear the words "STATE OF NEW MEXICO" and the lower portion shall bear the words "REGISTERED ARCHITECT". The space enclosed by the inner circle shall bear the name of the architect and his or her registration number. In no event shall the seal contain more than one name of an architect. By placement of a seal and signature on a drawing, an architect verifies that his or her registration is valid and that he or she is practicing in accordance with the Architectural Act, Sections 61-15-1 through 13 NMSA 1978 and these rules and regulations.

B. Use of registration seal:

(1) Each original sheet of construction drawings and each cover sheet of specifications, submitted for permitting, and reports, prepared

by or under the responsible charge of an individual architect, must bear the imprint of the seal with the signature of that architect and the date of the signature closely aligned to the seal. The name and address of the architect must also appear on the sealed page. A registrant may apply a seal, signature and date of signature by hand. A registrant may affix an electronically-generated seal, signature, and date of signature. An electronic signature may be utilized provided the registrant utilizes a secure method of affixation; the registrant does not authorize any other person to so affix; and the registrant and client have agreed to conduct transactions by electronic means. Drawings, reports or documents that are signed using an electronic signature shall employ an authentication procedure to ensure the validity of the electronic signature. Signature must satisfy requirements defined in 16.30.1.7 NMAC.

(2) As provided in the Architectural Act, Subsection A of Section 61-15-7 NMSA 1978, all plans, specifications, plats and reports prepared by an architect or under the architect's responsible charge shall be signed and sealed by that architect, including all plans and specifications prepared by the architect or under the architect's responsible charge on work described in project exemptions, under Section 61-15-9 NMSA 1978.

(3) Placing of multiple architectural seals on plans, specifications or reports shall not be permitted. The architect-of-record must seal, sign and date all construction drawings, specifications, and reports prepared by or under the supervision of that architect. In doing so, the architect-of-record assumes full responsibility for these documents.

(4) Reviewing, or reviewing and correcting, technical submissions after they have been prepared by others does not constitute the exercise of responsible charge because the reviewer has neither control over nor detailed knowledge of the content of such submissions

throughout their preparation. Any registered architect signing or sealing technical submissions not prepared by that architect but prepared under the architect's responsible charge by persons not employed in the office where the architect is resident, shall maintain and make available to the board upon request for at least five years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the architect's control over and detailed knowledge of such technical submissions throughout their preparation. An exception is made for:

(a)

architects who review, adapt, and seal prototypical projects provided that the project qualifies as a prototypical project meaning the original plans were designed by other architects, engineers or architects and engineers with the intent of being used in several diverse locations with local adaptations;

(b)

a kit-of-parts that is a manufactured item and the New Mexico registered architect is not responsible for the components.

(5)

Architectural and engineering seals are required for any subsequent and physically linked construction to a project which, when seen together with the original construction, would have required both seals.

(6) A

legally applied seal and signature is a permanent part of construction documents and may not be removed for non-payment of fees or other civil action.

C. Assumption of projects:

(1) Sealed

work: Prior to sealing, signing and dating work, a successor registered architect shall be required to notify the original architect, his successors, or assign, by certified letter to the last known address of the original registered architect, of the successor's intention to use or reuse the original registered architect's work. A successor registered

architect must use his or her own title block, seal and signature and must remove the title block, seal and signature of the original architect before sealing, signing and dating any sealed construction drawings and specifications. The successor registered architect shall take full responsibility for the drawings as though they were the successor's original product.

(2) Unsealed

work: When an architect assumes responsibility of an incomplete project, the following evaluation must occur before the architect can be said to have exhibited responsible charge over the project:

(a)

Program: the architect shall meet with the client to assure that the client's needs are met.

(b)

Codes: the architect shall assure that the project is in compliance with all federal, state, and local regulation.

(c)

Coordination: the architect shall assure coordination with the other professionals in a project.

(d)

Analysis: the architect shall assure the project meets all technical, aesthetic, and quality requirements and that site and environmental issues have been addressed.

(e)

The architect of record who assumes the incomplete project shall be charged with keeping records of the project for five years.

D. Plan checking:

Any authorized person checking documents for compliance with any applicable statutes, codes, ordinances, rules or regulations such as building codes, fire codes or zoning ordinances may "red-line" and list changes to meet such applicable statutes, codes, ordinances, rules and regulations, as this is not the practice of the profession. However, a person may not modify a professional document submitted for review unless that modification is supported by reference to an applicable code or standard. A non-registrant shall not modify, in any manner, a document embodying the

discretion or judgment of a registrant without the express permission of the architect who is in responsible charge. [16.30.3.18 NMAC - Rp, 16.30.3.18 NMAC, 9/26/2023]

16.30.3.19 CHANGE OF ADDRESS:

Registrants shall notify the board of a change of primary address within 30 days of a move. [16.30.3.19 NMAC - Rp, 16.30.3.19 NMAC, 9/26/2023]

HISTORY OF 16.30.3 NMAC:

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

- BEA 68-1, Architectural Law and Rules and Regulations, 7/1/1968.
- BEA 69-1, Architectural Law and Rules and Regulations, 6/17/1969.
- BEA 70-1, Architectural Law and Rules and Regulations, 7/28/1970.
- BEA 74-1, Roster of Registered Architects Laws Rules Regulations, 8/30/1974.
- BEA 78-1, Board of Examiners for Architects, 9/19/1978.
- NMBEA 85-1, Architectural Act Rules and Regulations, 2/7/1985.
- NMBEA 86-1, Architectural Act Rules and Regulations, 4/9/1986.
- NMBEA 88-1, State of New Mexico Board Of Examiners for Architects Rules and Regulations, 6/22/1988.
- NMBEA 89-1, State of New Mexico Board Of Examiners for Architects Rules and Regulations, 11/28/1989.
- Regulation No. NMBEA 90-1, State of New Mexico Board of Examiners for Architects Rules and Regulations, 8/14-90.
- NMBEA Rule 4, NCARB Examinations, 6/23/1980.

History of Repealed Material:

16 NMAC 30.3, Registration and Renewal, Duplicate Certificates, Seal Specifications and Document Identification, - Repealed, 9/6/2001.

History of 16.30.3 NMAC:

16.30.3 NMAC - Registration and Renewal, Duplicate Certificates, Seal Specifications and Document Identification, filed 9/6/2001, was repealed and replaced by

16.30.3 NMAC - Registration and Renewal, Duplicate Certificates, Seal Specifications and Document Identification, effective 9/26/2023.

ARCHITECTS, BOARD OF EXAMINERS FOR

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 30 ARCHITECTS
PART 6 MINIMUM STANDARDS FOR THE PRACTICE OF ARCHITECTURE IN NEW MEXICO**

16.30.6.1 ISSUING AGENCY: New Mexico Board of Examiners for Architects. [16.30.6.1 NMAC – Rp, 16.30.6.1 NMAC, 9/26/2023]

16.30.6.2 SCOPE: Provisions for Part 6 apply to any person registered as an architect, or to anyone applying for registration as an architect in New Mexico. [16.30.6.2 NMAC - Rp, 16.30.6.2 NMAC, 9/26/2023]

16.30.6.3 STATUTORY AUTHORITY: Subsection C of Section 61-15-4 NMSA 1978 prescribes that “The board...may make rules not inconsistent with law.” [16.30.6.3 NMAC - Rp, 16.30.6.3 NMAC, 9/26/2023]

16.30.6.4 DURATION: Permanent. [16.30.6.4 NMAC - Rp, 16.30.6.4 NMAC, 9/26/2023]

16.30.6.5 EFFECTIVE DATE: September 26, 2023, unless a different date is cited at the end of the section. [16.30.6.5 NMAC - Rp, 16.30.6.5 NMAC, 9/26/2023]

16.30.6.6 OBJECTIVE: The objective of this rule is to clearly outline the minimum standards of practice expected from an individual registered as a New Mexico architect. [16.30.6.6 NMAC - Rp, 16.30.6.6 NMAC, 9/26/2023]

16.30.6.7 DEFINITIONS: [RESERVED] [16.30.6.7 NMAC - Rp, 16.30.6.7 NMAC, 9/26/2023]

16.30.6.8 DESIGN AND CONSTRUCTION DOCUMENTS:

A. Programming, if required by contract:
(1) Definition: To create or assist the owner in creating a project’s design parameters and overall scope including priorities, goals, budget, data, concepts and general needs.

(2) The architect must be able to:
(a) prepare a program, presentations, reports and periodic reviews for owners and consultants;
(b) summarize and evaluate data and requirements; and

(c) form an educated opinion of probable costs and adequacy of the owner’s budget.

B. Site and environmental analysis:
(1) Definition: Site analysis includes land planning, urban design and environmental evaluation of the physical, economic and social impact of proposed land use on, including but not limited to, the environment, ecology, traffic and population patterns, zoning site constraints, adequacy of site for parking and loading, etc., and utility availability.

(2) The registrant must be able to select, organize and evaluate pertinent data that leads to a conceptual design in coordination with the owner’s program while conforming to the project’s requirements.

C. Schematic design:
(1) Definition: From the owner-approved program, the development of solutions to satisfy technical and aesthetic requirements with an updated opinion of probable cost.

(2) The registrant must be able to prepare, from the program, alternative

preliminary design concepts, presentation drawings and models and form an updated opinion of probable cost.

D. Building cost analysis:
(1) Definition: Evaluation of probable construction cost.

(2) The registrant must be able to:
(a) make computations based on area and volume and quantity surveys based on the project’s specific requirements; and
(b) evaluate the proposed costs for accuracy and fairness.

E. Code research:
(1) Definition: Assurance of a project’s compliance with federal, state and local regulation requirements.

(2) The registrant must be able to research and document codes and guidelines to assure a specific project’s compliance with law and should be knowledgeable of procedures to obtain relief or variances.

F. Design development:
(1) Definition: Based on the owner-approved schematic design, creating the size and character of the entire project including selection of materials and engineering systems with an updated opinion of probable cost for the owner’s further approval.

(2) The registrant must be able to:
(a) prepare detailed development drawings from schematic design documents;

(b) develop schedules and outline specifications, the project’s systems, with estimates for construction time and construction cost; and

(c) form updated opinions of probable cost.

G. Construction documents:

(1) Definition:
The description in graphic form of all the essentials of the work done in concurrence with the written specifications and the provision to the owner of an updated opinion of probable cost and, if relevant, the suggestion that alternative bids should be considered.

(2) The registrant must:
(a) be able to prepare accurate, consistent, complete and understandable construction documents and effectively coordinate consultant(s) drawings; and

(b) understand the responsibilities and liabilities arising from the issuance of construction documents.

H. Engineering systems coordination:

(1) Definition:
Responsibility for coordinating with consulting engineers in the selection, design and/or coordination of all building systems including traditional engineering systems.

(2) The registrant must be knowledgeable of how systems work, including system benefits and limitations, availability, cost and space requirements necessary, and must know when it is necessary to engage engineering professionals and other professionals or consultants.

I. Specifications and materials research:

(1) Definition:
The evaluation and selection of materials or products, based on appropriateness, durability, aesthetic quality, initial cost, maintenance and the project's standard of quality.

(2) The registrant must:
(a) have the ability to assess materials, including familiar items in unusual applications; and

(b) be able to communicate in graphic and written form to all parties, in logical and orderly sequence, the requirements of the construction process.

J. Document checking and coordination:

(1) Definition:
Cross-checking construction documents and drawings of other consultants for accuracy and compatibility.

(2) The registrant must be able to assure accuracy and compatibility of all construction documents for a project. [16.30.6.8 NMAC - Rp, 16.30.6.8 NMAC, 9/26/2023]

16.30.6.9 CONSTRUCTION ADMINISTRATION (if required by contract):

A. Bidding and contract negotiation.

(1) Definition:
Assist the client in establishing and administering bidding procedures, issuing addenda, evaluating proposed substitutions, reviewing the qualifications of bidders, analyzing bids or negotiating proposals and making recommendations for the selection of contractors.

(2) The registrant should make clear what the registrant's role shall be in each of the following steps:

- (a) the bid/award process;
- (b) the analysis and evaluation of bids;
- (c) settling protests to bid acceptability; and
- (d) the role of lending institutions.

B. Construction - office phase.

(1) Definition:
Processing contractor's applications for payment, preparing change orders, reviewing shop drawings and samples and interpreting construction documents.

(2) The registrant must be able to:
(a) timely process applications for payment;

(b) evaluate requests for changes and prepare change orders; and

(c) interpret and attempt to resolve conflicts relating to the contract documents and resolve disputes.

C. Construction - observation phase.

(1) Definition:
Assurance that contractor's work conforms to requirements of contract documents, that standards of workmanship are upheld, and that all work conforms to required codes. It includes the interpretation of contract documents, clarification of design intent, and the resolution of conflicts.

(2) The registrant must have an understanding of contract documents and must be able to:

- (a) evaluate quality of materials and workmanship;
- (b) analyze construction timetables and produce progress reports;
- (c) interpret contract documents;
- (d) evaluate dispute resolution alternatives;
- (e) monitor and receive all data, warranties and releases required by the contract documents; and
- (f) undertake a completion inspection with verification that the work was completed in accordance with the contract documents.

[16.30.6.9 NMAC - Rp, 16.30.6.8 NMAC, 9/26/2023]

16.30.6.10 DESIGN/BUILD WHERE THE ARCHITECT IS ALSO THE CONTRACTOR:

Unless a contractual relationship is stated otherwise, an architect is responsible for the minimum competencies of construction administration in a design/build project.

[16.30.6.10 NMAC - Rp, 16.30.6.10 NMAC, 9/26/2023]

16.30.6.11 PROJECT MANAGEMENT: Means defining goals; coordinating tasks and scheduling, assessing all discrepancies

and performance of corrective actions, maintaining design quality; closing out project records and agreements; and performing project evaluations. It includes owner notification of any additional services that may be required prior to their need.
[16.30.6.11 NMAC - Rp, 16.30.6.11 NMAC, 9/26/2023]

HISTORY OF 16.30.6 NMAC:

History of Repealed Material:

16 NMAC 30.6, Minimum Standards for the Practice of Architecture in New Mexico - Repealed, 9/6/2001.

History of 16.30.6 NMAC:

16.30.5 NMAC – Minimum Standards for the Practice of Architecture, filed 9/6/2001, was repealed and replaced by 16.30.5 NMAC – Minimum Standards for the Practice of Architecture, effective 9/26/2023.

GAME AND FISH DEPARTMENT

This is an amendment to 19.31.10 NMAC, Section 16, effective 9/12/2023.

19.31.4.16 ESTABLISHING FREE FISHING [DAYS] WEEKENDS:

The first consecutive Saturday and Sunday in June and the last consecutive Saturday and Sunday in September during the effective dates of this regulation, are established as free fishing [days] weekends whereby anglers may fish public waters in New Mexico as otherwise provided by regulation [,-but] without [benefit of] a fishing license, stamps or [habitat improvement stamp] paying any license fees. Anglers must abide by all other fishing laws including but not limited to bag limits, tackle restrictions, age restrictions and hours during each free fishing weekend.
[19.31.4.16 NMAC - N, 4/1/2022; A, 9/12/2023]

HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.37 NMAC Sections 3, 6, 7, 8, 10 and 11 effective 9/12/2023.

5.7.37.3 STATUTORY AUTHORITY: Section 9-25-1 et seq. NMSA 1978 and [Chapter 42, Laws of 2022] Section 21-21R-1 et seq. NMSA 1978.

[5.7.37.3 NMAC - N, 7/12/2022; A, 9/12/2023]

5.7.37.6 OBJECTIVE:

A. The objective of 5.7.37 NMAC is to provide a level of financial support to [qualified New Mexico students] returning student learners who are enrolled in a workforce certificate program, or an associate or bachelor's degree program at an eligible New Mexico public post-secondary educational institution or tribal college. This level of financial support is intended to help defray the cost of tuition and fees at the public post-secondary educational institution or tribal college where the student is enrolled.

~~**B.** The purpose of 5.7.37 NMAC is to encourage completion of a workforce-appropriate certificate, an associate or a bachelor's degree by providing financial support to qualified students enrolled in a minimum of six credit hours and a maximum of eighteen credit hours per fall and spring semester. The scholarship may also be awarded to qualified students enrolled in a minimum of three and a maximum of nine credit hours during the summer semester.~~

~~**C] B.** [A further purpose] The objective of 5.7.37 NMAC is to [encourage recent graduate learners who pursue a post-secondary education in New Mexico to complete a first four-year degree within a maximum of eight semesters or two-year degree within a maximum of four semesters by supplementing but not supplanting the New Mexico legislative lottery tuition scholarship. Returning student learners are encouraged to complete a two-year~~

~~degree or a four-year degree within the maximum credit hour allowances for the scholarship prescribed in 5.7.37.9 NMAC] provide a level of financial support to recent graduate learners. This level of financial support is intended to defray the cost of tuition and fees during a qualifying semester and summer semesters after any available state and institutional aid has been awarded. Provided sufficient funding exists in the Opportunity Scholarship Fund, the award may be used to supplement, but not supplant, the New Mexico legislative lottery tuition scholarship in an amount not to exceed the cost of tuition and fees for the qualifying semester and summer semesters, and fees for other semesters.~~

~~**D] C.** As it applies to students with disabilities who may require special accommodations, the department, in consultation with the student and the office at the public post-secondary educational institution that serves students with disabilities, shall review the circumstances affecting student eligibility and make accommodations as deemed reasonable and appropriate, based on the student's disability needs. If a New Mexico resident had to leave the state to receive an education pursuant to the federal Individuals with Disabilities Education Act the student shall be eligible for the scholarship if they graduated from an accredited high school in another state and otherwise met the qualifications for a tuition scholarship pursuant to the definition of a qualified student.
[5.7.37.6 NMAC - N, 7/12/2022; A, 9/12/2023]~~

5.7.37.7 DEFINITIONS:

A. "Community college" means a branch community college of a four-year state educational institution, a two-year state educational institution or a community college or technical and vocational institute established pursuant to Chapter 21, Article 13 or 16 NMSA 1978.

B. "Comprehensive institution" means eastern New Mexico university, New Mexico Highlands university, northern New Mexico college or western New Mexico university.

C. “Cumulative grade point average” includes grades received during fall, spring and summer semesters.

[E] D. “Department” means the higher education department.

[D] E. “Eligible institution” means a public post-secondary educational institution or a tribal college that has a current and valid memorandum of understanding as described in Subsection B of 5.7.37.11 NMAC.

[E] F. “Fee” or “Fees” means:

- (1) mandatory non-tuition charges levied to all students as a condition of enrollment;
- (2) course-specific fees levied in an amount not to exceed fifty dollars (\$50) per credit hour or as otherwise approved by the department on a course-by-course basis; and

(3) shall not include charges levied for funding of capital projects or charges pledged for repayment of institutional bonds, loans or institutional debt of any type.

[F] G. “Full time” means 15 or more credit hours each program semester of the regular academic year at four-year institutions or tribal colleges and 12 or more credit hours each program semester of the regular academic year in two-year institutions for recent graduate learners.

[G] H. “Independent student” means a student with established financial need and no means of familial support as evidenced by their filing status on the free application for federal student aid or other means of income verification as determined by the institution.

[H] I. “Opportunity scholarship” means an award to recent graduate learners and returning student learners.

[I] J. “Public post-secondary educational institution” means a state educational institution or a community college.

[J] K. “Qualified student” means a recent graduate learner or a returning student learner.

[K] L. “Recent graduate learner” means a full-time student who does not have a bachelor’s, master’s or doctoral degree and who graduated from a public or accredited private New Mexico high school or who received a high school equivalency credential while maintaining residency in New Mexico and who either:

- (1) within 16 months of graduation or receipt of a high school equivalency credential, was accepted for entrance to and attended an eligible institution; or
- (2) within four months of graduation or receipt of a high school equivalency credential, began service in the United States armed forces and, within 16 months of completion of honorable service or medical discharge from the service, attended an eligible institution; and

(3) successfully completed the first semester at an eligible institution with a grade point average of 2.5 or higher on a 4.0 scale during the first semester of full-time enrollment and maintains a cumulative grade point average of 2.5 or higher on a 4.0 scale at an eligible institution.

[E] M. “Research institution” means New Mexico institute of mining and technology, New Mexico state university and the university of New Mexico.

[M] N. “Returning student learner” means a student 18 years of age or older who does not otherwise meet the definition of a recent graduate learner, has a high school diploma or who has received a high school equivalency credential and who does not have a bachelor’s, master’s or doctoral degree, who has been a resident of New Mexico for the preceding 12 consecutive months and who maintains a cumulative grade point average of 2.5 or higher on a 4.0 scale at an eligible institution.

[N] O. “State educational institution” means an institution of higher education enumerated in Article 12, Section 11 of the constitution of New Mexico.

[O] P. “Tribal college” means a tribally, federally or

congressionally chartered eligible institution located in New Mexico that is accredited by the higher learning commission.

[P] Q. “Tuition” means mandatory instructional costs paid by or for a qualified student to an eligible institution for coursework.

[Q] R. “Workforce certificate” means a department-approved, credit-bearing certificate of two years’ duration or less where data indicates the certificate is in high demand as determined in consultation with the New Mexico department of workforce solutions.

[5.7.37.7 NMAC - N, 7/12/2022; A, 9/12/2023]

5.7.37.8 STUDENT ELIGIBILITY:

A. A scholarship may be awarded to a student who has met initial eligibility requirements as follows:

(1) has established and maintained New Mexico residency as defined in 5.7.18.9 NMAC [or], is eligible for a nondiscrimination waiver as defined in Subsection K of 5.7.18.10 NMAC or is an active member of the New Mexico National Guard.

All residency requirements for recent graduate learners must be met upon completion of high school, graduation, or receipt of a high school equivalency credential recognized by the state of New Mexico;

(2) has been determined to be a qualified student [pursuant to Subsection K or M of 5.7.37.7 NMAC];

(3) for a recent graduate learner, is enrolled full time, but not enrolled in more than 18 credit hours in the fall or spring semester;

(4) for a returning student learner, is enrolled in at least six credit hours, but not more than 18 credit hours in the fall or spring semester;

(5) qualified students may enroll in no [less] fewer than three credit hours, but not more than nine credit hours in the summer semester; and

(6) has met requirements in Paragraphs

(1) through (4) of Subsection A of 5.7.37.8 NMAC or students with exceptional mitigating circumstances as determined by the institution's lead financial aid officer; students who are incapable of meeting the requirements specified in Paragraphs (1) through (4) of Subsection A of 5.7.37.8 NMAC due to a documented exceptional mitigating circumstance do not forfeit eligibility for the opportunity scholarship; however, the following requirements shall apply:

(a) the student shall provide documents certifying the nature of the students exceptional mitigating circumstance to the institution's lead financial aid officer at the post-secondary educational institution at which the student is enrolling or will enroll; the institution's lead financial aid officer shall exercise professional judgment to determine whether the exceptional mitigating circumstance is beyond the student's control and precludes the student from meeting the requirements specified in Paragraphs (1) through (4) of Subsection A of 5.7.37.8 NMAC;

(b) if, in the professional judgment of the institution's lead financial aid officer, the student's exceptional mitigating circumstance is recognized as a valid reason for the student's inability to meet the requirements specified in Paragraphs (1) through (4) of Subsection A of 5.7.37.8 NMAC the student's initial or continuing eligibility for the opportunity scholarship shall be suspended or deferred unless and until such time that the student is capable of meeting the requirements of Paragraphs (1) through (4) Subsection A of 5.7.37.8 NMAC.

B. Other provisions regarding initial eligibility.

(1) Students with disabilities who are requesting a reduction of the credit hour requirement shall obtain a referral from the student services division of the public post-secondary educational institution or tribal college where the student is enrolled that oversees students with special needs ~~requests to reduce the credit hours to be~~

~~considered full-time for scholarship eligibility; referrals]. Referrals~~ and any sufficient documentation shall be received within 30 days of the start of the student's first semester. The documentation may be reused for the subsequent semesters unless the student is requesting to decrease their approved credit hours. In this case updated documentation shall be required prior to the start of the semester for which the student is enrolling.

(2) Students are encouraged, but are not required, to complete a free application for student aid (FAFSA) for scholarship eligibility.

(3) During the 16 months after high school graduation, completion of the requirements of a home-based or non-public-school primary educational program, or receipt of a high school equivalency credential recognized by the state of New Mexico a recent graduate learner may attend a public post-secondary educational institution or tribal college prior to their initial semester less than-full time without affecting future program eligibility. Once a recent graduate learner is enrolled and attends a public post-secondary educational institution or tribal college full-time during the 16 months after high school graduation, completion of the requirements of a home-based or non-public-school primary educational program, or receipt of high school equivalency credential recognized by the state of New Mexico, the recent graduate learner shall be considered to have commenced the initial semester and must meet the initial semester eligibility requirements within Subsection A of 5.7.37.8 NMAC.

C. Continuing eligibility. Upon satisfaction of the initial eligibility requirements, the scholarship will be re-awarded to a recent graduate learner during the second semester of continuous enrollment and re-awarded to a returning student learner during the second continuous semester of enrollment. A student's continuing eligibility shall be determined on a semester basis.

(1) An opportunity scholarship award may be re-awarded to a student who:

(a) maintains a minimum of a 2.5 cumulative [GPA] grade point average; a student has the right to request use of the student's cumulative [GPA] grade point average earned at all New Mexico public post-secondary educational institutions and tribal colleges; and

(b) maintains continuous enrollment and meets earned credit hour criteria as provided in Paragraphs (3) through (5) of Subsection A of 5.7.37.8 NMAC. When a recent graduate learner transfers after completion of the first semester from a two year institution to a four year institution for enrollment during the second or subsequent program semester, a student will have met eligibility requirements, but said student must enroll in 15 credit hours upon transfer to maintain eligibility;

(i) receipt of a transfer transcript for sufficient documentation for eligibility;

(ii) student transfers shall defer to the receiving institution to determine eligibility.

(2) Students with disabilities may be re-awarded the opportunity scholarship under the following conditions:

(a) a referral is obtained for each semester in which a reduction in credit hours is requested;

(b) maintains a minimum of a 2.5 cumulative [GPA] grade point average; and

(c) in no case shall eligibility extend beyond 90 attempted credit hours for completion of an associate degree or 160 attempted credit hours for completion of a bachelor's degree ~~[unless otherwise authorized by the department].~~

(3) An eligible student ~~[that]~~ who transfers shall continue to be eligible at the receiving

institution after receipt of the student's transfer transcript containing eligibility confirmation.

D. Probation. Students who have been determined to be eligible and subsequently have exceptional mitigating circumstances as determined by the institution's lead financial aid officer may be placed on a probationary status under the following conditions:

(1) the student shall provide documents certifying the nature of their exceptional mitigating circumstance to the lead financial aid officer at the post-secondary institution at which the student is enrolling or will enroll;

(2) the lead financial aid officer shall exercise professional judgment to determine whether the exceptional mitigating circumstance is beyond the student's control and precludes the student from meeting the requirements specified in Subsection A of 5.7.37.8 NMAC; and

(3) a student may receive scholarship funding while on probationary status, however under no circumstances shall the student receive program awards in excess of those prescribed in Subsections A through D of 5.7.37.9 NMAC.

E. Petition for reinstatement. A recent graduate learner [that] who loses eligibility for the opportunity scholarship or legislative lottery scholarship pursuant to 5.7.37.12 NMAC or 5.7.20.12 NMAC and has not been approved for a probationary semester may petition for reinstatement of eligibility for the opportunity scholarship as a returning student learner no sooner than two years following the end of the semester when eligibility was lost. A returning student learner [that] who loses eligibility for the opportunity scholarship pursuant to 5.7.37.12 NMAC and has not been approved for a probationary semester may petition for reinstatement of eligibility for the opportunity scholarship as a returning student learner no sooner than two years following the end of the semester when eligibility was lost. [5.7.37.8 NMAC - N, 7/12/2022; A, 9/12/2023]

5.7.37.10 AMOUNT OF SCHOLARSHIP:

A. To the extent that funds are made available from the fund, the board of regents or governing bodies of public post-secondary educational institutions and tribal colleges shall award tuition scholarships in department approved amounts [to qualified students.] as follows:

(1) for returning student learners an amount not to exceed the cost of tuition and fees for enrollment in at least six credit hours, but not more than 18 credit hours in the fall or spring semester and optional enrollment in no less than three credit hours, but not more than nine credit hours during a summer semester.

(2) for recent graduate learners an amount not to exceed the cost of tuition and fees during a qualifying semester after any available state and institutional aid has been awarded. The scholarship may also be awarded to a recent graduate learner enrolled in no fewer than three credit hours, but not more than nine credit hours during a summer semester. Provided sufficient funding exists in the Opportunity Scholarship Fund the award may be used to supplement, but not supplant the New Mexico legislative lottery tuition scholarship in an amount not to exceed the cost of tuition and fees for the qualifying semester and summer semesters, and fees for other semesters.

B. The method the department will use for calculating the tuition scholarship is as follows:

(1) estimate the total amount available in the opportunity scholarship fund, based on transfers, current year balances, and additional funds made available through legislation;

(2) estimate the number of scholarship recipients for each institution, based on department endorsed institutional projections;

(3) calculate the tuition scholarship for each sector (research, comprehensive, and

community college) and tribal college in accordance with Section 21-21N-4 NMSA 1978;

(4) calculate the total amount needed to pay full tuition and fees to all estimated recipients;

(5) compute an award for each scholarship recipient distributed in amounts as follows:

(a) one thousand five hundred dollars (\$1,500) per scholarship per program semester for a student enrolled at a research institution;

(b) one thousand twenty dollars (\$1,020) per scholarship per program semester for a student enrolled at a comprehensive institution or tribal college; and

(c) three hundred-eighty dollars (\$380) per scholarship per program semester for a student enrolled at a community college;

(6) If the total amount available pursuant to Paragraph (3) of Subsection B of 5.7.37.10 NMAC is less than the amount calculated in Paragraph (5) of Subsection B of 5.7.37.10 NMAC, the department shall decrease the scholarship award amounts in a manner that maintains the distribution in the same proportions as provided in Paragraph (5) of Subsection B of 5.7.37.10 NMAC. If the total amount available pursuant to Paragraph (3) of Subsection B of 5.7.37.10 NMAC is more than the amount calculated in Paragraph (5) of Subsection B of 5.7.37.10 NMAC, the department shall increase the scholarship award amounts in a manner that maintains the distribution in the same proportions as provided in Paragraph (5) of Subsection B of 5.7.37.10 NMAC; and

(7) notify institutions of the maximum award by June 1st annually.

C. In no case shall a student receive scholarship awards exceeding the total amount of tuition and fees charged after all other state aid has been applied.

D. Qualified students in their graduating semester shall receive a tuition scholarship proportional to the number of credit hours required to graduate. Students in their graduating semester may enroll in [less] fewer than six credit hours and maintain eligibility.

E. For qualified students in their first semester, preference shall be given to independent students before other students to the extent funds are available.

F. Opportunity scholarships may supplement but shall not supplant institutional aid such as three percent or bridge scholarships in the first semester.

G. Opportunity scholarships may be awarded to qualified students [prior to] after institutional aid such as three percent or bridge scholarships in the second semester and beyond. [5.7.37.10 NMAC - N, 7/12/2022; A, 9/12/2023]

**5.7.37.11
ADMINISTRATION OF
THE OPPORTUNITY
SCHOLARSHIP:**

A. Eligible public post-secondary educational institutions and tribal colleges shall:

(1) notify students of their possible eligibility, during their first regular semester of enrollment including transfer students who had the opportunity scholarship at previous institutions;

(2) designate their institution's lead financial aid officer to be responsible for determining initial and continuing student eligibility for the opportunity scholarship under the terms of these rules and regulations;

(3) maintain a listing of each participating student to include, but not be limited to:

(a) social security number as appropriate;

(b) cumulative [GPA] grade point average and completed enrollment hours in prior semesters;

(c) proof of initial and continuing enrollment;

(d) award semester; and

(e) other data fields deemed important by the department;

(4) draw-down files should be submitted to the department for eligible students as defined in 5.7.37.10 NMAC per semester; all fiscal year draw-downs shall be for eligible students enrolled during the same fiscal year;

(5) for students that satisfied the first semester eligibility requirements and seek continuing eligibility consideration, use professional judgment to determine that exceptional mitigating circumstances beyond the students control, for which documentation exists in the student's file; the institutions shall defer to their institutional satisfactory academic progress policy when considering circumstances which include, but are not limited to, consideration for falling below the cumulative [GPA] grade point average requirement or successfully maintaining enrollment as defined in Paragraphs (3) through (5) of Subsection A of 5.7.37.8 NMAC;

(6) provide to the department by April 15 each year the projected enrollment and tuition rates for the following academic year for their institution;

(7) publish the probation policy as defined in Subsection D of 5.7.37.8 NMAC;

(8) encourage consortium agreements, as defined in the code of federal regulations, 34 CFR 6685, in order to facilitate the enrollment of students and to facilitate the student's participation in this program; and

(9) ensure that all available state aids including legislative lottery scholarships are awarded before granting opportunity scholarships; the intent of this provision is that tuition and fee costs shall be paid first for those students eligible for merit-based aid packages funded by three percent scholarships; in those instances when tuition is not fully covered by the merit-based aid

package, said student is eligible for the tuition and fee cost differential to be funded by the opportunity scholarship program; nothing in this section requires a public post-secondary educational institution to award a scholarship inconsistent with the criteria established or such scholarship; refer to 5.7.37.10 NMAC for additional provisions.

B. The department shall:

(1) Enter into a memorandum of understanding on or before June 1st with each eligible institution describing:

(a) the maximum amount of tuition and fees per student that may be paid by the opportunity scholarship fund each fiscal year;

(b) the total amount available to the eligible institution for opportunity scholarships each fiscal year;

(c) the reimbursement of any [~~tuition or fee structures not captured within the definitions of Subsections E and P of 5.7.37.7 NMAC~~] reimbursable costs that exceed tuition and fees; and

(d) eligible workforce certificate programs.

(2) make available to the legislative finance committee and department of finance and administration, by November 1, the following information:

(a) the status of the fund;

(b) scholarship program participation data aggregated for each public post-secondary education institution and tribal college to show:

(i) the number of qualified students who received opportunity scholarships and in the prior 12-month period;

(ii) the total number of qualified students enrolled in the prior 12-month period;

(iii) the amount of tuition scholarships funded by semester and the amount of tuition costs that were not offset by the tuition scholarship by semester; and

(iv)

the number of qualified students who graduated with a degree and, for each qualified student, the number of consecutive semesters and nonconsecutive semesters attended prior to graduation.

[5.7.37.11 NMAC - N, 7/12/2022; A, 9/12/2023]

End of Adopted Rules

Other Material Related to Administrative Law

**REGULATION
AND LICENSING
DEPARTMENT
BARBERS AND
COSMOTOLOGISTS, BOARD
OF****CORRECTION TO
NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

In issue 16, the Regulation and Licensing Department, Board of Barbers and Cosmetologists published a Notice of a Minor, Nonsubstantive Correction to 16.34.4 NMAC and 16.34.6 NMAC. In fact, there should have been a notice of correction for 16.34.8 NMAC, Section 23 that removed the phrase “one hundred fifty” and parentheses around 150, as that text is extraneous and not correct legislative style. That correction was erroneously placed under 6.34.4 NMAC. That rule does not have a Section 23.

This correction is being published by the Administrative Law Division to fix this rule citation error.

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**

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Submittal Deadlines and Publication Dates

Volume XXXIV, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 5	January 18
Issue 2	January 19	January 31
Issue 3	February 2	February 14
Issue 4	February 16	February 28
Issue 5	March 2	March 14
Issue 6	March 16	March 28
Issue 7	March 30	April 11
Issue 8	April 13	April 25
Issue 9	May 4	May 16
Issue 10	May 18	May 31
Issue 11	June 1	June 13
Issue 12	June 15	June 27
Issue 13	July 7	July 18
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Issue 20	October 12	October 24
Issue 21	October 26	November 7
Issue 22	November 9	November 21
Issue 23	November 22	December 5
Issue 24	December 7	December 19

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