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# New Mexico Register

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

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## **The New Mexico Register**

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# New Mexico Register

Volume XXIX, Issue 6

March 27, 2018

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## Notices of Rulemaking and Proposed Rules

### ARCHITECTS, BOARD OF EXAMINERS FOR

#### NOTICE OF PUBLIC HEARING

**Public Notice.** The New Mexico Board of Examiners for Architects (NMBEA) gives notice that it will conduct a public hearing at the Mesilla Community Center located at 2251 Calle De Santiago, Mesilla, New Mexico 88046 on April 27, 2018, at 10:00am. The purpose of the public hearing is to receive public input on the proposed amendment to 16.30.2 NMAC - Organization and Administration, the proposed amendment to 16.30.4 NMAC - Code of Conduct, and the proposed amendment to 16.30.5 NMAC - Enforcement. The board will hold a regular board meeting following the public hearing.

**Rule Information.** The purpose of the amendment to 16.30.2 NMAC is to include language for the board to appoint a student observer. The purpose of the amendment to 16.30.4 NMAC is to correct a reference in the rule. The purpose of the amendment to 16.30.5 NMAC is to clarify Section 61-15-5 NMSA 1978, Additional Duties of the Board and add a complaint reporting procedure to be followed at board meetings.

**The statutory authorization follows:** Section 61-15-4 NMSA 1978 grants the board authority to make rules not inconsistent with law.

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

**Public Comment.** Interested parties may provide comment on the proposed amendments of this state rule at the public hearing or may submit written comments to Jackie Holmes, New Mexico Board of Examiners for Architects, P. O. Box 509, Santa Fe, New Mexico 87504, or by electronic mail at [nmbea@state.nm.us](mailto:nmbea@state.nm.us), or fax to (505) 476-4829. All written comments must be received

no later than 5:00 p.m. (MDT) on the date of the public hearing. The public comment period is from March 27, 2018 to April 26, 2018 at 5:00 p.m. (MDT).

Copies of the proposed rules may be accessed through the New Board of Examiners for Architect's website at <http://www.bea.state.nm.us>, or may be obtained from Jackie Holmes by contacting her at (505) 476-4831 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Melarie Gonzales at (505) 476-4833 as soon as possible before the date set for the public hearing. The NMBEA requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

### HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

#### NOTICE OF PUBLIC HEARING

The New Mexico Human Services Department (HSD) will hold a public hearing to allow public comment on the proposed amendment of the Supplemental Nutrition Assistance Program (SNAP) regulations. The Department is proposing amendments to the following SNAP New Mexico Administrative Code (NMAC) sections: 8.139.400 and 8.139.410.

The Department is proposing to update language in NMAC 8.139.400.11A to align with the Code of Federal Regulations (CFR) for student eligibility and can be found at [https://www.ecfr.gov/cgi-bin/text-idx?SID=6767bb8e7db08a8896fadaf389dc2afe&mc=true&node=se7.4.273\\_15&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?SID=6767bb8e7db08a8896fadaf389dc2afe&mc=true&node=se7.4.273_15&rgn=div8).

This alignment includes defining enrollment for the purposes to

determine student status and clarifies the exemptions allowed for student eligibility.

The Department is also proposing to update NMAC 8.139.410 regarding the Department's responsibility to report the Immigration Status of illegal aliens to be in compliance with CFR and can be found at [https://www.ecfr.gov/cgi-bin/text-idx?SID=fd0f6f24c71a90c733e4e1b6bfafe0e9&mc=true&node=se7.4.273\\_14&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?SID=fd0f6f24c71a90c733e4e1b6bfafe0e9&mc=true&node=se7.4.273_14&rgn=div8).

The Department is proposing these rules pursuant to the statutory authority of the food stamp program as authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et. seq.). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282. State authority for administering the food stamp program is contained in Chapter 27 NMSA, 1978. Administration of the Human Services Department (HSD), including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983).

The Department is holding a public hearing to adopt the rules pursuant to Section 14-4-5.3 NMSA 1978. The hearing will be held on Monday, April 30, 2018, from 9:30 a.m. to 10:30 a.m., at the HSD Income Support Division (ISD) conference room, 2009 S. Pacheco Street, Santa Fe, NM. The conference room is located in Room 120 on the lower level of Pollon Plaza.

The Human Services Register Vol. 41 No. 2 outlining the proposed regulations is available on the HSD's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-registers.aspx>. Individuals wishing to testify or to request a copy of the proposed regulations should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87504-2348, or by calling 505-827-7250.

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

alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the Assistant General Counsel/American Disabilities Act Coordinator, at 505-827-6201 or through the New Mexico Relay system, at 711 or toll free at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written comments which must be received by 5:00 p.m. on the date of the hearing, Monday, April 30, 2018. Please send comments to:

Human Services Department  
P.O. Box 2348, Pollon Plaza  
Santa Fe, New Mexico 87504-2348

You may also send comments electronically to: [HSD-isdrules@state.nm.us](mailto:HSD-isdrules@state.nm.us)

## 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 in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on Tuesday, May 1, 2018, from 9:00 a.m. to 12:00 p.m. (MDT). The purpose of the public hearing is to receive public input on the proposed new rule 6.65.3 NMAC, Educator Preparation Program Accountability. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the proposed rule changes. Written comment will also be accepted at the hearing.

**Rule Change Information.** The

purpose of the proposed new rule is to improve and strengthen the preparation of day-one ready New Mexico educators by developing standard and transparent processes for the evaluation, review, and approval of educator preparation programs (EPPs) in the state. The rule provides a means for the PED to partner with all EPPs in the state. This will enable the PED to benchmark the productivity and accountability of EPPs to ensure that teachers are able and ready on their first day of instruction to positively impact student learning and development.

The proposed new rule defines the requirements for EPP practices including: entry and exit requirements, clinical practice experiences, candidate observation, alignment with department standards, and submittal of data to the PED. Programs will be evaluated with both a comprehensive site visit review and a scorecard. The results of both the site visit review and the scorecard will be used to determine the program's status and will drive the continuous improvement of the EPP. The proposed new rule maximizes the amount of feedback and data the PED and EPPs receive, allowing both the PED and the EPPs the ability to assess the productivity and accountability of New Mexico's educator work force.

#### **The statutory authorizations include the following:**

**Section 22-10A-19.2 NMSA 1978** grants the department the authority to design a uniform statewide educator accountability reporting system for all public post-secondary teacher and administrator preparation programs in New Mexico including alternative licensure programs.

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

**Public Comment.** Interested parties may provide comment on the proposed new rule at the public hearing or may submit written comments, or both, to Jamie Gonzales, Policy Division, New

Mexico Public Education Department, Room 101, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, or by electronic mail at [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us), or fax to (505) 827-6681. All written comments must be received no later than 5:00 p.m. (MDT) on May 1, 2018. The PED encourages the early submission of written comments. The public comment is from March 27, 2018 to May 1, 2018 at 5:00 p.m. (MDT).

Copies of the proposed rules may be accessed through the New Mexico Public Education Department's website under the "Public Notices" link at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from Jamie Gonzales at (505) 827-7889 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Jamie Gonzales at (505) 827-7889 as soon as possible before the date set for the public hearing. The PED requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

## 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 in Mabry Hall, located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on Thursday, May 17, 2018 from 9:00 a.m. to 12:00 p.m. (MDT). The purpose of the public hearing is to receive public input on the proposed new rule 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement. At the

hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the proposed new rule. Written comment will also be accepted at the hearing.

**Rule Change Information.** This rule will support students in achieving reading proficiency. The rule establishes the criteria for providing data-driven interventions for students, parent and family communication, providing parents with options to address student progress in reading, and standards for reading proficiency and promotion. In addition, this rule outlines the standards for identifying students who are not proficient in reading and the process schools must follow for these students.

**The statutory authorizations include the following:**

**Section 22-2-1 NMSA 1978** gives the department the authority to adopt, promulgate, and enforce rules necessary to the department's exercise of authority over the control, management, and direction of all public schools.

**Sections 22-2C-1 to 13, NMSA 1978** define the criteria for student proficiency, remediation, and promotion.

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

**Public Comment.** Interested parties may provide comment on the proposed new rule at the public hearing or may submit written comments, or both, to Jamie Gonzales, Policy Division, New Mexico Public Education Department, Room 101, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, or by electronic mail at [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us), or fax to (505) 827-6681. All written comments must be received no later than 5:00 p.m. (MDT) on Thursday, May 17, 2018. The PED encourages the early submission of written comments. The public comment period is from March

27, 2018 to May 17, 2018 at 5:00 p.m. (MDT).

Copies of the proposed rule may be accessed through the New Mexico Public Education Department's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from Jamie Gonzales at (505) 827-7889 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Jamie Gonzales at (505) 827-7889 as soon as possible before the date set for the public hearing. The PED requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

**PUBLIC SAFETY,  
DEPARTMENT OF  
LAW ENFORCEMENT  
ACADEMY**

**NOTICE OF PUBLIC HEARING**

The New Mexico Law Enforcement Academy Board will hold a public hearing to allow public comment on the proposed amendment to 10.29.7 NMAC. The hearing will be held on Tuesday, May 15, 2018, at 9:00 a.m., at the New Mexico Law Enforcement Academy (NMLEA) Main Building, Auditorium, 4491 Cerrillos Road, Santa Fe, NM.

The Board, under the statutory authority granted by Section 29-7-4 NMSA 1978, is proposing amendments to the following:

**10.29.7 NMAC Police and Telecommunicators In-Service Training Requirements**

Proposed Rule change summary: The proposed rule revisions would bring the in-service training requirements current in the new training cycle as well as clarify timelines for current

training cycles without requiring a rule change every two years for the future. These revisions also will add consistency in both their language as well as compliance with applicable statutory citations. Lastly, they will provide clarity to agencies, satellite academies, officers, telecommunicators and the general public. These proposed rule revisions will comply with the board's rules and rule making requirements contained in Title 1, Chapter 24, Part 25 of the default procedural rule for rule making, which is in compliance with House Bill 58.

The proposed regulations changes are available on the NMLEA Board's website at: <https://www.lea.nm.gov/images/BoardandMinutes/10.29.7-NMAC-Replacement-Rule.pdf>. Individuals wishing to comment, or who wish to request a copy of the proposed regulations, should contact: Layla Reyes at the New Mexico Law Enforcement Academy, 4491 Cerrillos Road, Santa Fe, NM 87507, or by calling 505-827-9255 no later than May 11, 2017.

A full section-by-section description of the proposed changes rationale can be found at: <https://www.lea.nm.gov/images/BoardandMinutes/10.29.7-Rationale.pdf>, or by contacting Layla Reyes at the New Mexico Law Enforcement Academy at the address and contact information provided below.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any NMLEA public hearing, program, or service, please contact: Layla Reyes at the New Mexico Law Enforcement Academy. The Academy requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written comments which must be received by 4:30 p.m. on Friday, May 11, 2018. Please send comments to:



New Mexico Law Enforcement Academy  
c/o Layla Reyes - NMAC  
4491 Cerrillos Road  
Santa Fe, New Mexico 87507

You also may send comments electronically to: [laylad.reyes@state.nm.us](mailto:laylad.reyes@state.nm.us)

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**REGULATION AND LICENSING DEPARTMENT  
BODY ART PRACTITIONERS,  
BOARD OF**

**PUBLIC RULE HEARING AND  
REGULAR BOARD MEETING**

The New Mexico Board of Body Art Practitioners (“Board”) will hold a rule hearing and board meeting on Monday, May 7, 2018, beginning at 9:00 a.m. at the Regulation and Licensing Department, located at 5500 San Antonio Dr., Albuquerque, NM, in the Main Conference Room. Following the rule hearing, the Board will convene a board meeting to discuss and adopt the proposed rules and take care of regular business.

The purpose of the rule hearing is to receive public input on the proposed amendments to the Board’s rules. The proposed rules clarify and consolidate provisions regarding new definitions, licensure requirements for permanent cosmetics, tattoo and body piercing-scarification.

To obtain and review copies of the proposed changes you may go to the Board’s website: [http://www.rld.state.nm.us/boards/BoardofBodyArtPractitioners\\_Rules\\_and\\_Laws.aspx](http://www.rld.state.nm.us/boards/BoardofBodyArtPractitioners_Rules_and_Laws.aspx) or contact the Boards and Commissions Division at 505.476.4622.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Richard Espinoza, Board Administrator via electronic mail at [richard.espinoza@state.nm.us](mailto:richard.espinoza@state.nm.us) or by regular mail at P.O. Box 25101, Santa

Fe, NM 87504 no later than Monday, April 23, 2018. Persons wishing to present their written comments at the rule hearing will need to provide 15 copies of any written comment or proposed language change for distribution to the Board members and staff.

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, please contact: Richard Espinoza, Board Administrator 505.476.4622.

**Statutory Authority: Sections 61-17B-16, 61-17B-4, 61-17B-5 NMSA 1978; Section 61-1-34 NMSA 1978.**

**Summary of Proposed Changes:**

**16.36.1 NMAC – General Provisions**

This part adds new definitions, removes language no longer relevant, and sets out the requirements for posting licenses.

**16.36.2 – Licensure Requirements**

This part will be repealed and replaced. The amendments to this part consolidate all the requirements for body art apprentice licensure and reorganize the entire section. There is new language about apprentice license and permanent cosmetics license. Redundant language was deleted. The order of operations was streamlined and the board can now gather more detailed information about an applicant. The practitioner license is no longer available as it is changed to a sponsor license. The part consolidates all body art practitioners’ license requirements. The training requirements were clarified. Three sections are specific to body piercing-scarification apprenticeship training. The training hours were reduced to 1200 hours. There is another section specific to tattoo. In the specific part to Permanent Cosmetics the hours of training were increased to 255 for health and safety reasons. The part provides new sections for

expedited licensure for military service members, expired licenses and crossover hours.

**16.36.3 – Requirements for establishments**

The part was amended to reflect separation requirements in establishments based on recommendations from the department of health and regulation and licensing department inspectors.

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**REGULATION AND LICENSING DEPARTMENT  
OSTEOPATHIC MEDICINE,  
BOARD OF**

**PUBLIC RULE HEARING AND  
REGULAR BOARD MEETING**

The New Mexico Board of Osteopathic Medicine (“Board”) will hold a rule hearing and board meeting on Friday, May 4, 2018, beginning at 8:30 a.m. at the Regulation and Licensing Department, located at 2550 Cerrillos Road, Santa Fe, NM, in the Rio Grande Conference Room. Following the rule hearing, the Board will convene a board meeting to discuss and adopt the proposed rules and take care of regular business.

The purpose of the rule hearing is to receive public input on the proposed repeal and replace of the Board’s current rules pursuant to the Osteopathic Medicine Act that consolidated the Osteopathic Medicine and Surgery Act and the Osteopathic Physician’s Assistants Act. The proposed rules provide parts on definitions, licensure requirements, fees, continuing education, telemedicine, prescribing controlled substances, and discipline and a separate part addressing licensure and supervision of a physician’s assistant.

**Summary of Proposed Rules:**

**16.17.1 NMAC - General Provisions**

This part includes definitions and information on public records, information sharing, board election of officers, teleconference and change of information.

**16.17.2 NMAC - Application for Licensure, Qualifications and Fees**

This part addresses qualification and application procedures for all levels of licensure, including the new telemedicine license. All the fees are listed in this part.

**16.17.3 NMAC - Renewal and Continuing Education Requirements**

This part sets out the requirements for continuing medical education and renewal of licensure.

**16.17.4 NMAC - Prescribing and Distribution of Controlled Substances**

This part lays out the guidelines for prescribing controlled substances and using/registering with the prescription monitoring program.

**16.17.5 NMAC - Revocation or Refusal of Licensure**

This part sets out the disciplinary process.

**16.17.6 NMAC - Reinstatement**

This part defines the process for reinstatement of a license.

**16.17.7 NMAC - Licensure for Military Service Members, Spouses and Veterans**

This part sets out the process for expedited licensure for military service members, spouses and veterans.

**16.17.8 NMAC - Physicians Supervising Pharmacist Clinicians**

This part lays out the requirements for osteopathic physicians supervising pharmacist clinicians.

**16.17.9 NMAC - Physician's Assistants: Licensure and Practice Requirements**

This part deals with physician's assistants. It defines the requirements for physician assistant licensure when using a New Mexico licensed osteopathic physician as a supervising physician. It sets out the Continuing Medical Education requirements to be more in line with national standards, focuses on competency of

the physician assistants, and allows for the designation of a temporary supervising physician.

To obtain and review copies of the proposed changes you may go to the Board's website: <http://www.rld.state.nm.us/boards/OsteopathicMedicineRulesandLaws.aspx> or contact the Boards and Commissions Division at 505.476.4622.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Roberta Perea, Board Administrator via electronic mail at [roberta.perea@state.nm.us](mailto:roberta.perea@state.nm.us) or by regular mail at P.O. Box 25101, Santa Fe, NM 87504 no later than Monday, April 23, 2018. Persons wishing to present their written comments at the rule hearing will need to provide 15 copies of any written comment or proposed language change for distribution to the Board members and staff.

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, please contact: Roberta Perea, Board Administrator 505.476.4622.

Statutory authority for all the rules: Sections 61-10-5, 61-10-6.1, 61-10-11.1, 61-10-11.2, 61-10-15, 61-10-15.1, 61-10-19, 61-10-21; Section 24-2D-3 NMSA 1978; Section 61-1-34 NMSA 1978.

**WORKFORCE  
SOLUTIONS,  
DEPARTMENT OF  
NOTICE OF RULEMAKING**

The New Mexico Department of Workforce Solutions ("Department") hereby gives notice that it will conduct a public hearing in the auditorium of the State Personnel Office located at 2600 Cerrillos Road, Santa Fe, New Mexico on May 1,

2018 from 9:00 am to 12:00 pm.

The purpose of the public hearing will be to obtain input and public comment on the repeal of 11.2.4 through 11.2.21 NMAC to be replaced with 11.2.4 NMAC, WIOA Local Governance, 11.2.5 NMAC, WIOA One Stop System and Partnerships, 11.2.8 NMAC, WIOA Tile I Programs Service Delivery, 11.2.19 NMAC, WIOA Oversight and Monitoring, 11.2.20 NMAC, Technical Assistance Incentives and Sanctions, and 11.2.21 NMAC Grievance and Complaint Resolution.

Under Title I of the Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. Chapter 32, Subchapter I, WIOA USDOL Final Rule 20 C.F.R. 683, et al and Section 50-14-1 et seq, NMSA 1978, the Department is the agency responsible for the Workforce Innovation and Opportunity Act and has legal authority for rule making.

The proposed rules are streamlined from multiple rules on the same subject matter condensed to a few more specific rules regarding the WIOA program to allow for an easier understanding of the processes. The proposed rules amend the language from the "Workforce Investment Act" (WIA) to the "Workforce Innovation and Opportunity Act" and the proposed rules are updated to conform to current federal rules, requirements, and definitions. Specifically, 11.2.21 NMAC updates the EEOC procedures to include the federal rule updates.

Interested individuals may testify at the public hearing or submit written comments to State of New Mexico Department of Workforce Solutions, 401 Broadway NE, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman. Written comments must be received no later than 5 p.m. on April 30, 2018. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may

be accessed at <http://www.dws.state.nm.us/> or obtained by calling Andrea Christman at (505) 841-8478 or sending an email to Andrea.Christman@state.nm.us. The proposed rules will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Christman as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

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**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.

**ENERGY, MINERALS AND  
NATURAL RESOURCES  
DEPARTMENT  
MINING AND MINERALS  
DIVISION**

**TITLE 19 NATURAL  
RESOURCES AND WILDLIFE  
CHAPTER 10 NON-COAL  
MINING  
PART 15 MINING  
COMMISSION RULEMAKING**

**19.10.15.1 ISSUING**  
**AGENCY:** Energy, Minerals and Natural Resources Department, Mining and Minerals Division, and Mining Commission.  
[19.10.15.1 NMAC - N, 3/27/2018]

**19.10.15.2 SCOPE:** 19.10.15 NMAC applies to persons or entities engaged in rulemaking proceedings before the commission.  
[19.10.15.2 NMAC - N, 3/27/2018]

**19.10.15.3 STATUTORY AUTHORITY:** 19.10.15 NMAC is adopted pursuant to the New Mexico Mining Act, Sections 69-36-1 to 69-36-20 NMSA 1978 (1993, as amended), and the State Rules Act, Section 14-4-5.8 NMSA 1978 (2017).  
[19.10.15.3 NMAC - N, 3/27/2018]

**19.10.15.4 DURATION:**  
Permanent.  
[19.10.15.4 NMAC - N, 3/27/2018]

**19.10.15.5 EFFECTIVE DATE:** March 27, 2018, unless a later date is cited at the end of a section.  
[19.10.15.5 NMAC - N, 3/27/2018]

**19.10.15.6 OBJECTIVE:** The objectives of 19.10.15 NMAC are:  
**A.** to establish procedures used in rulemaking proceedings before the commission;  
**B.** to encourage

the participation in the hearings the commission conducts for the promulgation of rules;

**C.** to make possible the effective presentation of the evidence and points of view of parties and members of the public; and

**D.** to assure that rulemaking hearings are conducted in a fair and equitable manner.  
[19.10.15.6 NMAC - N, 3/27/2018]

**19.10.15.7 DEFINITIONS:**  
See Section 69-36-3 NMSA 1978 and 19.10.1.7 NMAC for definitions. See also Section 14-4-2 NMSA 1978 (2017) for the definitions of “proceeding”, “proposed rule” and “rule”.  
[19.10.15.7 NMAC - N, 3/27/2018]

**19.10.15.8 LIBERAL CONSTRUCTION:** 19.10.15 NMAC shall be liberally construed to carry out its purpose.  
[19.10.15.8 NMAC - N, 3/27/2018]

**19.10.15.9 SEVERABILITY:**  
If any portion or application of 19.10.15 NMAC is held invalid, the remainder, or its application to other persons or situations, shall not be affected.  
[19.10.15.9 NMAC - N, 3/27/2018]

**19.10.15.10 POWERS AND DUTIES OF COMMISSION AND HEARING OFFICER:**

**A. Commission.**  
The commission shall exercise all powers and duties prescribed under 19.10.15 NMAC and not otherwise delegated to the hearing officer or the commission administrator.

**B. Hearing officer.**  
The commission shall designate a hearing officer for each hearing who shall exercise all powers and duties prescribed or delegated under 19.10.15 NMAC. The hearing officer

may be an appointed member of the commission. The hearing officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial consideration of issues arising in proceedings 19.10.15 NMAC governs, including, but not limited to:

**(1)** conducting hearings under 19.10.15 NMAC;  
**(2)** taking, admitting or excluding evidence, examining witnesses and allowing post-hearing submissions;  
**(3)** making such orders as may be necessary to preserve decorum and to protect the orderly hearing process;

**(4)** if requested by the commission, preparing and filing a report of the hearing, with recommendations for commission action;

**(5)** requesting parties to file original documents with the commission administrator; and

**(6)** requesting a party to submit a proposed statement of reason in support of the commission’s decision.  
[19.10.15.10 NMAC - N, 3/27/2018]

**19.10.15.11 GENERAL PROVISIONS - COMPUTATION OF TIME:**

**A. Computation of time.** In computing any time prescribed or allowed by these rules, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday or legal state holiday, in which event the time is extended

until the end of the next day, which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service upon him or her, and service is by mail, three days is added to the prescribed period. The three-day extension does not apply to any deadline under the act.

**B. Extension of time.**

The commission or hearing officer may grant an extension of time for the filing of any document upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties.

[19.10.15.11 NMAC - N, 3/27/2018]

**19.10.15.12 GENERAL**

**PROVISIONS - RECUSAL:** No commission member shall participate in an action for which he or she would be disqualified under Section 69-36-6 NMSA 1978 of the Mining Act, the Governmental Conduct Act, or any other applicable law.

[19.10.15.12 NMAC - N, 3/27/2018]

**19.10.15.13 GENERAL**

**PROVISIONS - EX PARTE**

**DISCUSSIONS:** At no time after the initiation and before the conclusion of a proceeding under 19.10.15 NMAC, shall the division, or any other party, interested participant or their representatives discuss ex parte the merits of the proceeding with any commission member or the hearing officer.

[19.10.15.13 NMAC - N, 3/27/2018]

**19.10.15.14 DOCUMENT REQUIREMENTS - FILING AND SERVICE OF DOCUMENTS:**

**A.** The filing of any document that 19.10.15 NMAC requires shall be accomplished by delivering the document to the commission administrator and the commission legal counsel.

**B.** Any person filing any document shall:

(1) provide the commission administrator with nine original hard copies of the document and one identical bookmarked PDF file via email or personal delivery on

CD or jump drive;

(2) if the document is a notice of intent to present technical testimony filed by any person other than the petitioner, serve a copy thereof on the petitioner;

(3) any document filed pursuant to 19.10.15 NMAC shall be filed with the commission administrator at least 20 days before any meeting at which the commission will consider the document. If the document is a motion seeking an order from the hearing officer in a rulemaking hearing, the motion must also be served at the same time with the hearing officer and the commission's legal counsel.

**C.** Whenever 19.10.15 NMAC requires service of a document, service shall be made by delivering a copy to the person to be served by mailing it, or, if that person has agreed, by sending it by facsimile or by electronic transmission to that person. Agreement to be served by facsimile or electronic transmission may be evidenced by placing the person's facsimile number or email address on a document filed pursuant to 19.10.15 NMAC service shall also be made upon the commission's legal counsel. If a person is represented by an attorney, service of the document shall be made on the attorney. Service by mail is complete upon mailing the document. Service by facsimile or electronic transmission is accomplished when the transmission of the document is completed and acknowledged by designated recipient.

[19.10.15.14 NMAC - N, 3/27/2018]

**19.10.15.15 EXAMINATION OF DOCUMENTS FILED:**

**A. Examination allowed.** Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy any document filed in any rulemaking proceeding before the commission. Such documents shall be made available on the division's website.

**B. Cost of**

**duplication.** The person seeking copies of documents shall bear the cost of duplicating documents. [19.10.15.15 NMAC - N, 3/27/2018]

**19.10.15.16 PREHEARING PROCEDURES - PETITION FOR RULE CHANGE:**

**A.** Any person, may file a petition with the commission to adopt, amend or repeal any rule within the commission's jurisdiction.

**B.** The petition shall be in writing and shall include a statement of the reasons for the rule change. The petition shall cite the relevant statutes that authorize the commission to adopt the proposed rules and shall estimate the time that will be needed to conduct the rules hearing, if possible. A copy of the entire rule, including the proposed rule change, indicating any language proposed to be added or deleted, shall be attached to the petition. The entire rule and its proposed changes shall be submitted to the commission in redline fashion, and shall include line numbers. Any document that does not include all the items required to be in a petition shall be returned to the petitioner along with a copy of these rules and a check-off list of required items, and the petitioner will be asked to resubmit his or her petition in the form 19.10.15 NMAC requires.

**C.** The commission shall determine at a public meeting within 60 days of submission of a petition for rule change whether to hold a hearing on the petition. Any person may respond to the petition for rule change either in writing prior to the public meeting or in person at the public meeting. If the commission determines not to hold a hearing, the commission's determination shall be subject to review as contemplated by Section 69-36-16 NMSA 1978.

**D.** If the commission determines to hold a public hearing on the petition, it may issue such orders specifying procedures for conduct of the hearing, in addition to those provided by 19.10.15 NMAC, as may be necessary and appropriate to fully inform the commission of the matters at issue in the hearing or control the

conduct of the hearing. Such orders may include requirements for giving additional public notice, holding pre-hearing conferences, filing direct written testimony prior to the hearing or limiting testimony or cross-examination.

[19.10.15.16 NMAC - N, 3/27/2018]

**19.10.15.17 RULEMAKING NOTICE:**

**A.** The commission shall distribute a notice of proposed rulemaking at least 60 days before the hearing on the rule change by:

- (1) posting the notice on the division website;
- (2) posting the notice on the sunshine portal;
- (3) making the notice available in the division's district offices, if any;
- (4) sending the notice by mail or electronic mail to persons who have made a written request to the commission for advance notice of hearings and who have provided a mail or an electronic mail address to the commission;
- (5) providing the notice to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees; and

(6) publishing the notice in the New Mexico register and in a newspaper of general circulation in the state.

**B. Content.** The notice shall include:

- (1) a summary of the full text of the proposed rule;
- (2) a short explanation of the purpose of the proposed rule;
- (3) a citation to the specific legal authority authorizing the proposed rule and the adoption of the rule;
- (4) information on how a copy of the full text of the proposed rule may be obtained, including an internet link to the full text;

(5) information on how a person may comment on the proposed rule, where comments will be received and when

comments are due;

(6)

information on where and when a rulemaking hearing will be held and how a person may participate in the hearing; and

(7)

a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained.

[19.10.15.17 NMAC - N, 3/27/2018]

**19.10.15.18 ENTRY OF APPEARANCE:**

Any person who is or may be affected by the proposed rule change may file an entry of appearance as a party. The entry of appearance shall be filed no later than 10 days before the date of the hearing on the petition. In the event of multiple entries of appearance by those affiliated with one interest group, the hearing officer may consolidate the entries, or divide the service list to avoid waste of resources. The filing of a petition or a notice of intent to present technical testimony shall serve as an entry of appearance.

[19.10.15.18 NMAC - N, 3/27/2018]

**19.10.15.19 MOTIONS:**

**A. General.** Any person who has filed an entry of appearance may file a motion. All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion and state the relief sought. Each motion shall be accompanied by an affidavit, certificate or other evidence relied upon and shall be served as provided by 19.10.15.14 NMAC.

**B. Unopposed motions.** An unopposed motion shall state that the concurrence of all other parties was obtained. The moving party shall submit a proposed order approved by all parties for the hearing officer's review.

**C. Opposed motions.** Any opposed motion shall state either that concurrence was sought and denied, or why concurrence was not sought. A memorandum brief in support of such motion may be filed

with the motion.

**D. Response to**

**motions.** Any party upon whom an opposed motion is served shall have 15 days after service of the motion to file a response. A non-moving party failing to file a timely response shall be deemed to have waived any objection to granting the motion.

**E. Reply to response.**

The moving party may, but is not required to, submit a reply to any response within 10 days after the response is served.

**F. Decision.**

The hearing officer shall decide all motions without a hearing, unless otherwise ordered by the hearing officer sua sponte or upon any party's written request. The hearing officer shall refer any motion that would effectively dispose of the matter, and may refer any other motion to the commission for a decision. A procedural motion may be ruled upon prior to the expiration of the time for response; any response received thereafter shall be treated as a request for reconsideration of the ruling. The hearing officer shall file all original documents with the commission administrator.

[19.10.15.19 NMAC - N, 3/27/2018]

**19.10.15.20 TECHNICAL TESTIMONY:**

**A.** Any person, including the petitioner, who intends to present technical testimony at the hearing shall, no later than 10 working days prior to the hearing, file a notice of intent to present technical testimony. The notice shall:

(1) identify the person for whom the witness(es) will testify;

(2) identify each technical witness the person intends to present and state each witness's qualifications, including a description of their educational and work background, and the anticipated duration of each witness's testimony;

(3) if the hearing will be conducted at multiple locations, indicate the location or locations at which the witnesses will be present;

(4) summarize or 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 rule 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.

**B.** The hearing officer may enforce 19.10.15.20 NMAC's provisions through such action as the hearing officer deems appropriate, including exclusion of the technical testimony of any witness for whom a notice of intent was not timely filed. If such testimony is admitted, the hearing officer may keep the record open after the hearing to allow responses to such testimony. The hearing officer may also require that parties submit written rebuttal testimony prior to hearing.  
[19.10.15.20 NMAC - N, 3/27/2018]

**19.10.15.21 PARTICIPATION BY PUBLIC:**

**A.** Any member of the 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 non-technical exhibits with his or her testimony, so long as the exhibit is not unduly repetitious of the testimony.

**B.** A member of the 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. Written comment may be submitted electronically, mailed or delivered to the commission administrator.  
[19.10.15.21 NMAC - N, 3/27/2018]

**19.10.15.22 PARTICIPATION BY CONFERENCE TELEPHONE OR SIMILAR DEVICE:**

**A.** A commission member may participate in a meeting or hearing of the commission by

means of a conference telephone or other similar communications equipment, when it is otherwise difficult or impossible for the member to attend the meeting or hearing in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting or hearing are able to hear any member of the commission who speaks at the meeting or hearing. A commission member's participation by such means shall constitute presence in person at the meeting or hearing. A commission member who wishes to participate in a rulemaking hearing in this manner must receive permission from the hearing officer sufficiently in advance of the rulemaking hearing so as to permit the commission administrator to arrange for adequate telephone hookup.

**B.** A witness may participate in a rulemaking hearing of the commission by means of a telephone conference or other similar communications equipment when an emergency or circumstances make it impossible for the witness to attend the hearing in person. A witness who wishes to participate in a rulemaking hearing in this manner must receive permission from the hearing officer in advance of the rulemaking hearing. No witness may participate in a rulemaking hearing by telephone conference unless he or she makes a request sufficiently in advance of the rulemaking hearing to permit the commission administrator to arrange for an adequate telephone or electronic hookup. Each witness participating remotely must be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the hearing must be able to hear any witness who speaks during the hearing.  
[19.10.15.22 NMAC - N, 3/27/2018]

**19.10.15.23 HEARING PROCEDURES - CONDUCT OF HEARINGS:**

**A.** The rules of civil

procedure and the rules of evidence shall not apply.

**B.** The hearing officer shall conduct the hearing to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome, or burdening the record with unnecessary repetition. The hearing shall proceed as follows.

(1) The hearing shall begin with an opening statement from the hearing officer. The statement shall identify the hearing's nature and subject matter, and explain the procedures to be followed.

(2) The hearing officer may allow a brief opening statement by any party who wishes to make one.

(3) Unless otherwise ordered, the petitioner shall present the proposed rule first.

(4) The hearing officer shall establish an order for the testimony of other participants. The order may be based upon notices of intent to present technical testimony, sign-in sheets and the availability of witnesses who cannot be present for the entire hearing.

(5) If the hearing continues for more than one day, the hearing officer shall provide an opportunity each day for testimony from members of the public. Members of the public who wish to present testimony should indicate their intent on a sign-in sheet.

(6) The hearing officer may allow a brief closing argument by any person who wishes to make one.

(7) At the close of the hearing, the hearing officer shall determine whether to keep the record open for written submittals in accordance with 19.10.15.27 NMAC. If the record is kept open, the hearing officer shall determine and announce the subject(s) on which submittals will be allowed and the deadline for filing the submittals.

**C.** If the hearing is conducted at multiple locations, the hearing officer may require the

petitioner's witnesses to summarize their testimony or be available for cross-examination at each location. Other participants are not required to testify at more than one location, and the hearing officer may prohibit a witness from testifying at more than one location.  
[19.10.15.23 NMAC - N, 3/27/2018]

**19.10.15.24 TESTIMONY AND CROSS-EXAMINATION:**

**A.** The hearing officer shall allow all interested persons a reasonable opportunity to submit arguments and to examine witnesses testifying at the hearing.

**B.** All testimony will be taken under oath or affirmation, which may be accomplished in mass or individually.

**C.** The hearing officer shall admit any relevant evidence, unless the hearing officer determines that the evidence is unduly repetitious. The hearing officer shall require all oral testimony be limited to the position of the witness in favor of or against the proposed rule.

**D.** Any person who testifies at the hearing may be subject to cross-examination on the subject matter of his or her direct testimony and matters affecting his or her credibility. Any person attending the hearing may conduct such cross-examination if required for a full and true disclosure of matters at issue in the hearing. The hearing officer may limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.  
[19.10.15.24 NMAC - N, 3/27/2018]

**19.10.15.25 EXHIBITS:**

**A.** Any person offering an exhibit at hearing shall provide at least an original and 12 copies for the commission, and a sufficient number of copies for persons attending the hearing.

**B.** All exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially. If a person offers multiple exhibits, he or she

shall identify each exhibit with an index tab or by other appropriate means.

**C.** Large charts and diagrams, models and other bulky exhibits are discouraged. If visual aids are used, legible copies shall be submitted for inclusion in the record.  
[19.10.15.25 NMAC - N, 3/27/2018]

**19.10.15.26 TRANSCRIPT OF PROCEEDINGS:**

Unless specified by the commission or hearing officer, an audio recording and index shall be made of the hearing. If the hearing officer allows verbatim stenographic transcripts, the petitioner shall bear the cost of the original verbatim transcript of the proceeding and of providing a copy for each commission member and commission counsel.  
[19.10.15.26 NMAC - N, 3/27/2018]

**19.10.15.27 POST-HEARING SUBMISSIONS:**

The hearing officer may allow the record to remain open for a reasonable time following the hearing's conclusion for written submission of additional evidence, comments and arguments and proposed statements of reasons. The hearing officer's determination shall be announced at the hearing's conclusion. In considering whether the record will remain open, the hearing officer shall consider the reasons why the material was not presented during the hearing, the significance of the material to be submitted and the necessity for a prompt decision.  
[19.10.15.27 NMAC - N, 3/27/2018]

**19.10.15.28 HEARING OFFICER'S REPORT:**

If the commission directs, the hearing officer shall file a report of the hearing. The report shall identify the issues addressed at the hearing, identify the parties' final proposals and the evidence supporting those proposals, including discussion or recommendations as requested by the commission, and shall be filed with the commission administrator within the time specified by the commission. The commission administrator shall promptly notify each party that the

hearing officer's report has been filed and shall provide a copy of the report along with a notice of any deadline set for comments on that report.  
[19.10.15.28 NMAC - N, 3/27/2018]

**19.10.15.29 DELIBERATION AND DECISION:**

**A.** If a quorum of the commission attended at the hearing, and if the hearing notice indicated that a decision might be made at the hearing's conclusion, the commission may immediately deliberate and decide on the proposed rule.

**B.** If the commission does not reach a decision at the hearing's conclusion, the commission administrator, following receipt of the transcript, will promptly furnish a copy of the transcript to each member that did not attend the hearing and, if necessary, to other members, commission counsel and the hearing officer. Exhibits provided to those persons at the time of the hearing need not be supplied again.

**C.** The commission shall reach its decision on the proposed rule within 60 days following the close of the record or the date the hearing officer's report is filed, whichever is later.

**D.** If the commission determines during its deliberations that additional testimony or documentary evidence is necessary for a proper decision on the proposed rule change, the commission may, consistent with the requirements of due process, reopen the hearing for such additional evidence only.

**E.** The commission shall issue its decision on the proposed rule change in a suitable format, which shall include its reasons for the action taken.

**F.** The commission's written decision is the official version of the commission's action, and the reasons for that action. Other written or oral statements by commission members are not recognized as part of the commission's official decision or reasons.

**G.** The adoption of the commission's written decision shall constitute the adoption of the rule.



Within 15 days after adoption of the written decision, the commission shall file the rule and the written decision in accordance with the State Rules Act. [19.10.15.29 NMAC - N, 3/27/2018]

**19.10.15.30 NOTICE OF COMMISSION ACTION:** The commission administrator shall provide notice of the commission's action in accordance with the State Rules Act. [19.10.15.30 NMAC - N, 3/27/2018]

**19.10.15.31 APPEALS AND STAYS - APPEAL OF RULES:**  
**A.** Appeal of any rule change by the commission shall be taken in accordance with governing law.

**B.** The appellant shall serve a copy of the notice of appeal on the commission and on each party.

**C.** The appellant shall be responsible for preparation of a sufficient number of copies of the hearing record at the appellant's expense.

**D.** Unless otherwise provided by governing law, the filing of an appeal shall not act as a stay of the rule change being appealed. [19.10.15.31 NMAC - N, 3/27/2018]

**HISTORY: [RESERVED]**

## ENVIRONMENT DEPARTMENT

The New Mexico Environmental Improvement Board approved at its February 21, 2018 hearing, to repeal its rule 20.1.1 NMAC, Rulemaking Procedures – Environmental Improvement Board (replaced 08/27/2006) and replace it with 20.1.1 NMAC, Rulemaking Procedures – Environmental Improvement Board, (adopted on 03/01/2018) and effective 04/14/2018.

## ENVIRONMENT DEPARTMENT

### TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 1 ENVIRONMENTAL PROTECTION GENERAL PART 1 RULEMAKING PROCEDURES - ENVIRONMENTAL IMPROVEMENT BOARD

**20.1.1.1 ISSUING AGENCY:** Environmental Improvement Board. [20.1.1.1 NMAC - Rp, 20.1.1.1 NMAC, 04/14/2018]

**20.1.1.2 STATUTORY AUTHORITY:** This part is adopted pursuant to Sections 14-4-1 to -11, 50-9-12, 74-1-5, 74-1-8, 74-1-9, 74-2-6, 74-3-5, 74-4-5 and 74-9-27 NMSA 1978. [20.1.1.2 NMAC - Rp, 20.1.1.2 NMAC, 04/14/2018]

**20.1.1.3 SCOPE:** This part governs the procedures in all rulemaking hearings before the board, except to the extent that this part may be inconsistent with specific procedures in governing law. In cases where this part is inconsistent with any rulemaking procedures specified in governing law, the procedures in governing law apply, rather than the procedures in this part. [20.1.1.3 NMAC - Rp, 20.1.1.3 NMAC, 04/14/2018]

**20.1.1.4 DURATION:** Permanent. [20.1.1.4 NMAC - Rp, 20.1.1.4 NMAC, 04/14/2018]

**20.1.1.5 EFFECTIVE DATE:** April 14, 2018, unless a later date is cited at the end of a section. [20.1.1.5 NMAC - Rp, 20.1.1.5 NMAC, 04/14/2018]

**20.1.1.6 OBJECTIVE:** The purposes of this part are:  
**A.** to standardize the procedures used in rulemaking

proceedings before the board;

**B.** to encourage public participation in the hearings conducted by the board for the promulgation of regulations;

**C.** to make possible the effective presentation of the evidence and points of view of parties and members of the general public; and

**D.** to assure that board hearings are conducted in a fair and equitable manner.

[20.1.1.6 NMAC - Rp, 20.1.1.6 NMAC, 04/14/2018]

**20.1.1.7 DEFINITIONS:**  
 As used in this part:

**A.** “board administrator” means the department employee designated by the secretary of environment to provide staff support to the board;

**B.** “board” means the environmental improvement board;

**C.** “department” means the New Mexico environment department;

**D.** “document” means any paper, exhibit, pleading, motion, response, memorandum, decision, order or other written or tangible item that is filed in a proceeding under this part, or brought to or before the board for its consideration, but does not include a cover letter accompanying a document transmitted for filing;

**E.** “exhibit” means any document or tangible item submitted for inclusion in the hearing record;

**F.** “general public” includes any person attending a hearing who has not submitted a notice of intent to present technical testimony;

**G.** “governing law” means the statute, including any applicable case law, which authorizes and governs the decision on the proposed regulatory change;

**H.** “hearing officer” means the person designated by the board to conduct a hearing under this part;

**I.** “hearing record” means:

(1) the transcript of proceedings; and  
 (2) the record proper;

**J.** “participant” means any person who participates in a rulemaking proceeding before the board;

**K.** “party” means the petitioner; any person filing a notice of intent to present technical testimony, and any person filing an entry of appearance;

**L.** “person” means an individual or any entity, including federal, state and local governmental entities, however organized;

**M.** “petitioner” means the person who petitioned the board for the regulatory change that is the subject of the hearing;

**N.** “provide to the public” means for the board to distribute rulemaking information by:

- (1) posting it on the board’s website;
- (2) posting it on the New Mexico sunshine portal;
- (3) making it available at the department’s district, field, and regional offices;
- (4) sending

it by email to persons who have made a written request for notice of announcements addressing the subject of the rulemaking proceeding and who have provided an email address to the board administrator;

- (5) sending it by email to persons who have participated in the rulemaking and who have provided an email address to the board administrator;
- (6) sending

written notice that includes, at a minimum, an internet and street address where the information may be found to persons who provided a postal address; and

- (7) providing it to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees.

**O.** “record proper” means all documents related to the hearing and received or generated by the board prior to the beginning, or after the conclusion, of the hearing, including, but not limited to:

- (1) the petition for hearing and any response thereto;

(2) the minutes (or an appropriate extract of the minutes) of the meeting at which the petition for hearing was considered, and of any subsequent meeting at which the proposed regulatory change was discussed;

- (3) the notice of hearing;
- (4) affidavits of publication;
- (5) a copy of all publications in the New Mexico register relating to the proposed rule;
- (6) notices of intent to present technical testimony;
- (7) all written pleadings, including motions and responsive pleadings and orders;
- (8) a copy of any technical information that was relied upon in formulating the final rule;
- (9) statements for the public record or other relevant materials received by the agency during the public comment period;
- (10) the hearing officer’s report, if any;
- (11) a copy of the full text of the initial proposed rule, the full text of the final adopted rule, and the concise explanatory statement filed with the state records administrator;
- (12) post-hearing submissions, if allowed;
- (13) the audio recordings (or an appropriate extract of the recordings) of the meeting(s) at which the board deliberated on the adoption of the proposed regulatory change;
- (14) the board’s decision and the reasons therefore; and
- (15) any corrections made by the state records administrator pursuant to Section 14-4-3 NMSA 1978.

**P.** “regulation” means any rule, regulation or standard promulgated by the board and affecting one or more persons, besides the board and the department, except for any order or decision issued in connection with the disposition of any case involving a particular matter as

applied to a specific set of facts;

**Q.** “regulatory change” means the adoption, amendment or repeal of a regulation;

**R.** “service” means personally delivering a copy of the document, exhibit or pleading to the person required by this part to be served; mailing it to that person; or, if that person has agreed, sending it by facsimile or electronic transmission; if a person is represented by an attorney, service of the document shall be made on the attorney; service by mail is complete upon mailing the document; service by facsimile or electronic transmission is complete upon the transmission of the document.

**S.** “technical testimony” means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing; and

**T.** “transcript of proceedings” means the verbatim record (audio recording or stenographic) of the proceedings, testimony and argument in the matter, together with all exhibits proffered at the hearing, whether or not admitted into evidence, including the record of any motion hearings or prehearing conferences.

[20.1.1.7 NMAC - Rp, 20.1.1.7 NMAC, 04/14/2018]

**20.1.1.8 - 20.1.1.106**

[RESERVED]

**20.1.1.107 POWERS AND DUTIES OF BOARD AND HEARING OFFICER:**

**A.** Board: The board shall exercise all powers and duties prescribed under this part and not otherwise delegated to the hearing officer or the board administrator.

**B.** Hearing officer: The board shall designate a hearing officer for each hearing who shall exercise all powers and duties prescribed or delegated under this part. The hearing officer may be a member of the board. The hearing officer shall conduct a fair and

equitable proceeding, assure that the facts are fully elicited and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial consideration of issues arising in proceedings governed by this part, including, but not limited to:

- (1) conducting hearings under this part;
- (2) taking, admitting or excluding evidence, examining witnesses and allowing post-hearing submissions;
- (3) making such orders as may be necessary to preserve decorum and to protect the orderly hearing process;
- (4) if requested by the board, preparing and filing a report of the hearing, with recommendations for board action;
- (5) requesting parties to file original documents with the board administrator; and
- (6) requesting a party to submit a proposed statement of reason in support of the board's decision.

[20.1.1.107 NMAC - Rp, 20.1.1.107 NMAC, 04/14/2018]

**20.1.1.108 LIBERAL**

**CONSTRUCTION:** This part shall be liberally construed to carry out their purpose.

[20.1.1.108 NMAC - Rp, 20.1.1.108 NMAC, 04/14/2018]

**20.1.1.109 SEVERABILITY:**

If any part or application of this part is held invalid, the remainder of this part, or their application to other persons or situations, shall not be affected.

[20.1.1.109 NMAC - Rp, 20.1.1.109 NMAC, 04/14/2018]

**20.1.1.110 GENERAL PROVISIONS - COMPUTATION OF TIME:**

**A.** Computation of time: In computing any period of time prescribed or allowed by this part, except as otherwise specifically provided, the day of the event from which the designated period begins

to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or legal state holiday, in which event the time is extended until the end of the next day, which is not a Saturday, Sunday, or legal state holiday. Whenever a party must act within a prescribed period after service upon him, and service is by mail, three days is added to the prescribed period. The three-day extension does not apply to any deadline under the act.

**B. Extension of time:**

The board or hearing officer may grant an extension of time for the filing of any document upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties.

[20.1.1.110 NMAC - Rp, 20.1.1.110 NMAC, 04/14/2018]

**20.1.1.111 GENERAL**

**PROVISIONS - RECUSAL:** No board member shall participate in any action in which his or her impartiality of fairness may reasonably be questioned, and the member shall recuse himself or herself in any such action by giving notice to the board and the general public by announcing this recusal on the record. In making a decision to recuse himself or herself, the board member may rely upon the Governmental Conduct Act, Sections 10-16-1 through 10-16-18 NMSA 1978, the Financial Disclosures Act, Sections 10-16A-1 through 10-16A-8 NMSA 1978, or any other relevant authority.

[20.1.1.111 NMAC - Rp, 20.1.1.111 NMAC, 04/14/2018]

**20.1.1.112 GENERAL PROVISIONS - EX PARTE**

**DISCUSSIONS:** At no time after the initiation and before the conclusion of a proceeding under this part, shall the department, or any other party, interested participant, or their representatives discuss ex parte the merits of the proceeding with any board member or the hearing officer.

[20.1.1.112 NMAC - Rp, 20.1.1.112 NMAC, 04/14/2018]

**20.1.1.113 - 20.1.1.199**

[RESERVED]

**20.1.1.200 DOCUMENT REQUIREMENTS - FILING AND SERVICE OF DOCUMENTS:**

**A.** The filing of any document as required by this part shall be accomplished by delivering the document to the board administrator and the board legal counsel.

**B.** Any person filing any document shall:

(1) provide the board administrator with the original and nine copies of the document, provided that the board administrator may waive the requirement to provide nine copies if an electronic copy of the original is provided in a format acceptable for distribution to the board members;

(2) if the document is a notice of intent to present technical testimony filed by any person other than the petitioner, serve a copy thereof on the petitioner;

(3) any document filed pursuant to this part shall be filed with the board administrator at least 20 days before any meeting at which the board will consider the document. If the document is a motion seeking an order from the hearing officer in a rules hearing, the motion must also be served at the same time with the hearing officer and the board legal counsel.

**C.** Whenever this part requires service of a document, service shall be made by delivering a copy to the person to be served by mailing it, or, if that person has agreed, by sending it by facsimile or by electronic transmission to that person. Agreement to be served by facsimile or electronic transmission may be evidenced by placing the person's facsimile number or email address on a document filed pursuant to this part. Service shall also be made upon the board's legal counsel. If a person is represented by an attorney, service of the document shall be made on the attorney. Service by mail is complete upon mailing the

document. Service by facsimile or electronic transmission is complete upon transmission of the document.

**D.** The petitioner and any person who has filed a timely notice of intent to present technical testimony under this part may inspect all documents that have been filed in a proceeding in which they are involved as participants. Such inspection shall be permitted in accordance with the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978. The board administrator shall notify the petitioner and all persons who have filed a timely notice of intent to present technical testimony by email whenever any document is filed in a proceeding under this part. Any such person who does not provide an email address shall instead be notified by mail.

**E.** All documents filed under this part shall be made available to any person for inspection upon request and shall, to the extent required by law, be made available on the department's website and the New Mexico sunshine portal.

**F.** The board administrator shall provide copies of all documents to each board member at least 15 days before the meeting at which the board will consider the documents. With regard to those documents filed in conjunction with any rules hearing, the hearing officer may make exception to this requirement.

[20.1.1.200 NMAC - Rp, 20.1.1.200 NMAC, 04/14/2018]

**20.1.1.201 EXAMINATION OF DOCUMENTS FILED:**

**A.** Examination allowed: Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy any document filed in any rulemaking proceeding before the board. Such documents shall be made available by the board administrator, as appropriate, and shall also be made available on the New Mexico sunshine portal. If the board administrator determines that

any part of the rulemaking record cannot be practicably displayed or is inappropriate for public display on the New Mexico sunshine portal, the board administrator shall describe that part of the record, shall note on the New Mexico sunshine portal that the part of the record is not displayed, and shall provide instructions for accessing or inspecting that part of the record.

**B.** Cost of duplication: The cost of duplicating documents shall be borne by the person seeking copies of such documents, but the board administrator shall not charge a fee for providing the notice of proposed rulemaking in electronic form.

[20.1.1.201 NMAC - Rp, 20.1.1.201 NMAC, 04/14/2018]

**20.1.1.202 - 20.1.1.299 [RESERVED]**

**20.1.1.300 PREHEARING PROCEDURES - PETITION FOR REGULATORY CHANGE:**

**A.** Any person may file a petition with the board to adopt, amend or repeal any regulation within the jurisdiction of the board.

**B.** The petition shall be in writing and shall include a statement of the reasons for the regulatory change. The petition shall cite the relevant statutes that authorize the board to adopt the proposed rules and shall estimate the time that will be needed to conduct the rules hearing, if at all possible. A copy of the entire rule, including proposed regulatory change, indicating any language proposed to be added or deleted, shall be attached to the petition. The entire rule and its proposed changes shall be submitted to the board in redline fashion, and shall include line numbers. Any document that does not include all the items required to be in a petition shall be returned to the petitioner along with a copy of these rules and a check-off list of required items, and the petitioner will be asked to resubmit the petition in the form required by these rules.

**C.** The board shall determine, at a public meeting

occurring at least 15 days and no later than 60 days, after receipt of the petition, whether or not to hold a public hearing on the proposal. Any person may respond to the petition either in writing prior to the public meeting or in person at the public meeting.

**D.** If the board determines to hold a public hearing on the petition, it may issue such orders specifying procedures for conduct of the hearing, in addition to those provided by this part, as may be necessary and appropriate to fully inform the board of the matters at issue in the hearing or control the conduct of the hearing. Such orders may include requirements for giving additional public notice, holding pre-hearing conferences, filing direct testimony in writing prior to the hearing, or limiting testimony or cross-examination.

[20.1.1.300 NMAC - Rp, 20.1.1.300 NMAC, 04/14/2018]

**20.1.1.301 NOTICE OF HEARINGS:**

**A.** Unless otherwise allowed by governing law and specified by the board, the board shall provide to the public notice of the proposed rulemaking at least 60 days prior to the hearing. Notice of the proposed rulemaking shall include publication in at least one newspaper of general circulation in the state, publication in the New Mexico register, and such other means of providing notice as the board may direct or are required by law.

**B.** The notice of proposed rulemaking shall state:

(1) the subject of the proposed rule, including a summary of the full text of the proposed rule and a short explanation of the purpose of the proposed rule;

(2) a citation to the specific legal authority authorizing the proposed rule and a short explanation of the purpose of the proposed rule;

(3) a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full

text of the technical information may be obtained;

(4) the statutes, regulations and procedural rules governing the conduct of the hearing;

(5) the manner in which persons may present their views or evidence to the board, including the time, place, and information on participating in the public hearing;

(6) the location where persons may secure copies of the full text of the proposed regulatory change;

(7) an internet link providing free access to the full text of the proposed rule; and

(8) if applicable, that the board may make a decision on the proposed regulatory change at the conclusion of the hearing.

[20.1.1.301 NMAC - Rp, 20.1.1.301 NMAC, 04/14/2018]

#### **20.1.1.302 TECHNICAL TESTIMONY:**

**A.** Any person, including the petitioner, who intends to present technical testimony at the hearing shall, no later than 20 days prior to the hearing, file a notice of intent to present technical testimony with the board administrator. The notice 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.

**B.** The hearing officer may enforce the provisions of this section through such action as the hearing officer deems appropriate, including, but not limited to, exclusion of the technical testimony of any witness for whom a notice of intent was not timely filed. If such testimony is admitted, the hearing officer may keep the record open after the hearing to allow responses to such testimony. The hearing officer may also require that written rebuttal testimony be submitted prior to hearing.

[20.1.1.302 NMAC - Rp, 20.1.1.302 NMAC, 04/14/2018]

#### **20.1.1.303 ENTRY OF APPEARANCE:**

Any person may file an entry of appearance as a party. The entry of appearance shall be filed with the board administrator no later than 20 days before the date of the hearing on the petition. In the event of multiple entries of appearance by those affiliated with one interest group, the hearing officer may consolidate the entries, or divide the service list to avoid waste of resources.

[20.1.1.303 NMAC - Rp, 20.1.1.303 NMAC, 04/14/2018]

#### **20.1.1.304 PARTICIPATION BY GENERAL PUBLIC:**

**A.** 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 non-technical exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

**B.** 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. Written comment must be mailed or delivered

to the board administrator; email comments will not be accepted. However, comments may be submitted electronically on the board webpage.

**C.** If the board changes the date of the hearing or the deadline for submitting comments as stated in the notice of proposed rulemaking, the board shall provide to the public notice of the change.

[20.1.1.304 NMAC - Rp, 20.1.1.304 NMAC, 04/14/2018]

#### **20.1.1.305 LOCATION OF HEARING:**

Unless otherwise provided by governing law, the board may hold hearings on proposed regulatory changes of statewide application in Santa Fe or within any area of the state substantially affected by the proposed regulatory change, and shall hold hearings on proposed changes of local application within the area affected by the proposal.

[20.1.1.305 NMAC - Rp, 20.1.1.305 NMAC, 04/14/2018]

#### **20.1.1.306 PARTICIPATION BY CONFERENCE TELEPHONE OR OTHER SIMILAR DEVICE:**

**A.** A member of the board may participate in a meeting or hearing of the board by means of a conference telephone or other similar communications equipment, when it is otherwise difficult or impossible for the member to attend the meeting or hearing in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting or hearing are able to hear any member of the board who speaks at the meeting or hearing. A board member's participation by such means shall constitute presence in person at the meeting or hearing. A board member who wishes to participate in a rules hearing in this manner must receive permission from the hearing officer sufficiently in advance of the rules hearing so as to permit the board administrator to arrange for adequate telephone hookup.

**B.** A witness may

participate in a rules hearing of the board by means of a telephone conference or other similar communications equipment when an emergency or circumstances make it impossible for the witness to attend the hearing in person. A witness who wishes to participate in a rules hearing in this manner must receive permission from the hearing officer sufficiently in advance of the rules hearing. No witness may participate in a rules hearing by telephone conference unless he makes a request sufficiently in advance of the rules hearing so as to permit the board administrator to arrange for an adequate telephone hookup. Each witness participating by telephone must be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the hearing must be able to hear any witness who speaks during the hearing.  
 [20.1.1.306 NMAC - Rp, 20.1.1.306 NMAC, 04/14/2018]

**20.1.1.307 MOTIONS:**

**A. General:** All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion and state the relief sought. Each motion shall be accompanied by an affidavit, certificate or other evidence relied upon and shall be served as provided by 20.1.1.200 NMAC.

**B. Unopposed** motions: An unopposed motion shall state that the concurrence of all other parties was obtained. The moving party shall submit a proposed order approved by all parties for the hearing officer's review.

**C. Opposed motions:** Any opposed motion shall state either that concurrence was sought and denied, or why concurrence was not sought. A memorandum brief in support of such motion may be filed with the motion.

**D. Response to** motions: Any party upon whom an opposed motion is served shall have 15 days after service of the motion to file a response. A non-moving party failing to file a timely response

shall be deemed to have waived any objection to the granting of the motion.

**E. Reply to response:** The moving party may, but is not required to, submit a reply to any response within 10 days after service of the response.

**F. Decision:** All motions shall be decided by the hearing officer without a hearing, unless otherwise ordered by the hearing officer *sua sponte* or upon written request of any party. The hearing officer shall refer any motion that would effectively dispose of the matter, and may refer any other motion to the board for a decision. A procedural motion may be ruled upon prior to the expiration of the time for response; any response received thereafter shall be treated as a request for reconsideration of the ruling. The hearing officer shall file all original documents with the board administrator.

[20.1.1.307 NMAC - Rp, 20.1.1.307 NMAC, 04/14/2018]

**20.1.1.308 - 20.1.1.399 [RESERVED]**

**20.1.1.400 HEARING PROCEDURES - CONDUCT OF HEARINGS:**

**A.** The rules of civil procedure and the rules of evidence shall not apply.

**B.** The hearing officer shall conduct the hearing so as to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome, or burdening the record with unnecessary repetition. The hearing shall proceed as follows.

(1) The hearing shall begin with an opening statement from the hearing officer. The statement shall identify the nature and subject matter of the hearing and explain the procedures to be followed.

(2) The hearing officer may allow a brief opening statement by any party who wishes to make one.

(3) Unless

otherwise ordered, the petitioner shall present its case first.

(4) The hearing officer shall establish an order for the testimony of other participants. The order may be based upon notices of intent to present technical testimony, sign-in sheets and the availability of witnesses who cannot be present for the entire hearing.

(5) If the hearing continues for more than one day, the hearing officer shall provide an opportunity each day for testimony from members of the general public. Members of the general public who wish to present testimony should indicate their intent on a sign-in sheet.

(6) The hearing officer may allow a brief closing argument by any person who wishes to make one.

(7) At the close of the hearing, the hearing officer shall determine whether to keep the record open for written submittals in accordance with 20.1.1.404 NMAC. If the record is kept open, the hearing officer shall determine and announce the subject(s) on which submittals will be allowed and the deadline for filing the submittals.

**C.** If the hearing is conducted at multiple locations, the hearing officer may require the petitioner's witnesses to summarize their testimony or be available for cross-examination at each location. Other participants are not required to testify at more than one location, and the hearing officer may prohibit a witness from testifying at more than one location.

[20.1.1.400 NMAC - Rp, 20.1.1.400 NMAC, 04/14/2018]

**20.1.1.401 TESTIMONY AND CROSS-EXAMINATION:**

**A.** All testimony will be taken under oath or affirmation which may be accomplished in mass or individually.

**B.** The hearing officer shall admit any relevant evidence, unless the hearing officer determines that the evidence is incompetent or unduly repetitious. The hearing

officer shall require all oral testimony be limited to the position of the witness in favor of or against the proposed rule.

**C.** Any person who testifies at the hearing is subject to cross-examination on the subject matter of his or her direct testimony and matters affecting his or her credibility. Any person attending the hearing is entitled to conduct such cross-examination as may be required for a full and true disclosure of matters at issue in the hearing. The hearing officer may limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.

[20.1.1.401 NMAC - Rp, 20.1.1.401 NMAC, 04/14/2018]

**20.1.1.402 EXHIBITS:**

**A.** Any person offering an exhibit at hearing, other than a document filed and served before the hearing, shall provide at least an original and nine copies for the board, and a sufficient number of copies for every other party.

**B.** All exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially. If a person offers multiple exhibits, he shall identify each exhibit with an index tab or by other appropriate means.

**C.** Large charts and diagrams, models and other bulky exhibits are discouraged. If visual aids are used, legible copies shall be submitted for inclusion in the record. [20.1.1.402 NMAC - Rp, 20.1.1.402 NMAC, 04/14/2018]

**20.1.1.403 TRANSCRIPT OF PROCEEDINGS:**

**A.** Unless specified by the board or hearing officer, a verbatim transcript shall be made of the hearing. The cost of the original transcript of the proceeding and of providing a copy for each board member shall be borne by the petitioner.

**B.** Any person may obtain a copy of the transcript of a proceeding. It shall be obtained

directly from the court reporter, and the cost of the transcript shall be paid directly to the source.

[20.1.1.403 NMAC - Rp, 20.1.1.403 NMAC, 04/14/2018]

**20.1.1.404 POST-HEARING SUBMISSIONS:**

The hearing officer may allow the record to remain open for a reasonable period of time following the conclusion of the hearing for written submission of additional evidence, comments and arguments, and proposed statements of reasons. The hearing officer's determination regarding post-hearing submissions shall be announced at the conclusion of the hearing. In considering whether the record will remain open, the hearing officer shall consider the reasons why the material was not presented during the hearing, the significance of the material to be submitted and the necessity for a prompt decision.

[20.1.1.404 NMAC - Rp, 20.1.1.404 NMAC, 04/14/2018]

**20.1.1.405 HEARING OFFICER'S REPORT:**

If the board directs, the hearing officer shall file a report of the hearing. The report shall identify the issues addressed at the hearing, identify the parties' final proposals and the evidence supporting those proposals, including discussion or recommendations as requested by the board, and shall be filed with the board administrator within the time specified by the board. The board administrator shall promptly notify each party that the hearing officer's report has been filed and shall provide a copy of the report along with a notice of any deadline set for comments on that report.

[20.1.1.405 NMAC - Rp, 20.1.1.405 NMAC, 04/14/2018]

**20.1.1.406 DELIBERATION AND DECISION:**

**A.** If a quorum of the board attended the hearing, and if the hearing notice indicated that a decision might be made at the conclusion of the hearing, the board may immediately deliberate and make a decision on the proposed regulatory

change.

**B.** If the board does not reach a decision at the conclusion of the hearing, the board administrator, following receipt of the transcript, will promptly furnish a copy of the transcript to each board member that did not attend the hearing and, if necessary, to other board members, board counsel and the hearing officer. Exhibits provided to those persons at the time of the hearing need not be supplied again.

**C.** The board shall reach its decision on the proposed regulatory change within 60 days following the close of the record or the date the hearing officer's report is filed, whichever is later.

**D.** If, during the course of its deliberations, the board determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed regulatory change, the board may, consistent with the requirements of due process, reopen the hearing for such additional evidence only.

**E.** The board shall issue its decision on the proposed regulatory change in a suitable format, which shall include its reasons for the action taken.

**F.** The board's written decision is the official version of the board's action, and the reasons for that action. Other written or oral statements by board members are not recognized as part of the board's official decision or reasons.

**G.** If the board fails to act on a proposed rule within two years after the notice of proposed rulemaking is published in the New Mexico register, the rulemaking is automatically terminated unless the board acts to extend the period for an additional two years by filing a statement of good cause for the extension in the rulemaking record. If the board extends the rulemaking period, it shall provide for additional public participation, comments, and hearing prior to adopting the rule.

**H.** The board may terminate a rulemaking at any time by publishing a notice of termination in the New Mexico register. If the

board terminates a rulemaking in this manner, it shall provide to the public notice of its action.

[20.1.1.406 NMAC - Rp, 20.1.1.406 NMAC, 04/14/2018]

**20.1.1.407 NOTICE OF BOARD ACTION:**

**A.** The board administrator shall provide to the public notice of the board's action and a concise explanatory statement.

**B.** The adopted rule shall not take effect unless within 15 days of adoption of the rule, the board delivers the final rule to the state records administrator, accompanied by a concise explanatory statement that contains:

(1) the date that the board adopted the rule;

(2) a reference to the specific statutory or other authority authorizing the rule; and

(3) any findings required by law for adoption of the rule.

**C.** Adoption of the final rule occurs upon signature of the written decision.

**D.** If the state records administrator notifies the board of having made any minor, non-substantive corrections in spelling, grammar, and format in the filed rule, the board administrator shall provide to the public notice of the correction within 30 days of receiving the state records administrator's record of correction.

[20.1.1.407 NMAC - Rp, 20.1.1.407 NMAC, 04/14/2018]

**20.1.1.408 - 20.1.1.499 [RESERVED]**

**20.1.1.500 APPEALS AND STAYS - APPEAL OF REGULATIONS:**

**A.** Appeal of any regulatory change by the board shall be taken in accordance with governing law.

**B.** The appellant shall serve a copy of the notice of appeal on the board and on each party.

**C.** The appellant shall be responsible for preparation

of a sufficient number of copies of the hearing record at the expense of appellant.

**D.** Unless otherwise provided by governing law, the filing of an appeal shall not act as a stay of the regulatory change being appealed. [20.1.1.500 NMAC - Rp, 20.1.1.500 NMAC, 04/14/2018]

**20.1.1.501 STAY OF BOARD REGULATIONS:**

**A.** Any person who is or may be affected by a rule adopted by the board may file a motion with the board seeking a stay of that rule or regulatory change. The motion shall include the reason for, and the legal authority supporting, the granting of a stay. The movant shall file the motion with the board administrator at least 30 days before the meeting at which the board will consider the motion. The movant shall serve the motion for a stay as provided by this part, and shall further serve all parties in the rulemaking proceeding. The board chair will decide at which meeting the stay motion will be heard.

**B.** Unless otherwise provided by governing law, the board may grant a stay pending appeal of any regulatory change promulgated by the board. The board may only grant a stay if good cause is shown after a motion is filed and a hearing is held.

**C.** In determining whether good cause is present for the granting of a stay, the board, upon at least a two-thirds vote of the members voting shall consider:

(1) the likelihood that the movant will prevail on the merits of the appeal;

(2) whether the moving party will suffer irreparable harm if a stay is not granted;

(3) whether substantial harm will result to other interested persons; and

(4) whether harm will ensue to the public interest.

**D.** If no action is taken within 60 days after filing of the motion, the board shall be deemed to have denied the motion for stay.

[20.1.1.501 NMAC - Rp, 20.1.1.501 NMAC, 04/14/2018]

**HISTORY OF 20.1.1 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records, state records center and archives under: EIB 93-1, Rules of Procedure for Environmental Improvement Board Regulation Hearings, filed 1/21/93.

**History of Repealed Material:** 20 NMAC 1.1, Rulemaking Procedures - Environmental Improvement Board (filed 10/27/95) repealed 08/27/06. 20.1.1 NMAC, Rulemaking Procedures - Environmental Improvement Board, filed 08/27/06, repealed 04/14/18.

**Other History:**

EIB 93-1, Rules of Procedure for Environmental Improvement Board Regulation Hearings (filed 1/21/93) was renumbered, reformatted, amended and replaced by 20 NMAC 1.1, Rulemaking Procedures - Environmental Improvement Board, effective 11/30/95. 20 NMAC 1.1, Rulemaking Procedures - Environmental Improvement Board (filed 10/27/95) was renumbered, reformatted, and replaced by 20.1.1 NMAC, Rulemaking Procedures - Environmental Improvement Board, effective 08/27/06.

**HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION**

**Explanatory note:** HSD will be issuing a temporary emergency rule which was implemented and effective for benefit month October, 2017. HSD is amending the rule to be in compliance with the federal law which would otherwise place HSD in violation. This temporary emergency process does not permanently amend or repeal the existing rule. The emergency rule will only remain in effect until a permanent rule takes effect under normal rule making process.



**This is an emergency amendment to 8.139.610, Section 12, effective 04/01/2018.**

**8.139.610.12 GENERAL (BENEFIT AMOUNT):**

**A.** The SNAP benefit amount to be issued depends on the number of eligible members in the household and the net monthly income used to determine eligibility.

**(1)** HSD uses a 30-day calendar month to determine a household's SNAP benefit amount. A household applying on the 31st of the month will be treated as if it applied on the 30th.

**(2)** When a household is determined eligible, the SNAP benefit amount is calculated, issuance authorization is processed that night, and SNAP benefits are issued the following work day.

**B. Maximum food stamp benefit amount:**

**(1)** The maximum food stamp allotment (MFSA or maximum food stamp benefit amount) "means the diet required to feed a family of four persons consisting of a man and a woman 20 through 30 years of age, a child six through eight years of age, and a child nine through 11 years of age determined in accordance with USDA calculations". The cost of such a diet is the basis for determining uniform SNAP benefit amounts for all households regardless of their actual composition. To develop maximum SNAP benefit amounts, USDA makes adjustments in the MFSA taking into account economies of scale and other adjustments required by law.

**(2)** Except when SNAP benefits are prorated and when reductions are made at the national level, a household's monthly SNAP benefit amount is equal to the MFSA for the household's size reduced by thirty percent of its net monthly income. The basis of issuance tables (supplement 400-B) contain the maximum SNAP benefit amounts by household size and income.

**(3)** If the tables (supplement 400-B) are

not used, the maximum SNAP benefit amount can be calculated by multiplying a household's net income by thirty percent, rounding the result up to the next whole dollar, and subtracting that amount from the MFSA for the appropriate household size (Subsection E of 8.139.500.8 NMAC).

**C. Initial month:** A household's SNAP benefit amount for the initial month of certification will be based on the day of the month the household applies for SNAP benefits. The household receives SNAP benefits from the date of application to the end of the month, unless the applicant household consists of residents of a public institution.

**(1) Applying from institutions:** For households applying for SSI and SNAP benefits before release from an institution, the SNAP benefit amount for the initial month of certification will be based on the date of the month the household is released from the institution. The household will receive SNAP benefits from the date of the household's release from the institution to the end of the month.

**(2) Benefits less than \$10:** If the initial month's calculations yield a SNAP benefit amount of less than \$10, then no issuance will be made for the initial month. For households entitled to no SNAP benefits in the initial month, but eligible in subsequent months, the caseworker shall certify a household beginning with the month of application.

**D. Minimum benefit amount:**

**(1)** Except during an initial month, all eligible one- and two-person households, including categorically eligible households, will receive a minimum monthly SNAP benefit amount [of \$16.00].

**(2)** [~~All eligible households with three or more members entitled to \$1.00, \$3.00, and \$5.00 SNAP benefit amounts will receive SNAP benefit amounts of \$2.00, \$4.00, and \$6.00, respectively, to correspond with~~

~~current coupon book denominations.]~~  
**Determination:** Minimum amounts are determined by federal guidelines and may be adjusted each year.

All eligible one and two person households, including categorically eligible households, will receive the minimum monthly SNAP benefit amount, which can be found at <https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information>. [02/01/95, 07/01/98; 8.139.610.12 NMAC - Rn, 8 NMAC 3.FSP.620, 05/15/2001; A, 02/28/2007; A/E, 04/01/2009; A, 07/15/2013; A/E, 04/01/2018]

**PUBLIC EDUCATION DEPARTMENT**

The New Mexico Public Education Department approved, at its 12/5/2017 hearing, to repeal its rule 6.32.2 NMAC, Guidelines for Implementing Bilingual Multicultural Education Programs (filed 11/30/2005) and replace it with 6.32.2 NMAC, Guidelines for Implementing Bilingual Multicultural Education Programs, (adopted on 3/5/2018) and effective 7/1/2018.

The New Mexico Public Education Department approved at its 03/05/2018 hearing, to repeal its rule 6.41.4 NMAC, Standard for Providing Transportation to Eligible Students (filed 11/15/2005) and replace it with 6.41.4 NMAC, Standard for Providing Transportation to Eligible Students, (adopted on 03/14/2018) and effective 03/27/2018.

**PUBLIC EDUCATION DEPARTMENT**

**TITLE 6 PRIMARY AND SECONDARY EDUCATION  
CHAPTER 32 EDUCATIONAL STANDARDS - BILINGUAL MULTICULTURAL EDUCATION  
PART 2 GUIDELINES FOR IMPLEMENTING BILINGUAL MULTICULTURAL EDUCATION PROGRAMS**

**6.32.2.1 ISSUING AGENCY:** Public Education Department herein after the department.  
[6.32.2.1 NMAC - Rp, 6.32.2.1 NMAC, 7/1/2018]

**6.32.2.2 SCOPE:** This regulation applies to public schools receiving bilingual state funding, K-12.  
[6.32.2.2 NMAC - Rp, 6.32.2.2 NMAC, 7/1/2018]

**6.32.2.3 STATUTORY AUTHORITY:** This regulation is adopted pursuant to Sections 22-2-1, 22-23-1 through 22-23-6 NMSA 1978.  
[6.32.2.3 NMAC - Rp, 6.32.2.3 NMAC, 7/1/2018]

**6.32.2.4 DURATION:** Permanent; in the event that any provision of this regulation is deemed to be legally void, the remainder of the provisions of the regulation shall remain in full force and effect until otherwise repealed or expired.  
[6.32.2.4 NMAC - Rp, 6.32.2.4 NMAC, 7/1/2018]

**6.32.2.5 EFFECTIVE DATE:** July 1, 2018, unless a later date is cited at the end of a section.  
[6.32.2.5 NMAC - Rp, 6.32.2.5 NMAC, 7/1/2018]

**6.32.2.6 OBJECTIVE:** This regulation provides requirements for developing and implementing bilingual multicultural education and language revitalization programs in accordance with Section 22-23-4 NMSA 1978 and standards for excellence, Subsection B of 6.30.2.11 NMAC and supports the state of New Mexico’s long-standing policy in furthering bilingual multicultural education.  
[6.32.2.6 NMAC - Rp, 6.32.2.6 NMAC, 7/1/2018]

**6.32.2.7 DEFINITIONS:** As used in the Bilingual Multicultural Education Act, Section 22-23-1 NMSA 1978:

**A. “bilingual**

**multicultural education program”** means a program using two languages, including English and the home or heritage language, as a medium of instruction in the teaching and learning process;

**B. “culturally and linguistically different”** means students who are of a different cultural background than mainstream United States culture and whose home or heritage language, inherited from the student’s family, tribe or country of origin, is a language other than English;

**C. “district”** means a public school or any combination of public schools in a district;

**D. “English language learner”** means a student whose first or heritage language is not English and who is unable to read, write, speak or understand English at a level comparable to grade-level English proficient peers and native English speakers;

**E. “heritage language”** means a language other than English that is inherited from a family, tribe, community or country of origin;

**F. “home language”** means a language other than English that is the primary or heritage language spoken at home or in the community;

**G. “school board”** means a local school board; and

**H. “standardized curriculum”** means a district curriculum that is aligned with the state academic content standards, benchmarks and performance standards.  
[6.32.2.7 NMAC - Rp, 6.32.2.7 NMAC, 7/1/2018]

**6.32.2.8 DEPARTMENT DUTIES:** The department shall be responsible for carrying out the powers and duties as provided in the Bilingual Multicultural Education Act, Sections 22-23-1 through 22-23-6 NMSA 1978.  
[6.32.2.8 NMAC - Rp, 6.32.2.8 NMAC, 7/1/2018]

**6.32.2.9 PROGRAM**

**GOALS:** As stated in the Bilingual Multicultural Education Act, Section 22-23-1 NMSA 1978, the state’s bilingual multicultural education program goals are for all students, including English language learners, to:

**A.** become bilingual and biliterate in English and a second language, including Spanish, a Native American language (with appropriate approval from tribal councils or from other appropriate tribal entities with authority to make educational decisions on behalf of Native American children) or another language. For Native American languages that are oral only, the literacy component shall be measured only in the skill areas/ domains of listening, speaking, and comprehension; and

**B.** meet state academic content standards and benchmarks in all subject areas.  
[6.32.2.9 NMAC - Rp, 6.32.2.9 NMAC, 7/1/2018]

**6.32.2.10 PROGRAM ELIGIBILITY:** To be eligible for financial support, each program shall:

**A.** provide for the educational needs of linguistically and culturally different students, including Native American children and other students who may wish to participate, in grades kindergarten through 12, with priority to be given to programs in grades kindergarten through three, in any public school or any combination of public schools in a district;

**B.** fund programs for culturally and linguistically different students in the state in grades kindergarten through three, for which there is an identifiable need to improve the language capabilities of both English and the home language of these students, before funding programs at higher grade levels;

**C.** use two languages as mediums of instruction for any part or all of the curriculum of the grade levels within the program;

**D.** establish a parent advisory committee, representative of the languages and cultures of

all the students in the program, to assist and advise in the development, implementation, and evaluation of the program;

**E.** provide procedures to ensure that parental notification is given annually prior to program placement; and

**F.** provide personnel endorsed in bilingual education, modern classical and native languages, TESOL, or certified in Native American language and culture. The secretary of education may authorize other personnel to implement programs if qualified personnel are not available by the submission of an approved program design that addresses recruitment, professional development, and staffing patterns.

[6.32.2.10 NMAC - Rp, 6.32.2.10 NMAC, 7/1/2018]

#### **6.32.2.11 PROGRAM APPROVAL:**

**A.** A public school district shall submit an initial application to the department by the date of the preceding school year as specified by the department for each school requesting program approval. A proposed bilingual multicultural education program shall be eligible pursuant to Section 22-23-1 NMSA 1978 and 6.32.2 NMAC.

**B.** The initial application shall include:

(1) projected number of students to be served;

(2) assurances that all district and school personnel are knowledgeable of the requirements to comply with Section 22-23-1 NMSA 1978 and 6.32.2 NMAC; signatures of school board president, superintendent, bilingual multicultural education director, school principal, and a parent advisory committee representative who shall not be employed by the district or school;

(3) a program plan;

(4) a resource allocation plan that supports program implementation;

(5) evidence

of prior tribal consultation in program planning in accordance with the Indian Education Act 22-23A-1 through 22-23A-8 NMSA 1978; public schools providing a Native American language revitalization program, or other approved Native American bilingual multicultural education model, shall obtain approval from tribal councils or from other appropriate tribal entities with authority to make educational decisions on behalf of Native American children; and

(6) districts providing a Native American language revitalization program, or other approved Native American bilingual multicultural education model, shall provide notification of approval and the application approved by the department to tribal councils or other appropriate tribal entities with authority to make education decisions on behalf of Native American children.

**C.** The department shall review initial applications for approval. Districts with approved applications shall submit by the fortieth day of the target school year the following:

(1) instructional plan; and

(2) actual number of students to be served.  
[6.32.2.11 NMAC - Rp, 6.32.2.11 NMAC, 7/1/2018]

#### **6.32.2.12 PROGRAM ELEMENT - INSTRUCTION:**

**A.** Public schools providing an approved bilingual multicultural education program shall include:

(1) instruction to attain language proficiency and literacy skills in two languages, one of which is English;

(2) instruction to attain academic achievement in two languages, one of which is English;

(3) sheltered content instruction;

(4) standardized curriculum, including instructional materials with scope and sequence, that is aligned with

the state academic content standards, benchmarks and performance standards;

(5) instruction in the history and cultures of New Mexico; and

(6) culturally and linguistically responsive instruction designed to develop cross-cultural skills.

**B.** Public schools providing a Native American language revitalization program, or other approved Native American bilingual multicultural education model, shall obtain approval from tribal councils or from other appropriate tribal entities with authority to make educational decisions on behalf of Native American children. An approved program shall include:

(1) instruction to attain language proficiency and literacy skills in English and a Native American language (where tribal language is written); for Native American languages that are oral only, the literacy component shall be measured only in the skill areas or domains of listening, speaking and comprehension;

(2) instruction to attain academic achievement in English and a Native American language;

(3) sheltered content instruction;

(4) standardized curriculum, including instructional materials with scope and sequence, that is aligned with the state academic content standards, benchmarks and performance standards, unless otherwise agreed to in writing by the department in accordance with the Indian Education Act Article 23A;

(5) instruction in the history and cultures of New Mexico Native American tribes; and

(6) culturally and linguistically responsive instruction designed to develop cross-cultural skills.

**C.** The following content areas shall be included as appropriate:

(1) language arts in the home or heritage language - for funding purposes, time allotted for instruction in the home language must be equivalent to the time provided for English language arts and must be consecutive in nature (that is, not fragmented throughout the day);

(2) English language development - English language instruction to develop the English language proficiency of English language learners based on the student's English language proficiency level; instruction shall be distinct from content area instruction; and

(3) depending on the time allotted for program:

(a) content area instruction in the home or heritage language of the program that utilizes the student's language, history, and culture; or

(b) fine arts instruction in the home or heritage language of the program that utilizes the student's language, history, culture, and the arts traditions of the student's community.

D. All programs shall implement one or more of the following bilingual multicultural education models in the public school:

(1) dual language immersion: designed to develop proficiency in two languages;

(2) enrichment: designed to further develop the home language, as defined in Subsection G of Section 22-23-2 NMSA 1978, of fully English proficient students;

(3) heritage language: designed to support and revitalize a student's heritage language and culture through oral and written communication; for Native American languages that are oral only, the literacy component shall be measured only in the skill areas or domains of listening, speaking and comprehension;

(4) maintenance: designed to develop and maintain proficiency and literacy in the home language while developing a student's literacy and

oral skills in English; and

(5) transitional: designed to develop skills in the home language and culture while developing continued skills and proficiency in English. [6.32.2.12 NMAC - Rp, 6.32.2.12 NMAC, 7/1/2018]

**6.32.2.13 PROGRAM ELEMENT - PROFESSIONAL DEVELOPMENT:** Districts shall provide professional development to employees.

A. Public school districts shall provide professional development to teachers, Native American language and culture teachers, teacher assistants, instructional support personnel, principals, bilingual directors or coordinators, associate superintendents, superintendents, other instructional personnel, and financial officers in the areas of:

(1) research-based bilingual multicultural education, language revitalization programs and implications for instruction;

(2) best practices of English as a second language (ESL); English language development (ELD), bilingual multicultural education and language revitalization programs;

(3) classroom assessments that support academic and language development;

(4) principles of first and second language acquisition, including language revitalization, differentiated language instruction and sheltered content instruction; and

(5) effective practices of program implementation and program evaluation.

B. Bilingual multicultural education or language revitalization programs shall be part of the district's professional development plan as required in Subsection E of Section 22-23-5 NMSA 1978.

[6.32.2.13 NMAC - Rp, 6.32.2.13 NMAC, 7/1/2018]

**6.32.2.14 PROGRAM ELEMENT - ASSESSMENT:**

A. Trained personnel shall administer state-approved language proficiency assessments in English and the home or heritage language annually until proficiency in each language is achieved; public schools providing a Native American language revitalization program, or other approved Native American bilingual multicultural education model, shall obtain approval for language proficiency assessments from tribal councils or from other appropriate tribal entities with authority to make educational decisions on behalf of Native American children; for Native American languages that are oral only, the literacy component shall be measured only in the skill areas or domains of listening, speaking, and comprehension.

B. Public school districts shall comply with federal assessment requirements.

C. Students enrolled in this program shall participate in the New Mexico standards-based assessment (NMSBA) program.

D. In those grades that students do not participate in the New Mexico standards-based assessment program, the public school district shall develop and implement an assessment and evaluation program. [6.32.2.14 NMAC - Rp, 6.32.2.14 NMAC, 7/1/2018]

**6.32.2.15 PROGRAM EVALUATION:**

A. Bilingual multicultural education programs shall be evaluated by the department annually for effectiveness and for the appropriate use of funds generated by the bilingual cost differential in the funding formula. For the purposes of such evaluation, each district shall maintain academic achievement and language proficiency data for each school year of each program, which shall be updated annually. This data shall be provided to the department in an annual progress report submitted to the department by September 30 of the following school year. The annual

report shall include the following, by school and by model(s):

(1) verification that the program has identified and served students most in need (with priority given to K-3) based on language proficiency (English and home or heritage language) and academic achievement;

(2) a current analysis of language and academic assessment results demonstrating that participating students have made measurably significant growth toward meeting the state targets for language and academic proficiency;

(3) specific and measureable goals for the following school year, based on Paragraph (2) of Subsection A of 6.32.2.15 NMAC;

(4) verification that teachers, Native American language and culture teachers, teacher assistants, instructional support personnel, principals, bilingual directors or coordinators, associate superintendents, superintendents, other instructional personnel, and financial officers have participated in the districts professional development plan for the program;

(5) an expenditure report from the general ledger on the use of funds generated by the bilingual cost differential in the funding formula for the program; and

(6) districts providing a Native American language revitalization program, or other approved Native American bilingual multicultural education model, shall provide the annual progress report submitted to the department to tribal councils or other appropriate tribal entities with authority to make education decisions on behalf of Native American children.

**B.** The department shall compile and analyze the data submitted by public school districts and shall report annually to the appropriate interim legislative committee.

[6.32.2.15 NMAC - Rp, 6.32.2.15 NMAC, 7/1/2018]

**6.32.2.16 PROGRAM**

**RENEWAL:**

**A.** Based on program monitoring and review of the annual report, the department will determine whether the bilingual multicultural education program is compliant pursuant to Section 22-23-1 NMSA 1978 and 6.32.2 NMAC.

(1) If the department determines that a program is compliant, the public school district may continue the program as authorized in the approved application; districts providing a Native American language revitalization program, or other approved Native American bilingual multicultural education model, shall notify tribal councils or other appropriate tribal entities with authority to make educational decisions on behalf of Native American children of compliance and program continuation.

(2) If the department determines that a program is not compliant, the department shall notify the district of such non-compliance, including specific areas of non-compliance.

(a) Upon receipt of a notice of non-compliance from the department, the district shall develop a program improvement plan, with technical assistance from the department, to address the non-compliance. This plan shall include provisions to adjust the curriculum, program components or method of instruction, as necessary. The plan must be submitted to the department within 30 days, or, with prior written approval of the department, additional time not to exceed 90 days, from receipt by the district of the notice of non-compliance. The district shall implement this plan during the school year in which the district received the notice of non-compliance.

(b) A district in the process of implementing a program improvement plan shall submit its annual report to the department and will be evaluated by the department for compliance based on the standards articulated in

6.32.2.15 NMAC, and not solely on the basis of whether they have fully implemented and complied with the program improvement plan.

(c) If upon review, after receipt of the annual report submitted by a district with a program improvement plan, the department determines that the district remains non-compliant; the department shall so notify the district. If the district remains non-compliant after the first year of implementation of the program improvement plan, the district will be required to re-evaluate the program improvement plan and make necessary adjustments. The district must report the results of this evaluation and any revisions to the original program improvement plan to the department within 30 days, or, with prior written approval of the department, additional time not to exceed 90 days, of receipt of the notice of non-compliance.

(d) If a program is determined to be non-compliant after receiving three consecutive notices of non-compliance, the department shall notify the district and shall discontinue the program at the end of the third school year unless the district can verify compliance to the satisfaction of the department.

(e) A district may not apply for approval for a bilingual multicultural education program for the school year immediately following a discontinuation by the department.

(f) Districts providing a Native American language revitalization program, or other approved Native American bilingual multicultural education model, shall notify tribal councils or other appropriate tribal entities with authority to make educational decisions on behalf of Native American children of non-compliance and provide evidence of tribal consultation in the development of a program improvement plan in accordance with the Indian Education Act, Sections 22-23A-1 through 22-23A-8 NMSA 1978 and the Bilingual Multicultural Education Act, Section

22-23-1 NMSA 1978.

(g)

All districts, regardless of any discontinuation by the department, shall submit the annual report to the department, for any year in which the district has provided assurances to the department.

[6.32.2.16 NMAC - Rp, 6.32.2.16 NMAC, 7/1/2018]

**HISTORY OF 6.32.2 NMAC:**

**PRE-NMAC HISTORY:** The material in this regulation is derived from that previously filed with the State Records Center and Archives under: State Board of Education Regulation 73-21, Guidelines for Submitting Bilingual Multicultural Education Proposals, filed June 18, 1973 and

State Board of Education Regulation No. 75-19, Guidelines for Implementing Bilingual Multicultural Programs, filed January 22, 1976.

**HISTORY OF REPEALED**

**MATERIAL:** 6.32.2 NMAC, Guidelines for Implementing Bilingual Multicultural Programs, repealed effective 7/1/2003; 6.32.2 NMAC, Guidelines for Implementing Bilingual Multicultural Education Programs, repealed effective 11/30/2005; 6.32.2 NMAC, Guidelines for Implementing Bilingual Multicultural Education Programs, filed 11/30/2005 was repealed and replaced by Guidelines for Implementing Bilingual Multicultural Education Programs effective 7/1/2018.

**PUBLIC EDUCATION DEPARTMENT**

**TITLE 6 PRIMARY AND SECONDARY EDUCATION  
CHAPTER 41 TRANSPORTATION - SCHOOL BUS SAFETY  
PART 4 STANDARD FOR PROVIDING TRANSPORTATION FOR ELIGIBLE STUDENTS**

**6.41.4.1 ISSUING AGENCY:** Public Education

Department, hereinafter the department.

[6.41.4.1 NMAC - Rp, 6.41.4.1 NMAC, 3/27/2018]

**6.41.4.2 SCOPE:**

Provisions of Chapter 41, Part 4 apply to Local Education Agencies (LEA). This regulation governs LEAs. If an LEA chooses to provide transportation services by contracting with a transportation service provider instead of through LEA employed personnel, it may do so. The LEA, however, is responsible for ensuring that the provisions of transportation services complies with all pertinent state and federal regulations including 49 Code of Federal Regulations Part 382 and statutes and department regulations.

[6.41.4.2 NMAC - Rp, 6.41.4.2 NMAC, 3/27/2018]

**6.41.4.3 STATUTORY AUTHORITY:**

This regulation is promulgated pursuant to Sections 1111g(1)(E) and 1112c(5)(B) of ESEA, Section 722g(J)(iii) of the McKinney-Vento Act, and Sections 22-2-1, 22-2-2, 22-8-26, 22-10A-5, 22-16-2, 22-16-4, and Subsection D of Section 9-24-8 NMSA 1978.

[6.41.4.3 NMAC - Rp, 6.41.4.3 NMAC, 3/27/2018]

**6.41.4.4 DURATION:**

Permanent.

[6.41.4.4 NMAC - Rp, 6.41.4.4 NMAC, 3/27/2018]

**6.41.4.5 EFFECTIVE DATE:**

March 27, 2018, unless a later date is cited at the end of a section.

[6.41.4.5 NMAC - Rp, 6.41.4.5 NMAC, 3/27/2018]

**6.41.4.6 OBJECTIVE:**

To establish a safe, timely, and efficient system of transportation responsive to the needs of eligible public school students, hereinafter students, including children and youth in foster care and homeless children and youth, and to guide the provision of school transportation and transportation as a related service

to students with an Individualized Education Program (IEP). LEAs, therefore, shall ensure that all eligible students are served within the requirements of current federal and state laws and department regulations.

[6.41.4.6 NMAC - Rp, 6.41.4.6 NMAC, 3/27/2018]

**6.41.4.7 DEFINITIONS:**

**A. "Activity driver"**

means an individual who is employed by an LEA or a transportation service provider and has completed all federal, state, and department certifications, licensing requirements, and LEA criteria to drive students on school-sponsored activities.

**B. "Child welfare agency"**

means the children youth and families department.

**C. "Children in foster care"**

means 24 hour substitute care for children and youth who are placed away from their parents or guardians and who are in custody of state or tribal welfare agencies.

**D. "Conviction"**

means an adjudication of guilt, and includes a guilty plea, judgment, or verdict, no contest, nolo contendere, conditional plea of guilty, or any other plea that would result in an adjudication of guilt in any court of competent jurisdiction. A conviction includes a deferred sentence and a conditional discharge prior to satisfaction of the conditions and after satisfaction of conditions where required by the act.

**E. "Driver"**

means school bus driver, substitute school bus driver, activity bus driver, school-owned activity vehicle driver, and sport utility vehicle (SUV) driver.

**F. "Eligible student"**

means:

**(1) Students**

eligible for transportation services under federal and state statute or under the department's standard for determining hazardous walking conditions pursuant to 6.41.3 NMAC. Students are eligible for transportation services in accordance with Section 22-16-4 NMSA 1978 if school bus routes are:

(a)

one mile one way for students in grades kindergarten through six;

(b)

one and one-half miles one way for students in grades seven through nine, and;

(c)

two miles one way for students in grades 10 through 12.

(2)

Students with an IEP are entitled to transportation pursuant to Subparagraphs A through C of Paragraph (1) of Subsection F of 6.41.4.7 NMAC, or transportation as a related service pursuant to Subsection EE of 6.41.4.7 NMAC.

**G. “Employer”** means an LEA or transportation service provider.

**H. “Homeless children and youth”** as defined by section 725(2) of the McKinney-Vento Act means individuals who lack a fixed, regular, and adequate nighttime residence. The term includes:

(1) children and youth who are:

(a)

sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;

(b)

living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations;

(c)

living in emergency or transitional shelters;

(d)

abandoned in hospitals;

(2) children

and youth who have a primary nighttime address that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;

(3) children

and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or

(4) migratory

children under Title I Part C migrant education program.

**I. “Individualized education program (IEP)”** means

a written statement for a child with a disability that is developed, reviewed, and revised in accordance with Sections 300.320 through 300.324 of 34 CFR.

**J. “IEP team”**

means individuals who are involved in writing a student’s IEP. In accordance with Section 300.321 of 34 CFR, Individuals with Disabilities Education Act, this team may include:

(1) the

student’s parents or legal guardian;

(2) at least

one of the student’s general education teachers;

(3) the

student’s special education teacher;

(4) an

individual who can interpret the instructional implications of a student’s evaluation;

(5) an

individual representing the school system;

(6) individuals

with knowledge or special expertise about the student;

(7)

representatives from transition service agencies, if applicable; or

(8) the student,

if appropriate.

**K. “Local education agency”** means a local public school district, a locally-chartered charter school, or a state-chartered charter school.

**L. “On-duty time”**

means time related to the driving, servicing, or operation of the vehicle, or those duties assigned or necessary that are related to a specific LEA-sponsored activity trip such as staying with the vehicle for security purposes or assisting with supervision of students. On-duty time also includes performing any compensated work for an entity that is not a motor carrier.

**M. “Planned school-sponsored activity trip”** means

transportation of school groups when the activity is approved according to the LEA’s policy. Activity trips do not include recurring transportation that is part of the school day.

**N. “Roadway”** means

that portion of a highway improved,

designed, or ordinarily used for vehicular traffic, exclusive of berm or shoulder.

**O. “School bus”**

means a commercial motor vehicle used to transport preprimary, primary or secondary school students from home to school, from school to home or to and from school-sponsored events, but not including a vehicle:

(1) operated

by a common carrier, subject to and meeting all requirements of the public regulation commission but not used exclusively for the transportation of students;

(2) operated

solely by a government-owned transit authority, if the transit authority meets all safety requirements of the public regulation commission but is not used exclusively for the transportation of students;

(3) operated

as a per capita feeder as provided in Section 22-16-6 NMSA 1978; or

(4) that is a

minimum six-passenger, full-size, extended-length, sport utility vehicle operated by a school district employee pursuant to Subsection D of Section 22-16-4 NMSA 1978.

**P. “School bus assistant”** means an individual employed by an LEA or a transportation service provider to help the school bus driver and students. A school bus assistant shall be provided on school buses when necessary, when required by law or regulation, or when required by a student’s IEP.

**Q. “School bus driver”** means an individual employed by an LEA or a transportation service provider that has completed all federal, state, and department certification and licensing requirements and LEA criteria and is assigned to drive a school bus on an LEA-approved school bus route or on a planned LEA-sponsored activity trip in a school bus that meets requirements pursuant to 6.40.2 NMAC.

**R. “School bus driver instructor (SBDI)”** means a person certified by the department to provide mandatory pre-service training to

applicants who want to drive a school bus in New Mexico.

**S. “School bus route”** means a designated course regularly traveled by a school bus for to-and-from transportation to pick up students and take them to school or to deliver students from school to their homes or to designated school bus stops that are approved by the LEA. Should the typical number of students on a school bus route drop below the number of 10, it shall be the responsibility of the LEA to notify the department transportation director by phone or email immediately.

**T. “School of origin”** means the school in which the child or youth is enrolled at the time of placement in foster care or prior to becoming homeless.

**U. “School-owned activity vehicle”** means a vehicle other than a school bus that is used to transport students to and from planned LEA-sponsored activity trips.

**V. “School-owned activity vehicle driver”** means an individual who meets all qualifications, licensing requirements and LEA criteria to drive students on LEA-sponsored activities in school-owned vehicles other than school buses.

**W. “School-owned activity vehicle instructor” or “AVI”** means a person certified by the department to provide mandatory pre-service training to driver applicants for school-owned activity vehicles.

**X. “Serious traffic offense”** means any of the following offenses contained in Sections 66-1-1 through 66-8-141 NMSA 1978:

- (1) speeding in excess of 15 miles above any posted speed limit;
- (2) reckless driving;
- (3) careless driving;
- (4) passing a school bus;
- (5) following too closely;
- (6) operating a commercial motor vehicle without holding a valid commercial driver’s

- license (CDL) along with any endorsements;
- (7) racing on a highway;
- (8) homicide or great bodily harm by vehicle;
- (9) injury to a pregnant woman;
- (10) failing to stop after an accident involving death or personal injury; or
- (11) operating a vehicle after suspension or revocation of a driver’s license.

**Y. “Sponsor”** means an individual, such as a coach, teacher, or parent who accompanies students on a planned LEA-sponsored activity trip.

**Z. “Substitute school bus assistant”** means an individual employed by an LEA or transportation service provider to help the school bus driver and students when the assigned school bus assistant is absent.

**AA. “Substitute school bus driver”** means an individual employed by an LEA or transportation service provider to operate a school bus on a school bus route when the assigned school bus driver is absent. The substitute school bus driver shall meet all certification and licensing requirements of a school bus driver.

**BB. “Sport Utility Vehicle (SUV)”** means a sport utility vehicle or a crew cab pickup truck. This type of vehicle differs from a typical four-door sedan due to being constructed on a light or medium truck chassis, making it more rugged and giving it higher ground clearance. It must have four full-size doors and seat six to nine passengers. Vans and mini-vans are excluded from this definition.

**CC. “To-and-from route serviced by an SUV”** means a designated course regularly traveled to pick up designated students at their designated pick-up location to take them to school or to deliver designated students from school to a designated drop-off location.

**DD. “Transportation administrator”** means an individual employed by the LEA or

transportation service provider who has responsibility to monitor and guide the transportation program, drivers, and assistants and who is required to make daily observations to detect reasonable suspicion for alcohol or substance use or both.

**EE. “Transportation as a related service”** means specific modifications or support services or both that are required for transportation of a student with an IEP.

**FF. “Transportation service provider”** means an individual or business that has entered into a binding agreement with the LEA to provide school transportation services.

[6.41.4.7 NMAC - Rp, 6.41.4.7 NMAC, 3/27/2018]

**6.41.4.8 RESPONSIBILITIES OF THE LOCAL BOARD OF EDUCATION OR CHARTER SCHOOL ADMINISTRATOR:**

Each local board of education or charter school administrator is responsible for adopting transportation policies, which ensure a safe, timely, and efficient system of transportation for all eligible students, including children in foster care and homeless children and youth, within its jurisdiction. School transportation services for eligible students shall be provided by use of a school bus, per capita feeder route, or SUVs or a combination of school bus, per capita feeder route, or SUVs. Additional options for transportation of children in foster care or homeless children and youth may be explored while ensuring the safety of students. Therefore, each local board of education or charter school administrator shall establish policies in the following areas.

**A. Community, parent and staff involvement:** Each LEA shall:

- (1) provide a platform for adequate community, parent, staff, and transportation service provider participation in the development of policies and procedures for providing



transportation services to eligible students;

(2) approve a policy defining the responsibilities of parents, students, teachers, staff, and transportation service providers;

(3) provide a platform for adequate information and training provided to the community, parents, and school personnel so that each understands the rights and responsibilities associated with transportation services;

(4) approve a policy concerning complaints from parents, students, transportation providers, and others regarding school transportation;

(5) approve a policy concerning transportation as a related service for a student with an IEP as the IEP requires. The transportation administrator or designee, or transportation service provider shall be afforded the opportunity to participate in the development of the IEP as it relates to transportation;

(6) approve disciplinary procedures, including an appeal process, applicable to all students being transported. The procedures shall comply with all applicable federal and state law and department regulation. Information regarding disciplinary procedures shall be provided to parents and students;

(a) the procedures shall include the process for emergency removal of a student from a school bus;

(i) if emergency removal of a student is necessary, the driver shall report the incident or behavior to the transportation administrator within 24 hours of the incident; and

(ii) a written behavioral report shall be filed with the school and a copy of the report provided to the parents;

(b) nothing contained herein or in local board of education policy shall prevent the emergency removal of any student from a school bus if the student endangers or reasonably

appears to endanger the health, welfare, or safety of themselves, any other student, teacher, or employee;

(7) approve disciplinary procedures including an appeal process applicable to students with an IEP being transported. The procedures shall comply with all applicable federal and state law and department regulation governing students with disabilities. Information regarding disciplinary procedures shall be provided to parents, students, and IEP teams;

(a) disciplinary procedures for a student with an IEP shall be specified in the student's IEP;

(b) the procedures shall include the process for emergency removal of a student with an IEP from a school bus;

(i) if emergency removal of a student is necessary, the driver shall report the incident or behavior to the transportation administrator within 24 hours of the incident; and

(ii) the transportation administrator shall report each incident or behavior in writing to the LEA's special education director within 24 hours of receiving the driver's report;

(c) nothing contained herein or in local school board policy shall prevent the emergency removal of any student from a vehicle if the student endangers or reasonably appears to endanger the health, welfare, or safety of themselves, any other student, teacher, or employee; and

(d) suspension of transportation service for a student with an IEP for more than ten cumulative days requires a change in transportation service in that student's IEP; and

(8) adopt and approve policies in specialized areas affected by federal regulations, state law, and new legislative initiatives related to school transportation.

**B. Student services:**  
Transportation is provided to students who are eligible for transportation

pursuant to Sections 22-16-2 and 22-16-4, NMSA 1978. Students who do not obey the state and local LEA regulations governing student transportation may have their transportation services revoked by the LEA. Each LEA shall adopt:

(1) a student disciplinary policy for school transportation, including procedures for suspending a student's transportation privilege and for holding parents responsible for any malicious destruction to the vehicle or assault on a driver or others. Policies shall be in agreement with and subject to procedural safeguards and protections specified in federal, state, and department regulations;

(2) a comparable travel time policy that shall:

(a) ensure that transportation time for a student with an IEP is comparable to transportation time provided to neighborhood students who do not have an IEP;

(b) consider the least distance from a student with an IEP's home to the school site as compared to the least distance from the homes of neighborhood students who do not have an IEP to the school site;

(c) consider the time for other transportation services identified in the IEP. Any variance from the comparable travel time policy shall be determined on a case-by-case basis by the IEP team and shall be clearly stated in the IEP;

(3) a policy regarding the transportation of specialized personnel, such as licensed nurses and special education assistants, or other designated persons;

(4) a policy regarding the transportation of animals that accompany a student with an IEP and shall ensure that the certification, training, and immunization requirements for the animal are completed and current;

(5) a policy outlining acceptable procedures for

medicine transport. The policy shall include the designated place for transport and the personnel authorized to administer medication during transport when necessary;

(6) a policy regarding the maintenance of a roster or seating chart for students who ride school buses;

(7) a policy for providing transportation services for students eligible under Section 504 of the Rehabilitation Act of 1973 when such services are specified in the student’s accommodation plan; and

(8) a policy covering a do not resuscitate request from the parents or guardians specific to the student while the student is being transported on a school bus, school-owned activity vehicle, or SUV.

**C. Relationship with transportation providers.** When a transportation service provider is contracted to provide school transportation services, each local board of education or charter school administrator shall:

(1) approve all contracts and contract amendments with a transportation service provider in accordance with state law and department regulation;

(2) approve a policy governing the termination of a contract with a transportation service provider in accordance with state law and department regulation;

(3) include as a part of each contract a scope of work which ensures that this regulation and all other applicable state and federal regulations and state statutes and department regulations are adhered to; and

(4) develop policy involving finger-print based background checks in accordance with state law.

**D. Planned LEA-sponsored activities:** Each local board of education or charter school administrator shall adopt policies and procedures concerning the safety and welfare of students who are transported to and from planned LEA-sponsored activities. Policies

and procedures shall comply with all applicable federal, state, and department regulations.

(1) Vehicles used for school-sponsored activities shall be school-owned, leased, or private vehicles that meet the following department requirements:

(a) vehicles shall not be vans or mini-vans;

(b) excluding buses, vehicles shall not seat less than six or more than nine people including the driver;

(c) excluding buses, vehicles shall have seat belts available for all occupants and all occupants are required to wear them while the vehicle is in motion;

(d) vehicles shall have available secure cargo storage or other adequate tie-down for securing items in the vehicle, excluding hitched trailers; and

(e) trailers shall not be hitched to vehicles while the vehicle is transporting students.

(2) Policies and procedures shall include provision for the use of commercial common carrier buses, taking into account that commercial common carrier buses do not meet current New Mexico school bus construction standards and school bus phase-out pursuant to 6.40.2 NMAC.

(3) Policies and procedures shall include provisions for rest and relaxation for students and the driver(s) during the trip.

(4) Policies and procedures shall include procedures for releasing students on the planned activity trip to parents or guardians.

(5) Policies shall explicitly state that prior to and during work periods all drivers, school bus assistants, and substitute school bus assistants have not used and do not use alcoholic beverages, illegal substances, or legal substances which would impair the driver’s or the assistant’s ability to perform required

duties.

[6.41.4.8 NMAC - Rp, 6.41.4.8 NMAC, 3/27/2018]

**6.41.4.9 RESPONSIBILITIES OF THE LEA:**

**A. General requirements:**

(1) The LEA shall designate a transportation administrator.

(2) The LEA shall observe all federal and state laws, department regulations, and local board of education policies and procedures. The LEA shall follow the New Mexico guide for school vehicle maintenance and safety audit program.

(3) Prior to providing services, the LEA shall ensure that each transportation service provider has a properly executed contract on a form approved by the department.

(4) The LEA shall direct drivers, school bus assistants, and substitute school bus assistants on meeting all transportation requirements of students’ IEPs.

(5) The LEA shall, in accordance with applicable federal and state law and department regulation:

(a) verify qualifications which include fingerprint-based background checks and reference checks made and completed for the following positions:

- (i) school bus driver;
- (ii) substitute school bus driver;
- (iii) activity school bus driver;
- (iv) school-owned activity vehicle driver;
- (v) SUV driver;
- (vi) school bus assistant; and
- (vii) substitute school bus assistant;

(b) ensure proper training is provided by a qualified trainer and documented on the applicable pre-service training

record as provided by the department. The training shall be completed prior to the drivers, school bus assistants, and substitute school bus assistants performing assigned duties; and

(c)

ensure ongoing training is provided and continuing requirements for drivers, school bus assistants, and substitute school bus assistants are met pursuant to 6.41.4.13 NMAC.

(6) The

LEA shall establish and provide to all drivers written procedures to be followed:

(a)

for immediate replacement of a vehicle when a vehicle fails pre-trip inspection;

(b)

during inclement weather; and

(c)

during school bus evacuation drills.

(7) The LEA

shall provide to transportation service providers and drivers vital emergency information for all students with an IEP or special medical conditions. All vital emergency information shall be treated as a confidential record as provided by law.

(8) The LEA,

shall be available until all school bus drivers have completed their trips and all students have been properly delivered.

(9) The LEA

shall develop and implement a school transportation safety curriculum for students who ride school buses to and from planned LEA-sponsored activity trips.

(10) The LEA

shall review for safety each student walk zone for each school on an LEA approved cycle. The review cycle shall not exceed five years.

(11) The

LEA shall ensure that school bus evacuation drills are performed and documented once per semester.

(12) All school

buses, activity school buses, and school-owned activity vehicles shall be alcohol, drug, and tobacco free areas. The LEA shall ensure that, prior to or during work periods, all drivers, school bus assistants, and

substitute school bus assistants shall not use alcoholic beverages, illegal substances, or legal substances which would impair the driver's or the assistant's ability to perform required duties.

(13) The

transportation administrator shall ensure compliance with 49 CFR Part 382 by maintaining documentation including proof of contract and pools of driver names. Drivers who possess a CDL shall constitute a pool of names and the school-owned activity vehicle drivers shall constitute a separate pool of names for random drug and alcohol testing.

(14) The LEA

shall arrange for and document in-service training that meets the department's required hours for applicable staff.

**B. Accidents:** In the event of a school bus accident or emergency, the LEA shall:

(1) promptly

notify the department by telephone if a school bus is involved in an accident that results in the death, serious injury or hospitalization of any occupant of the school bus or other motor vehicle or a pedestrian;

(2) promptly

notify the department if a school bus is involved in an accident in which possible mechanical failure may have been a contributing factor; and

(3) submit

the uniform school bus accident and adjudication report to the department within seven calendar days of any accident.

**C. Plan of action for emergencies:**

(1) The LEA

or the transportation service provider shall provide to each driver a written plan of action in case of an emergency covering:

(a)

vehicle trouble requiring evacuation;

(b)

vehicle trouble not requiring evacuation;

(c)

passenger trouble requiring transportation personnel intervention;

(d)

passenger trouble requiring police intervention; and

(e)

passenger trouble requiring medical intervention.

(2) Student

evacuation drills or adequate alternate instruction as provided in Paragraph (4) of Subsection C of 6.41.4.9 NMAC for to-and-from transportation services in a school bus shall:

(a) be

documented;

(b) be

conducted once per semester;

(c)

include all school bus drivers and substitute school bus drivers;

(d)

include all school bus assistants and substitute school bus assistants;

(e)

exempt students when they are limited in their capability to participate; and

(f)

include the following types of evacuation drills:

(i)

occupants exit through the rear emergency door;

(ii)

occupants exit through the front service door;

(iii)

occupants in the front half of the school bus exit through the front service door and occupants in the back half of the school bus exit through the rear emergency door. If any emergency door is located mid-bus, it shall be considered the rear emergency door; and

(iv)

occupants receive instructions on the proper use of roof hatches.

(3) Student

evacuation drills or adequate alternate instruction as provided in Paragraph (4) of Subsection C of 6.41.4.9 NMAC for to-and-from transportation services in an SUV shall:

(a) be

documented;

(b) be

conducted once per semester;

(c)

include all SUV drivers and assistants;

(d) exempt students when they are limited in their capability to participate; and

(e) include the following types of evacuation drills:

(i) occupants exit through the nearest door;

(ii) occupants exit through driver-side doors only; and

(iii) occupants exit through passenger-side doors only.

(4) Adequate alternate instruction shall be verbal instruction on the location and operation of emergency exits and shall be presented by the driver to all vehicle occupants.

**D. School bus routes:**

The LEA shall follow department regulations and procedures for the establishment and monitoring of school bus routes.

(1) Loading and unloading shall occur, whenever possible, off the roadway and so that students do not have to cross the roadway. When it is impossible for a school bus to completely pull off the roadway, the driver shall remain on the roadway and use procedures provided in Subsection D of 6.41.4.11 NMAC.

(2) LEAs shall establish written procedures regarding adherence to school bus route pick-up and delivery times by both drivers and students. This information shall be available to parents and guardians of the students.

(3) The LEA shall review each school bus route on a district- approved cycle for safety and economy. The review cycle shall not exceed five years.

(4) The LEA shall comply with local board of education policy regarding the number of days allowed to re-configure a school bus route when a student's IEP has been modified and requires an adjustment to the student's transportation.

(5) The LEA shall establish a policy for the

minimum time required for the school bus driver to wait for a student with an IEP who is receiving transportation as a related service to arrive at the school bus stop to be picked up. The policy shall also include information regarding the unloading of that student when returning the student to their school bus stop when a parent or guardian is not present to receive the student.

**E. Loading and unloading students at schools:**

(1) All school bus loading and unloading zones shall be properly marked by use of signs and pavement markings.

(2) The school bus loading and unloading zones shall be adequately staffed with designated personnel to monitor the loading and unloading of students.

(3) When loading and unloading, school buses shall be parked in a single file as close as possible to avoid students and other people from going between the school buses.

(4) Whenever possible, loading and unloading shall be done on school premises and separated from general vehicular traffic areas and playground areas.

(5) If loading or unloading must occur on the roadway, the school bus shall be stopped on the side of the roadway nearest the school. Alternating red flasher lights shall be activated when the school bus is stopped on the roadway.

(6) When loading, school buses shall be parked prior to dismissal time, if possible. School buses shall be parked in the order in which they arrive at the school.

(7) When loading or unloading students, the school bus parking brake shall be activated, the transmission shall be in neutral or in park, if equipped, and the engine off. Should the driver be required to leave the driver's seat, the keys shall be removed from the ignition switch. Exceptions to removing the key from the ignition switch include:

(a) school buses built after July 1, 2003 that are equipped with an interlock for wheel chair lifts; and

(b) school buses equipped with a child check safety system. In buses equipped with this system, the service door shall be closed when the driver leaves the driver's seat.

(8) The LEA shall review each school bus loading and unloading area at each school for safety on an LEA-approved cycle. The review cycle shall not exceed five years.

**F. School bus stops:**

LEAs shall establish all school bus stops and, when appropriate, include involvement from a student's IEP team. The local public safety organization having jurisdiction shall also be included whenever necessary. Services shall be designed that safely, efficiently, and economically transport students.

(1) The LEA shall review each school bus stop for safety on an LEA approved cycle. The review cycle shall not exceed five years.

(2) School bus stops shall not be established where the view is obstructed to motorists for 500 feet in either direction. If, because of natural conditions, a stop must be established with a view of less than 500 feet, the LEA shall contact the state highway department or other agency having jurisdiction and request the installation of highway signage.

(3) School bus stops shall not be established on any interstate highway. If necessary, school bus stops shall be established on service or frontage roads adjacent to the interstate highway.

(4) School bus stops shall, whenever possible, be established so that students do not have to cross the roadway.

(5) School bus stops shall not be made:

(a) within 25 feet of any intersection.

(b) at a railroad grade crossing where

a stop-and-go traffic light controls movement of traffic;

(c)

at an abandoned railroad grade crossing which is marked with a sign indicating that the railroad is abandoned;

(d)

at an industrial or spur line railroad grade crossing marked with a sign reading "EXEMPT CROSSING"; or

(e)

at a railroad grade crossing used exclusively for industrial switching purposes within a business district or a streetcar crossing.

**G. Identification of transportation needs for students with disabilities:**

(1)

Transportation needs for students with an IEP who require transportation as a related service is determined by each student's IEP team and shall be included in the IEP.

(2)

When modifications to standard transportation are necessary, transportation personnel shall be afforded the opportunity to participate in the development of the IEP. The IEP document shall clearly state the transportation needs or modification or both identified by the IEP team and, if applicable, transportation personnel. If circumstances require changes in services, any team member may request that the team reconvene to consider the student's transportation needs.

**H. Provisions for transportation of students with disabilities:**

(1) In

providing transportation as a related service to a student with an IEP, the LEA shall ensure:

(a)

all alternatives are considered if, due to serious health or safety considerations, an IEP team determines that a student with an IEP cannot be transported with neighborhood peers who are not disabled;

(b)

time transporting a student with an IEP is comparable to that provided

for non-disabled neighborhood peers, unless otherwise specified in the student's IEP;

(c)

access to and from the designated pickup and drop-off point; and

(d)

access to other educational and related services specified in the student's IEP.

(2)

Confidentiality of IEP and student medical information shall apply when transportation as a related service is provided to a student with an IEP.

**I. Provisions of transportation for children and youth in foster care:**

(1) The LEA

shall develop and implement clear written procedures governing how transportation to maintain children in foster care in their school of origin when in their best interest will be provided, arranged, and funded for the duration of the time in foster care. The procedures shall:

(a)

ensure that children in foster care needing transportation to the school of origin will promptly receive transportation in a cost-effective manner and in accordance with section 475(4)(A) of the Social Security Act;

(b)

ensure that, if there are additional costs incurred in providing transportation to maintain children in foster care in their school of origin, the LEA will provide transportation to the school of origin if:

(i)

the local child welfare agency agrees to reimburse the LEA for the cost of such transportation;

(ii)

the LEA agrees to pay for the cost of such transportation; or

(iii)

the LEA and the local child welfare agency agree to share the cost of such transportation; and

(c)

include, in addition to state and local funds that may be available for transportation, certain federal funds, if allowable under the grants, may be available to cover additional

transportation costs to maintain children in foster care in their schools of origin.

(2) LEAs shall

provide transportation to maintain children in foster care in their school of origin even if it does not provide transportation for children that are not in foster care.

(3) LEAs shall

provide or arrange for adequate and appropriate transportation of children in foster care to and from the school of origin while any disputes are being resolved.

**J. Provisions of transportation for homeless children and youth:**

(1) LEAs are

responsible for reviewing and revising transportation policies that may act as barriers to the identification, enrollment, attendance or success in schools of homeless children and youth.

(2) McKinney-

Vento Act requires homeless children and youth to receive transportation that is comparable to what is available to non-homeless students.

(3) LEAs shall

adopt policies and practices to ensure that transportation is provided, at the request of the parent or guardian or in the case of the unaccompanied youth, the liaison, to and from the school of origin in accordance with the following requirements.

(a) If

the child or youth continues to live in the area served by the LEA in which the school of origin is located, that LEA shall provide or arrange for the child's or youth's transportation to and from the school of origin.

(b)

If the child or youth continues their education in the school of origin but begins living in an area served by another LEA, the LEA of origin and the LEA in which the homeless child or youth is living must agree upon a method to apportion the responsibility and costs for providing the child or youth with transportation to and from the school of origin. If the LEAs cannot agree upon a method, the responsibility and costs

for transportation are to be shared equally, pursuant to 6.42.2 NMAC.

(4) LEAs may use McKinney-Vento subgrant funds or Title I funds to defray the excess costs of transporting homeless children and youth to and from their school of origin.

(5) LEAs are required to provide adequate and appropriate transportation for homeless children and youth to and from the school of origin while enrollment disputes are being resolved.

(6) LEAs shall continue to provide transportation to and from the school of origin to formerly homeless children and youth who have become permanently housed for the remainder of the academic year during which the child or youth becomes permanently housed.

**K. Dispute resolution regarding the transportation of children in foster care and homeless children and youth:**

(1) To the extent feasible and appropriate, LEAs must ensure children in foster care remain in their school of origin while disputes are being resolved to minimize disruptions and reduce the number of moves between schools.

(2) Homeless children and youth shall be provided adequate and appropriate transportation to and from the school of origin while disputes are being resolved.

(3) LEAs shall work with child welfare agencies, unaccompanied youth liaisons, and parents and guardians to resolve disputes at the lowest level possible.

(4) If disputes are unable to be resolved at the local level, applicable parties may access dispute resolution procedures available at the department including those pursuant to 6.10.3 NMAC.

**L. Student behavior:**

(1) When a student's behavior on a school bus or at a designated school bus stop endangers the safety of others, the student shall be suspended from being

transported according to LEA policies and department regulations.

(2) If an incident or behavior occurs involving a student with an IEP, the driver shall report each incident or behavior to the transportation administrator within 24 hours of the incident. Provisions for removal and reinstatement of transportation services for students with disabilities shall be specified in the LEA's policies and in the student's IEP. Any change in transportation as a related service must be made through the IEP process, and the procedural safeguards specified in department regulations shall apply. The transportation administrator shall report each incident or behavior within 24 hours of receiving the driver's report to the LEA's special education director or appropriate administrator. The incident or behavior shall be addressed by the student's IEP team.

**M. Process for pre-employment screening of initial commercial driver's license (CDL) driver applicants:** The employer shall adhere to all applicable federal, state, and department employment requirements.

(1) The employer shall verify the following documentation is in each driver applicant's file:

(a) a complete LEA-approved application form that meets or exceeds federal, state and department requirements;

(b) a copy of the driver applicant's current and valid driver's license, verified by the employer;

(c) a fingerprint-based background check. Effective January 1, 2006, a person applying for full or part-time employment with an LEA or transportation service provider to operate a vehicle for the purpose of transporting students shall, at the person's own expense, submit to a fingerprint-based background check pursuant to Section 22-10A-5 NMSA 1978;

(i) the finger-print based background

check shall be conducted prior to employment;

(ii) the applicant shall not qualify if there is a conviction of any violation of the Controlled Substances Act;

(iii) the applicant shall not qualify if there is a conviction of child abuse pursuant to Section 30-6, NMSA 1978, Crimes Against Children and Dependents;

(iv) the applicant shall not qualify if there is a conviction of any other criminal offense in which a child was a victim as defined or prescribed by the offense;

(v) the employer shall maintain on file an agreement, authorization, and waiver and release form in addition to a criminal history affidavit on any newly-hired employee employed to operate a vehicle for the purpose of transporting students; and

(vi) the fingerprint-based background check requirement does not apply to any person who, as of January 1, 2006 was already engaged in full or part-time employment to operate a vehicle used to transport students, unless the employer's policies require it;

(d) a department of transportation (DOT) medical examiner's certificate indicating that a DOT physical examination was passed in accordance with DOT and federal motor carrier safety administration requirements. The DOT physical examination form that is current on the date of the examination must be used. The transportation administrator or the department may require a DOT physical examination be performed at any time, and the medical examiner's certificate shall be provided to all appropriate parties;

(e) a completed New Mexico school bus driver pre-service training record per the current SBDI manual provided by the department;

(i) an SBDI certified by the department shall conduct instruction using the current SBDI manual provided by the

(i) an SBDI certified by the department shall conduct instruction using the current SBDI manual provided by the

department;

(ii) all pre-service training shall be documented on the appropriate pre-service training record as per the SBDI manual provided by the department;

(iii) pre-service training shall be administered in a 65-71 passenger type C school bus. When the driver applicant is expected to operate more than one size and type of school bus, training shall be given on the specific handling characteristics of each size and type of school bus the driver applicant may be assigned to drive once all pre-service training has been completed;

(iv) all behind the wheel instruction shall be administered under the supervision of an SBDI and without student passengers or other persons on board except other school bus driver applicants;

(v) observation time shall include riding in a school bus with a licensed school bus driver driving on a school bus route or in observation of other school bus driver applicants driving under the supervision of an SBDI. Observation time shall also include actual school bus route orientation with a licensed school bus driver; and

(vi) if the school bus driver applicant has completed a department-approved first aid and cardiopulmonary resuscitation (CPR) course taught by a certified instructor and the certificate is current, the certificate shall be provided to the transportation administrator. This shall satisfy the requirement for first aid and CPR training on the school bus driver pre-service training record. On-line courses are not acceptable;

(f) a printout of the driver applicant's current driving record through the New Mexico motor vehicle division or the national driver register or other states' motor vehicle divisions. Verification includes the driver applicant's eligibility to be a driver. The driver applicant shall not be

eligible if their driving record shows the driver applicant has:

(i) been convicted of driving while intoxicated (DWI) or driving under the influence (DUI) of intoxicating liquor or drugs within three years of the date of application for employment;

(ii) been convicted of a DWI or DUI between three years and 20 years prior to the date of application for employment unless the person provides written verification from a licensed counselor or physician that the person has successfully completed an alcohol or drug abuse program. On-line programs are not acceptable;

(iii) been convicted two or more times for DWI or DUI;

(iv) had their driver's license suspended or revoked within five years of the date of application for employment for any serious traffic offense;

(v) been convicted of more than three serious traffic offenses within three years of the date of application for employment; or

(vi) been convicted of any felony within the previous 10 years, or there exist other reasonable grounds related to the services of transporting students rendering the applicant ineligible;

(g) a copy of the CDL test results, if available.

(2) The employer shall make available to each driver applicant at the time of hiring a current copy of 6.41.4 NMAC and any applicable LEA handbooks.

**N. Process for pre-employment screening of returning CDL driver applicants:** The employer shall adhere to all applicable federal, state and department employment requirements.

(1) A returning CDL driver applicant shall:

(a) provide a completed New Mexico school bus driver pre-service training

record provided by the department or certificates of training conducted by the department prior to 2000; and

(b) complete the training as outlined on the New Mexico returning school bus driver pre-service training record per the current SBDI manual provided by the department.

(2) A returning CDL driver applicant that cannot provide either a New Mexico school bus driver pre-service training record provided by the department or certificates of training conducted by the department prior to 2000 must complete the process for pre-employment screening of initial commercial driver's license (CDL) driver applicants pursuant to Subsection M of 6.41.4.9 NMAC.

(3) The employer shall verify that the following is completed and in each returning driver applicant's file:

(a) documentation pursuant to the requirements listed in Paragraph (1) of Subsection M of 6.41.4.9 NMAC; and

(b) a completed New Mexico returning school bus driver pre-service training record.

(4) The employer shall make available documents pursuant to Paragraph (2) of Subsection M of 6.41.4.9 NMAC.

**O. Process for pre-employment screening of school-owned activity vehicle driver applicants:** The LEA shall adhere to all federal, state and department employment requirements when employing a school-owned activity vehicle driver.

(1) The LEA shall verify the following documentation is in each driver applicant's file:

(a) a completed employment application form that meets or exceeds federal, state and department requirements unless the applicant is currently employed by the LEA;

(b) documentation pursuant to

requirements listed in Subparagraphs (b), (c) and (f) of Paragraph (1) of Subsection M of 6.41.4.9 NMAC;

(c) a current medical examiner’s certificate indicating that a physical examination was passed using the DOT physical examination form that is current as of the date of the examination. The transportation administrator or the department may require a physical examination be performed at any time. The medical examiner’s certificate shall be provided to all appropriate parties;

(d) a completed New Mexico school-owned activity vehicle driver pre-service training record per the current SBDI manual provided by the department;

(i) training shall be provided by an SBDI with activity vehicle (AV) certification by the department or an activity vehicle instructor (AVI) certified by the department using the current SBDI manual provided by the department;

(ii) as part of the pre-service training, the driver applicant must complete a defensive driving course (DDC) that is nationally recognized and approved by the department. In lieu of AV-certified SBDI or AVI DDC training, a certificate of completion of a DDC course that is approved by the department may be accepted. The certificate of completion shall be dated within four years of the driver applicant’s date of application; and

(iii) as part of the pre-service training, the driver applicant must complete a department-approved first aid and CPR course taught by a certified instructor. A certificate from the completed course shall be provided to the transportation administrator. If the driver applicant has a current certificate from a department-approved complete first aid and CPR course, this shall satisfy the requirement. On-line courses are not acceptable.

(2) The employer shall make available

documents pursuant to Paragraph (2) of Subsection M of 6.41.4.9 NMAC.

**P. Process for pre-employment screening of school bus assistant and substitute school bus assistant applicants:** The employer shall adhere to all applicable federal, state, and department employment requirements.

(1) The employer shall maintain the following documentation in each school bus assistant and substitute school bus assistant’s file:

(a) a completed employment application form that meets or exceeds federal, state and department requirements unless the applicant is currently employed by the LEA;

(b) a fingerprint-based background check pursuant to the requirements listed in Subparagraph (c) of Paragraph (1) of Subsection M of 6.41.4.9 NMAC;

(c) a physical examination record;

(i) the physical examination shall be completed before the assistant begins performing duties; and

(ii) the transportation administrator or the department may require a new physical examination be performed at any time;

(d) a completed New Mexico school bus assistant pre-service training record in accordance with the SBDI manual as provided by the department; and

(e) a current first aid and CPR certificate. On-line first aid and CPR courses are not acceptable.

(2) The applicant shall not qualify if they have:

(a) been convicted of any felony within the previous 10 years, or there exist other reasonable grounds related to the services of transporting students rendering the applicant ineligible;

(b) a conviction for any violation of the Controlled Substances Act;

(c)

been convicted of child abuse pursuant to Section 30-6, NMSA 1978, Crimes Against Children and Dependents; or

(d) been convicted of any other criminal offense in which a child was a victim as defined or prescribed by the offense.

(3) The employer shall make available documents pursuant to Paragraph (2) of Subsection M of 6.41.4.9 NMAC.

**Q. Continuing standards for drivers:** Any individual who currently drives a vehicle transporting students shall no longer be eligible to transport students:

(1) for three years if they receive a conviction for DWI or DUI. They may requalify if a written verification from a licensed counselor or physician is provided that the person has successfully completed an alcohol or drug abuse program. On-line programs are not acceptable. They are permanently ineligible if they have two or more DWI or DUI convictions;

(2) for five years if they receive a suspension or revocation of driver’s license for any serious traffic offense;

(3) for three years if they receive convictions for more than three serious traffic offenses; or

(4) if they receive any convictions pursuant to Paragraph (2) of Subsection P of 6.41.4.9 NMAC.

**R. Background check requirements for drivers, school bus assistants, and substitute school bus assistants:** The background check requirements pursuant to 6.41.4.9 NMAC, shall not apply to anyone who, as of January 1, 2006 was already engaged in full or part time employment to operate a vehicle to transport students. LEAs may require additional background check information.

**S. Required documentation for files:** In addition to the required pre-employment screening documentation pursuant to



6.41.4.9 NMAC, the documentation below shall be maintained in the employee's file.

- (1) Employee files for school bus drivers, substitute school bus drivers and activity bus drivers shall include:
  - (a) a copy of current CDL;
  - (b) a current medical examiner's certificate for a DOT physical examination;
  - (i) a DOT physical examination shall be renewed every 24 months from the date of the last examination, or earlier as requested by a licensed medical professional;
  - (ii) the current DOT physical examination form must be used; and
  - (iii) additional DOT physical examinations may be requested by the employer or the department;
  - (c) a driving record printed annually then verified for eligibility. The driver's current driving record shall be obtained through the New Mexico motor vehicle division or the national driver register or other states' motor vehicle division. The driver shall no longer be eligible:
    - (i) for three years if they receive a conviction for DWI or DUI. They may requalify if a written verification from a licensed counselor or physician is provided that the person has successfully completed an alcohol or drug abuse program. On-line programs are not acceptable. They are permanently ineligible if they have two or more DWI or DUI convictions;
    - (ii) for five years if they receive a suspension or revocation of their driver's license for any serious traffic offense;
    - (iii) for three years if they receive convictions for more than three serious traffic offenses; or
    - (iv) for 10 years if they receive a conviction for any felony or there

exist other reasonable grounds related to the services of transporting students rendering the applicant ineligible;

- (d) documented in-service training as per the department's requirements;
  - (i) in-service training shall be pro-rated for newly-hired school bus drivers, substitute school bus drivers, and activity bus drivers for their first year of employment for the number of quarters employed. Quarters during the calendar year are as follows: January 1 to March 31; April 1 to June 30; July 1 to September 30; and October 1 to December 31;
  - (ii) to remain qualified, school bus drivers, substitute school bus drivers, and activity bus drivers shall complete a total of eight hours in-service training per semester. Semesters during the calendar year are as follows: January 1 to June 30 and July 1 to December 31;
  - (iii) in-service training shall be documented by the transportation administrator or designee with the date of training, hours trained, trainer's name, printed and signed name of attendees, and topic or topics discussed. Such documents shall be stored in files maintained by the employer,
  - (iv) drivers who do not complete the required hours of in-service training per semester are disqualified from duty until those hours of in-service training are completed. The department may determine the in-service training topics.
- (2) Employee files for school-owned activity vehicle drivers shall include:
  - (a) a copy of current driver's license;
  - (b) a current medical examiner's certificate indicating that a physical examination in accordance with DOT and federal motor carrier safety administration requirements was passed;
  - (i) the DOT physical examination form that is current on the date of the examination must be used; and

(ii) additional physical examinations on the DOT form may be requested by the employer or the department;

- (c) a driving record printed annually then verified for eligibility pursuant to the requirements listed in Subparagraph (c) of Paragraph (1) of Subsection S of 6.41.4.9 NMAC.

(3) Employee files for school bus assistants and substitute school bus assistants shall include:

- (a) a copy of current first aid and CPR certificate; and
- (b) documented in-service training pursuant to the requirements listed in Subparagraph (d) of Paragraph (1) of Subsection S of 6.41.4.9 NMAC.

**T. Planned LEA-sponsored activity trips:** When a planned LEA-sponsored activity trip involves more than 18 people, including the drivers, or would require more than two school-owned activity vehicles to transport students during the same time frame to the same destination, the LEA shall use an activity school bus. Passenger management, as described in Paragraph (7) of Subsection T of 6.41.4.9 NMAC, shall not be an additional responsibility of the driver of the activity bus or a school bus assistant on a planned LEA-sponsored activity trip.

- (1) When an activity bus is used for a planned LEA-sponsored activity trip:
  - (a) the activity bus shall meet the requirements pursuant to 6.40.2 NMAC;
  - (b) the activity bus shall not carry more than the manufacturer-rated seating capacity;
  - (c) the employer shall not use a school bus assigned to a school bus route to provide transportation for any planned LEA-sponsored activity trips if doing so will interfere with its operation on its assigned school bus route;
  - (d) the employer shall not temporarily

reassign any students from one school bus route to another school bus route in order to free-up a school bus for a planned LEA-sponsored activity trip; and

(e)

on an activity bus that includes transporting equipment:

(i)

items shall not occupy needed seating space;

(ii)

items shall not be placed in the driver's compartment;

(iii)

all items shall be properly secured; and

(iv)

aisle and exits shall not be blocked.

(2) When a

school-owned activity vehicle is used on a planned LEA-sponsored activity trip:

(a)

the school-owned activity vehicle shall meet applicable federal motor vehicle safety standards (FMVSS);

(b)

the driver operating a school-owned activity vehicle shall meet all requirements for school-owned activity vehicle drivers, pursuant to Subsection O of 6.41.4.9 NMAC;

(c)

the school-owned activity vehicle shall not carry more than the manufacturer-rated seating capacity;

(d)

the school-owned activity vehicle shall meet the following criteria:

(i)

the school-owned activity vehicle shall not be vans or mini-vans;

(ii)

the school-owned activity vehicle shall not seat less than six and no more than nine people including the driver;

(iii)

the school-owned activity vehicle shall have seat belts available for all occupants, and all occupants are required to wear them while the vehicle is in motion;

(iv)

the school-owned activity vehicle shall have available a cargo net or other adequate tie-down for securing

items in the vehicle; excluding hitched trailers;

(v)

trailers shall not be hitched to school-owned activity vehicles while the vehicle is transporting students;

(vi)

the school-owned activity vehicle shall not exceed the manufacturer's gross vehicle weight rating (GVWR) as specified on the vehicle license and registration form; the GVWR includes the weight of the passengers and luggage; and

(vii)

the school-owned activity vehicle shall be in compliance with all applicable federal, state, and department regulations, and with child restraint guidelines from the national highway traffic safety administration (NHTSA);

(e)

on a school-owned activity vehicle that includes transporting equipment shall transport equipment pursuant to the requirements listed in items (i), (ii), and (iii) of Subparagraph (e) of Paragraph (1) of Subsection T of 6.41.4.9 NMAC;

(f)

the school-owned activity vehicle shall be replaced in accordance with the LEA's policy which defines the replacement cycle for school-owned activity vehicles.

(3) The

following time limits shall apply to drivers of planned LEA-sponsored activity trips.

(a) A

driver shall not have more than eight hours continuous driving time and no more than 10 hours total driving time.

(b) A

driver shall not be permitted to be on-duty more than 15 hours in a 24-hour period.

(c)

A driver shall have eight consecutive off-duty hours before resuming on-duty time.

(d)

A driver is considered off-duty if relieved of all duties and responsibilities for the care and custody of the vehicle, its accessories, cargo, and passengers.

(4) An

activity trip ticket that documents and authorizes the activity trip shall be prepared, signed by the LEA, and provided to the driver if the planned LEA-sponsored activity trip requires travel outside of the LEA's geographic boundary.

(5) LEAs

are not required to have an activity trip ticket if a commercial common carrier is used to transport students on a planned LEA-sponsored activity trip. However, the LEA shall maintain a copy of the contract for the transportation services for the planned LEA-sponsored activity trip.

(6) Drivers

shall be informed of and responsible for the following while driving on planned LEA-sponsored activity trips in addition to the applicable responsibilities of drivers pursuant to 6.41.4.11 NMAC:

(a)

compliance with all federal, state, department and employer policies and regulations;

(b)

care of and safe and efficient operation of the school bus or school-owned activity vehicle at all times;

(c)

performance and documentation of a thorough pre-trip inspection of the vehicle and special equipment prior to departure, unless completed and documented by other qualified personnel;

(d)

conducting an emergency evacuation drill or providing adequate alternate instruction to all passengers prior to departure. An LEA-approved document shall be provided to the driver for the driver and the sponsor to sign in evidence that such has been completed before beginning each planned LEA-sponsored activity trip;

(e)

ensuring the safety of all passengers while they are in the school bus or school-owned activity vehicle;

(f)

ensuring all passengers are properly seated with seat belts in use when the driver is operating a school-owned activity vehicle;

(g) maintaining an activity trip ticket when one is required. The driver shall, upon request, show the signed activity trip ticket to any state police officer or other law enforcement officer, DOT officer, or staff member of the department;

(h) notifying the transportation administrator or designee and obtaining their approval prior to incorporating a change if there are any changes in the route or itinerary;

(i) notifying the transportation administrator or designee of all emergencies that arise;

(j) maintaining and submitting to designated employer personnel all records pertinent to the planned LEA-sponsored activity trip including signed documentation that adequate emergency evacuation instruction was conveyed to all passengers;

(k) ensuring that prior to departure and the return journey, the school bus or school-owned activity vehicle is clean, completely serviced, and inspected, noting the condition of the vehicle in writing on the appropriate form and signing the form;

(l) ensuring the school bus or school-owned activity vehicle shall not be fueled while passengers are on board unless there are exceptional circumstances when it is impractical to unload;

(m) ensuring that no students remain on the school bus or school-owned activity vehicle unless the driver or a school sponsor is on board. At the conclusion of the planned LEA-sponsored activity trip, ensure that no one is on the school bus or school-owned activity vehicle; and

(n) ensuring that the sponsors are actively supervising students on the bus.

(7) School sponsors shall be notified of the following responsibilities for each planned LEA-sponsored activity trip:

(a)

preparing and submitting activity trip requests in accordance with federal, state and department regulations as well as the LEA's policies;

(b) ensuring there are an adequate number of disciplinary staff;

(c) notifying the transportation administrator or designee of any schedule changes;

(d) assuring that student(s) are at the departure point(s) at the appointed time;

(e) supervising the loading and unloading of the vehicle;

(f) maintaining a student roster and taking roll each time students load onto the vehicle;

(g) assuring the orderly conduct and discipline of students on and off the vehicle;

(h) supervising and maintaining control of student passengers in case of an emergency;

(i) providing for adequate rest stops;

(j) making all arrangements on overnight planned LEA-sponsored activity trips for meals and lodging, including the driver's meals and lodging.

(8) Planned LEA-sponsored activity trips shall be paid from budgeted LEA-sponsored activity funds and not from current fiscal year to-and-from transportation funds.

(9) The LEA shall adopt a policy that addresses out-of-state transportation for planned LEA-sponsored activity trips. LEAs shall use the guidelines for school-owned activity vehicles provided in 6.41.4 NMAC whenever possible

**U. Training:**

(1) Transportation administrators shall provide training for other LEA employees who are responsible for supervision of the school transportation program and school employed drivers.

(2) A minimum of two hours of in-service training is required annually. The contents of the training will be determined by the department. [6.41.4.9 NMAC - Rp, 6.41.4.9 NMAC, 3/27/2018]

**6.41.4.10 REQUIREMENTS OF TRANSPORTATION SERVICE PROVIDERS:**

**A. General requirements:** The transportation service providers shall:

(1) Cooperate with the LEA administration to provide safe and efficient transportation services for all eligible students;

(2) keep all required vehicle maintenance records;

(3) hire all school bus drivers, substitute school bus drivers, activity school bus drivers, school bus assistants, and substitute school bus assistants in accordance with LEA policies, federal, state, and department regulations, and Section 22-10-3.3 NMSA 1978;

(4) maintain all school bus driver, substitute school bus driver, activity school bus driver, school bus assistant, and substitute school bus assistant files with required documentation in accordance with federal, state and department regulations;

(5) hire mechanics and office support personnel;

(6) provide to all drivers written procedures to be followed:

(a) during inclement weather; and

(b) during school bus evacuation drills;

(7) provide to each driver an LEA-approved written plan of action in case of an emergency covering:

(a) vehicle trouble requiring evacuation;

(b) vehicle trouble not requiring evacuation;

(c)

passenger trouble requiring transportation personnel intervention;  
 (d) passenger trouble requiring police intervention; and

(e) passenger trouble requiring medical intervention.  
 (8) attend IEP meetings as necessary.

**B. Equipment:** The transportation service provider shall:  
 (1) maintain all school buses to manufacturer specifications and all safety equipment on school buses to federal, state and department specifications;  
 (2) report complete and accurate information required by the department's transportation director or designee and the LEA; and  
 (3) comply immediately with equipment recalls by taking a vehicle that has an equipment recall by a manufacturer, a distributor, a federal or state agency, or the department to an approved location as per the recall notification for modification or repair.

**C. Training:** The transportation service provider shall:  
 (1) provide pre-service and in-service training for all school bus drivers, substitute school bus drivers, activity bus drivers, and all school bus assistants and substitute school bus assistants in accordance with the department regulations;  
 (2) provide training for transportation service providers' employees who have supervisory responsibility of school bus drivers. A minimum of two hours of training is required annually. The contents of the training will be determined by the department transportation director.

[6.41.4.10 NMAC - Rp, 6.41.4.10 NMAC, 3/27/2018]

**6.41.4.11 RESPONSIBILITIES OF DRIVERS, SCHOOL BUS ASSISTANTS, AND SUBSTITUTE SCHOOL BUS ASSISTANTS:** All drivers and, where applicable, all

school bus assistants and substitute school bus assistants shall:  
**A. Comply with the following.**  
 (1) Operate the vehicle in a safe and efficient manner in accordance with federal, state, local statutes and regulations, department regulations, and LEA policies.

(2) Cooperate with the transportation administrator's compliance with 49 CFR Part 382 as conducted by the LEA and transportation service provider.

**B. Perform a pre-trip inspection.**  
 (1) All school bus drivers shall perform and document a daily thorough pre-trip inspection of the school bus and special equipment, unless completed and documented by other qualified personnel. The inspection shall include, at minimum, inspection of the:

- (a) outside of the vehicle:
  - (i) oil, water, and any other fluid leaks (power steering, power brakes, transmission, differential);
  - (ii) wheels, tires, lug bolts and nuts for serviceability;
  - (iii) all exterior lights for serviceability and operation;
  - (iv) all glass, mirrors, windshields (clean and unbroken and mirrors adjusted for the driver);
  - (v) exhaust system for leaks, looseness, and secure clamps;
  - (vi) engine compartment for serviceability, hoses, belts, wiring, and proper fluid levels;
  - (vii) battery for secure connections and no corrosion;
  - (viii) fuel filler cap;
  - (ix) lift system for those vehicles equipped;
  - (x) service door, emergency exits, and

- buzzers; and (xi)
- stop arm and signs; (b)
- inside of the vehicle: (i)
- all seats and interior lights; (ii)
- horn, windshield wipers, all gauges and indicators; (iii)
- emergency equipment including a first aid kit, fire extinguisher, reflectors, body fluid clean-up kit, and seat belt cutter; (iv)
- parking brake and service brake; (v)
- interior mirror; (vi)
- cleanliness of vehicle; (vii)
- heaters and defrosters; (viii)
- air or hydraulic brake check; and (ix)
- emergency exits and buzzers.

(2) All school-owned activity vehicle drivers shall perform, at a minimum, a thorough pre-trip inspection for operational check of the vehicle and equipment unless completed by other personnel who have completed department-approved pre-service training. The inspection shall, at minimum, include inspection outside of the vehicle pursuant to the requirements listed in items (i) through (viii) of Subparagraph (a) of Paragraph (1) of Subsection B of 6.41.4.11 NMAC and inside of the vehicle pursuant to the requirements listed in items (i) through (viii) of Subparagraph (b) of Paragraph (1) of Subsection B of 6.41.4.11 NMAC. All school-owned activity vehicle drivers shall inspect all gauges, seats, and interior lights of the school-owned activity vehicle.

(3) The driver shall not operate any school bus, activity school bus, or school-owned activity vehicle that does not meet the pre-trip inspection requirements. The driver shall immediately notify the transportation administrator or designee upon failure of the pre-trip inspection and document the reason

for the failure.

**C. Use the following basic driving, loading, and unloading procedures for school bus routes.**

(1) Drivers shall obey all traffic laws, ordinances, and rules of the road and not drive the school bus faster than the posted speed limit.

(2) Loading and unloading shall occur, whenever possible, off of the traveled portion of the roadway and so that students do not have to cross the roadway.

(3) Drivers shall load or unload students only at established school bus stops unless an emergency dictates otherwise. School bus stops shall not be changed or the time schedules altered by the school bus driver or transportation service provider without the approval of the transportation administrator or designee. Drivers shall not grant permission for a student to load or unload except at the student's designated school bus stop without written approval from the transportation administrator or designee.

(4) Drivers shall use rear view mirrors to check traffic before arriving at the school bus stop.

(5) Drivers shall reduce the speed of the school bus when approaching the school bus stop.

(6) On morning school bus routes, drivers shall:

(a) bring the school bus to a complete stop eight to 10 feet before the school bus stop, set the parking brake and shift the transmission in neutral or, if equipped, park;

(b) make a complete stop at all established school bus stops whether students are present or not, unless a parent or guardian or the transportation administrator has notified the driver that the student will be absent;

(c) not wait for students unless they are

observed making an effort to reach the school bus stop or unless otherwise specified in a student's IEP; and

(d) use rear view mirrors to check traffic.

(7) When loading, the driver shall check that all students are seated in the school bus before the school bus is put in motion.

(8) When unloading, the driver shall count the students that have exited the school bus. When students exit the school bus, drivers shall ensure the following.

(a) If students are required to cross the roadway, they shall walk eight to 10 feet in front of the school bus and be positioned perpendicular to the right front portion of the school bus where the driver can see them.

(b) The driver shall check rear view mirrors and all traffic lanes to ensure all required traffic is stopped before signaling students to cross the roadway to the left front portion of the school bus.

(c) Before signaling students to proceed the rest of the way, the driver shall check rearview mirrors and all traffic lanes again to ensure all required traffic is stopped.

(d) The driver shall check to be sure that all students have crossed the roadway safely by using the crossover mirrors and perform a final student count.

(e) The driver shall verify that all doors are free of obstructions then close all doors before the school bus is put in motion.

(f) The driver shall use rear view mirrors to check traffic before departing from the school bus stop.

(9) The driver shall not operate the school bus in such a manner as to cause on-board accidents by jerking, stopping suddenly or swerving unnecessarily.

(10) The driver shall not leave the driver's seat without setting the park brake, putting the transmission in neutral or,

if equipped, park, stopping the engine, and removing the keys. Exceptions include the following:

(a) school buses with a wheelchair lift that meets 6.40.2 NMAC requiring a vehicle interlock system for school buses built after July 1, 2003, and to deactivate the child check safety system. The driver may leave the key in the ignition with the engine off when deactivating the child check safety system but the service door shall be closed;

(b) school buses equipped with a diesel engine and automatic transmission where the driver shall follow the manufacturer's recommendation for parking in gear.

(11) The driver shall keep the school bus clean, well ventilated, and, when necessary, properly heated.

(12) The driver, if traveling in a convoy, shall follow the lead school bus and shall maintain proper distance between vehicles.

(13) The driver shall report all hazards on the school bus route, whether potential or existing, and all causes for failure to operate on schedule to the transportation administrator or designee.

(14) The driver shall not use the school bus outside regular to-and-from transportation or a planned LEA-sponsored activity trip without the approval of the transportation administrator.

**D. In addition to requirements pursuant to Subsection C of 6.41.4.11 NMAC use the following if the school bus must be loaded or unloaded on the roadway.**

(1) If the school bus must be loaded or unloaded on the traveled portion of the roadway:

(a) The driver shall activate the alternating amber flasher lights not less than 100 feet nor more than 300 feet from a stop in urban areas or not less than 300 feet nor more than 1,000 feet from a stop in rural areas to warn

motorists that the school bus is about to stop on the roadway.

(b) The alternating red flasher lights and stop arm shall be activated after the school bus is completely stopped and the service door is opened.

(i) If a school bus is approaching another school bus that has stopped to load or unload students with its alternating amber or red flasher lights activated, the approaching school bus shall mimic the other bus by activating its alternating amber or red flasher lights and shall not load or unload students.

(ii) Once the school bus loading or unloading students has deactivated its alternating amber or red flasher lights, the approaching school bus shall resume operations.

(2) If the school bus must be loaded or unloaded on the traveled portion of the roadway with multiple traffic lanes in each direction, highway, or a divided roadway:

(a) the school bus shall stop in the right-hand or outside traffic lane;

(b) students shall not be loaded or unloaded in a designated right-turn lane or in a lane immediately adjacent to a designated right-turn lane;

(c) loading and unloading shall occur only on the side of the roadway on which the student lives.

(3) The alternating red flasher lights shall be deactivated before the school bus is put in motion.

(4) The driver shall use good judgment when activating and deactivating the alternating flasher lights so as not to impede traffic unnecessarily.

**E. Load and unload students at schools using the following procedures.**

(1) If loading or unloading must occur on the street, alternating flasher lights shall not be activated unless the school bus is stopped on the traveled portion of the roadway.

(2) When loading or unloading, the school bus parking brake shall be activated, transmission shall be in neutral or, if equipped, in park, and the engine shall be off. Should the driver be required to leave the driver's seat, the keys shall be removed from the ignition switch. Exceptions to removing the key from the ignition switch:

(a) school buses built after July 1, 2003, that are equipped with an interlock for wheel chair lifts; or

(b) school buses equipped with a child check safety system. In buses equipped with this system, the service door shall be closed before the driver leaves the driver's seat.

(3) When loading, school buses may be parked in a single file as close as possible to avoid students or other people from going between the school buses.

(4) When loading, school buses shall be parked prior to dismissal time, if possible. School buses shall be parked in the order that they arrive at the school.

(5) The driver shall not back up a school bus on school grounds unless absolutely necessary and then only with assistance from an adult of the driver's choosing.

**F. Operate a school bus on an interstate highway using the following procedures.**

(1) All loading or unloading shall be done at points off the interstate highway either at an interchange, service, or frontage road.

(2) The school bus shall not cross over to the opposite roadway or make any other similar maneuver except at interchanges and then only in a manner consistent with the proper procedures at any given interchange unless directed otherwise by a law enforcement officer.

(3) School buses using portions of the interstate highway shall not stop on or adjacent to the roadway unless there is an emergency or as directed by a law enforcement officer.

(4) The school bus shall not stop on the interstate highway nor shall any students or other passengers load or unload on the interstate highway except in an emergency.

**G. Follow the procedures for school buses crossing railroad tracks:** The driver is always responsible for the safe movement of the school bus and in no instance shall a railroad signal, active or non-active, abrogate this precaution. The following procedures shall apply to school buses or activity school buses at railroad crossings.

(1) Before crossing any track or tracks of a railroad, the school bus driver shall activate the hazard warning lights and shall bring the school bus to a full and complete stop not less than 15 feet or more than 50 feet from the rail nearest the front of the school bus.

(2) On multiple lane roadways, the school bus shall be in the extreme right traffic lane whenever possible.

(3) If a stop and go traffic light controls the movement of traffic at the railroad crossing, the driver need not stop unless the traffic light indicates to stop.

(4) When approaching a railroad crossing, the driver shall carefully observe traffic and reduce the speed of the school bus in advance of stopping.

(5) While completely stopped prior to crossing and until completely across the railroad crossing, the driver shall:

(a) fully open the service door;

(b) fully open the window to the driver's immediate left;

(c) turn off all noisy equipment, radio, and fans;

(d) direct passengers to be silent if passengers are making noise;

(e) listen and look in both directions along the track or tracks for approaching trains or other vehicles;

and

(f) keep the transmission of the school bus in first gear by maintaining a speed which does not cause the transmission to shift.

(6) The school bus driver shall not proceed through the railroad crossing or around crossing gates unless directed by law enforcement officer or railroad personnel if:

(a) there are operating flashing red lights;

(b) there is an operating bell;

(c) a crossing gate is closed or in the process of being opened or closed;

(d) the rear portion of the school bus cannot be positioned more than 15 feet from the rail nearest the rear of the school bus; or

(e) the view in either direction is unclear or is obstructed in any way until the driver has secured the school bus and performed a visual inspection to verify that no trains or other vehicles are approaching.

(7) After safely and completely crossing the railroad tracks, the driver shall:

(a) fully close the service door;

(b) turn off hazard warning lights;

(c) adjust the window to the driver's immediate left;

(d) resume use of any noisy equipment, radio, and fans; and

(e) continue traveling safely.

(8) When traveling near railroad tracks, even if not crossing, the school bus driver shall be aware of hazardous circumstances on the railroad tracks that could present a danger to the school bus. In such situations, the driver shall remain aware and instruct the students to remain silent until there is no longer a danger.

**H. Address student safety.**

(1) The driver shall be responsible for the safety and orderly conduct of school bus passengers.

(2) The driver, school bus assistants and substitute school bus assistants shall meet all requirements of student IEPs when transportation is a related service.

(3) The driver shall report all serious discipline cases to the transportation administrator or designee in accordance with the department and the LEA's policies.

(4) The driver shall have the authority to assign any passenger to a seat.

(5) The driver shall not carry on any unnecessary conversations with passengers while driving.

(6) The driver shall not permit the transportation of firearms, knives, explosives, breakable glass, or other dangerous objects, reptiles, or animals, except a service animal authorized by an IEP.

(7) In transporting musical instruments, shop projects, or other school projects, items shall be transported pursuant to the requirements listed in Subparagraph (e) of Paragraph (1) of Subsection T of 6.41.4.9 NMAC.

(8) On the school bus, the driver shall not permit items to block the aisle or exits.

(9) While a school bus is in motion, the driver shall not permit any passengers to occupy any area in front of the passenger seating area. All passengers shall be properly seated.

**I. Perform a post-trip inspection.**

(1) The driver shall, as part of each post-trip inspection, ensure that no passengers remain on board.

(2) The driver shall submit a signed, LEA-approved form reporting all faulty or improperly functioning equipment to the transportation administrator or designee, or the transportation service provider.

**J. Participate in emergency evacuation drills for**

**school buses.** All school bus drivers, substitute school bus drivers, activity bus drivers, school bus assistants, and substitute school bus assistants shall participate in the emergency evacuation drills or adequate alternate instruction scheduled by the transportation administrator.

**K. Be familiar with the location and use of the following emergency equipment:**

- (1) hazard warning lights;
- (2) fire extinguisher;
- (3) first aid kit;
- (4) body fluid cleanup kit;
- (5) triangular warning reflectors; and
- (6) seat belt cutter.

**L. Address emergency evacuations and accidents.**

(1) Emergency evacuations shall take place if there is a fire or danger of fire involving the vehicle. The vehicle shall be stopped and evacuated immediately. Passengers shall move a safe distance away from the vehicle and remain there until given further direction.

(2) Emergency evacuations may take place if the vehicle is stopped in an unsafe position. The driver shall immediately determine whether it is safer for passengers to remain in the vehicle or to evacuate the vehicle. The driver shall direct the passengers to evacuate the vehicle if:

- (a) the vehicle has stopped in the path of a train;
- (b) the position of the stopped vehicle may change, thus increasing the danger to passengers; or
- (c) the position of the stopped vehicle is such that there is danger of another vehicle colliding into it.

(3) In the case of any accident, the driver's first responsibility is for the safety of the passengers. The driver shall:

- (a)

stop immediately;

(b)

notify police and the LEA administrator and, if appropriate, the transportation service provider;

(c)

remain calm and reassure passengers;

(d)

if necessary to evacuate the vehicle, direct passengers to a safe place away from traffic and not permit passengers to leave the scene of the accident;

(e)

render reasonable assistance to persons injured in the accident;

(f)

remain at the scene of the accident and not move the vehicle unless required by local ordinance or a law enforcement officer;

(g)

if possible, place reflectors appropriately to warn traffic;

(h)

obtain information such as names, license numbers, registration numbers, location, time, road and weather conditions, and a listing of all passengers including their seating locations;

(i)

make no admission as to liability nor assume responsibility for the accident;

(j)

comply with federal, state, department regulation and LEA policy and procedures in reporting the accident; and

(k)

adhere to any vital emergency medical information provided.

**M. Alternating flasher lights shall not be used when the school bus is:**

- (1) on school grounds to load or unload students;
  - (2) completely off the traveled portion of the roadway;
  - (3) at a railroad crossing; or
  - (4) stopped, except when loading or unloading students on the roadway.
- [6.41.4.11 NMAC - Rp, 6.41.4.11 NMAC, 3/27/2018]

**6.41.4.12 SCHOOL BUS SAFETY AND EQUIPMENT:**

All school buses used to transport students on school bus routes and LEA-sponsored activities shall meet requirements pursuant to 6.40.2 NMAC and the state of New Mexico guide for school bus maintenance and safety audit program, school bus inspection guide.

**A.** Each school bus shall be equipped with an operable seat belt for the driver that shall be used when the school bus is in motion.

**B.** Each school bus shall have seat belts or a seat harness as required on school buses when required in a student's IEP.

**C.** Each school bus shall have at least one seat belt cutter properly secured in a location within reach of the driver while the driver is belted into the driver's seat pursuant to Paragraph (1) of Subsection YY of 6.40.2.10 NMAC. The seat belt cutter shall be durable and designed to eliminate the possibility of the operator or others being cut during use.

**D.** Each school bus shall carry a first aid kit with contents pursuant to Paragraph (2) of Subsection P of 6.40.2.10 NMAC.

**E.** Each school bus shall carry a body fluid clean-up kit pursuant to Paragraph (3) Subsection P of 6.40.2.10 NMAC.

**F.** Each school bus shall be equipped with at least one UL-approved pressurized dry-chemical fire extinguisher complete with hose. The fire extinguisher shall have a total rating of 2A10BC or greater and meet the requirements of Paragraph (1) of Subsection P of 6.40.2.10 NMAC. The extinguisher shall be securely mounted in the driver's compartment, fully charged and in working condition.

**G.** Each school bus shall be equipped with a minimum of three triangular warning reflectors pursuant to Paragraph (4) of Subsection P of 6.40.2.10 NMAC, and the driver shall be knowledgeable as to their proper placement. Drivers shall use reflectors in the event of

prolonged stops on the roadway.

(1)

On a two-lane road:

(a)

a warning reflector shall be placed on the traffic side of the school bus 10 feet from the front or rear of the school bus, depending on traffic direction;

(b)

a warning reflector shall be placed in the center of the traffic lane or shoulder occupied by the disabled school bus 100 feet from the rear of the school bus; and

(c)

a warning reflector shall be placed in the center of the traffic lane or shoulder occupied by the disabled school bus 100 feet from the front of the school bus.

(2)

On a one-way or divided highway, warning reflectors shall be placed on the traffic side of the school bus at 10, 100, and 200 feet from the rear of the school bus and placed so as to direct traffic away from the school bus.

(3)

If the school bus is disabled within 500 feet of a curve, crest of a hill, or other obstruction:

(a)

a warning reflector shall be placed on the traffic side of the school bus 10 feet from the rear of the school bus in the direction of the obstruction;

(b)

a warning reflector shall be placed on the traffic side of the school bus 100 feet from the rear of the school bus in the direction of the obstruction; and

(c)

a warning reflector shall be placed on the traffic side of the school bus up to 500 feet from the rear of the school bus in the direction of the obstruction.

**H.** The hazard warning lights shall be used only when it is necessary to stop the bus on the shoulder of the roadway or on the roadway. The hazard warning lights shall also be used when the speed of the school bus is less than one-half of the posted speed limit.

**I.** The emergency door(s), windows, and roof hatches shall not be fastened or wired so as



to prevent opening from the inside or outside.

**J.** Loose items shall be properly stowed underneath in equipment compartments or securely fastened if carried inside the school bus.

**K.** Trailers shall not be attached to a school bus.

**L.** Trailers shall not be hitched to school-owned vehicles while the vehicle is transporting students.

[6.41.4.12 NMAC - Rp, 6.41.4.12 NMAC, 3/27/2018]

**6.41.4.13 CONTINUING REQUIREMENTS FOR DRIVERS, SUBSTITUTE DRIVERS, SCHOOL BUS ASSISTANTS, AND SUBSTITUTE SCHOOL BUS ASSISTANTS:**

**A. School bus drivers, substitute school bus drivers, and drivers of activity buses shall maintain and provide to the employer a copy of the following:**

(1) a current CDL with appropriate class and endorsements;

(2) a current DOT medical examiner's certificate in compliance with federal and state CDL licensing requirements;

(3) a driving record obtained through the New Mexico motor vehicle division or the national driver register or other states' motor vehicle division and printed annually; and

(4) a current first aid and CPR certificate which has been obtained from a course approved by the department.

**B. School-owned activity vehicle drivers shall maintain and provide to the employer a copy of the following:**

(1) a current driver's license;

(2) a current medical examiner's certificate from a physical recorded on the DOT form;

(3) a driving record pursuant to requirements in Paragraph (3) of Subsection A of 6.41.4.13 NMAC; and

(4) a current

first aid and CPR certificate pursuant to the requirements in Paragraph (4) of Subsection A of 6.41.4.13 NMAC.

**C. School bus assistants and substitute school bus assistants shall maintain and provide a copy to the employer of the following:**

(1) a current first aid and CPR certificate pursuant to the requirements in Paragraph (4) of Subsection A of 6.41.4.13 NMAC; and

(2) a physical examination renewed every 24 months from the date of the last examination or before as specified by a licensed medical professional.

**D. In-service Training:** To remain qualified, school bus drivers, substitute school bus drivers, school bus assistants, and substitute school bus assistants shall complete a total of eight hours per semester of in-service training that has been approved by the transportation administrator. Persons who do not complete the required hours of in-service training are disqualified from duty until those hours of in-service training are completed.

[6.41.4.13 NMAC - Rp, 6.41.4.13 NMAC, 3/27/2018]

**6.41.4.14 USING SPORT UTILITY VEHICLES (SUVS) FOR TO-AND-FROM TRANSPORTATION:**

**A. General requirements. An LEA electing to transport students in an SUV on a to-and-from route shall:**

(1) be limited to transport up to six students who are enrolled in the LEA;

(2) only transport students whose residence is within the boundaries of the LEA, with the exception of those students in foster care or homeless children and youth as required as part of the best interest determination;

(3) only transport students who live five or more miles from the student's or students' school, with the exception

of those students in foster care or homeless children and youth as required as part of the best interest determination;

(4) require that the SUV driver be an LEA employee certified as a school-owned activity vehicle driver;

(5) require that the driver meet all federal, state, and department qualifications and licensing requirements. The driver shall:

(a) allow the LEA to obtain the driver's driving record through the New Mexico motor vehicle division, or the national driver register or other states' motor vehicle divisions;

(b) satisfactorily complete a physical examination using the current DOT physical examination form:

(i) physical examination shall be renewed every 24 months from the date of the last examination or before as specified by a licensed medical professional;

(ii) additional physical examinations shall be required at any other time at the request of the LEA or the department's transportation bureau;

(iii) all physical examinations shall be conducted by a licensed medical professional;

(c) meet the requirements of the Controlled Substances and Alcohol Use and Testing in accordance with 49 CFR Part 382;

(6) require that the driver complete pre-service training as outlined in department guidance. The pre-service training shall be provided only by a school bus driver instructor that has activity vehicle certification or an activity vehicle instructor that has been certified by the department;

(7) require the SUV driver transporting students on to-and-from routes to obtain two hours of in-service training per semester;

(8) be required

to insure both the SUV and SUV driver through the public school insurance authority;

(9) establish written procedures for an immediate substitute SUV or school bus should an SUV fail to meet pre-trip inspection requirements; the substitute SUV or school bus shall meet all pre-trip requirements;

(10) require the SUV driver to immediately report in writing on the appropriate form(s) signed by the SUV driver any faulty or improperly functioning equipment to the transportation administrator or their designee;

(11) require all passengers to enter and exit on the passenger side of the SUV;

(12) require the SUV driver to ensure that no student remains in the SUV at the conclusion of the route;

(13) be required to have the vehicle inspected semi-annually by an authorized dealer including the manufacturer's recommended multi-point inspection. An inspection shall not occur within 90 days from the prior inspection. All inspections shall occur during the school year. Any defects found by the dealer shall be repaired prior to the vehicle being used to transport students. The vehicle shall be considered out of service until all defects are repaired by the dealer. The semi-annual inspections shall be submitted to the department's transportation bureau along with the documentation of all repaired defects;

(14) require the SUV driver to conduct a daily, thorough pre-trip operational check of the SUV and equipment; the pre-trip shall be documented and shall cover at a minimum:

(a) wheels, tires, lug bolts, and nuts for serviceability;

(b) all exterior lights for serviceability and operation;

(c) all glass, mirrors, windshields (clean, unbroken and mirrors adjusted for the driver);

(d) exhaust system for leaks and looseness of connections;

(e) fluid leaks under and in the front (oil, water, power steering, transmission, brakes) and in the rear (brakes and differential);

(f) engine compartment for serviceability (battery, belts, wiring, hoses, fan);

(g) engine compartment for fluid levels (oil, engine coolant, power steering, brake, windshield washer, transmission);

(h) fuel filler cap;

(i) all gauges, seats, and interior lights;

(j) horn and windshield wipers;

(k) emergency equipment;

(l) cleanliness of SUV;

(m) electronic locks; and

(n) heaters and defrosters;

(15) not allow the SUV driver to operate the SUV if it does not meet the pre-trip inspection requirements;

(16) not allow an employee to operate an SUV for to-and-from transportation if the person's driving record shows:

(a) a conviction for driving a vehicle while intoxicated (DWI) or driving under the influence of intoxicating liquor or drugs (DUI) within the previous three years;

(b) a conviction for DWI or DUI between three years and 20 years prior to the date of application for employment unless a written verification from a licensed counselor or physician has been provided that the person has successfully completed an alcohol or drug abuse program. On-line programs are not acceptable;

(c) a conviction two or more times for DWI or DUI;

(d)

their driver's license has been suspended or revoked within the previous five years for any serious traffic offense;

(e) a conviction of more than three serious traffic offenses within the previous three years;

(f) a conviction of any felony within the previous 10 years, or there exist other reasonable grounds related to the services of transporting students rendering the applicant ineligible;

(17) not allow an employee to operate an SUV for to-and-from transportation if the person's fingerprint-based background check shows:

(a) a conviction for any violation of the Controlled Substances Act;

(b) a conviction of child abuse pursuant to Section 30-6, NMSA 1978, Crimes Against Children and Dependents; or

(c) conviction of any other criminal offense in which a child was a victim as required by the offense; and

(18) ensure all SUVs shall be alcohol, drug and tobacco free areas. Prior to or during work periods, all SUV drivers shall not use alcoholic beverages, illegal substances, or legal substances which would impair the driver's ability to perform required duties.

(19) ensure that student evacuation drills or adequate alternate instruction are conducted pursuant to Paragraph (3) of Subsection C of 6.41.4.9 NMAC.

(20) adopt a policy defining the replacement cycle for SUVs.

**B. Procedures and criteria to establish routes.** The local superintendent or charter school administrator shall demonstrate a need before providing to-and-from transportation in an SUV.

(1) Those students receiving to-and-from transportation through the use of an SUV must be approved by the superintendent or charter school administrator. The superintendent

or charter school administrator must approve annually. In addition, the superintendent or charter school administrator must approve any changes to an SUV route that occur after the annual approval.

(2) On forms provided by the department, the local superintendent or charter school administrator shall submit the following information to the secretary of education or designee and to the department's transportation director or designee for approval before using an SUV to transport students on a to-and-from route:

- (a) a description of the need to transport students in an SUV;
- (b) a list of students to be transported in an SUV;
- (c) the location of the school and location of the students' residence as shown on a map; and

(d) the local superintendent or charter school administrator must sign the form submitted to the department.

(3) A revised request for the SUV route must be submitted to the department for approval if there are any changes to the initial request.

(4) LEAs may count the students and miles for transportation funding who receive transportation services through the use of an SUV; however, only half of the miles will be counted through the funding formula.

(5) Written notification shall be given to the department's transportation director or designee immediately when the LEA is no longer providing transportation in an SUV to the student or students who had been previously approved.

(6) Students in foster care or homeless children and youth may be transported as otherwise prescribed and required by law or department rule.

**C. Construction standards.** To provide for the safety of students, all SUVs used to transport students on to-and-from routes shall

adhere to construction standards requirements.

(1) All SUVs used to transport students on to-and-from routes shall:

- (a) be LEA owned;
- (b) be a minimum six-passenger, full-size, extended-length, SUV;

(i) the SUV shall not accommodate more than nine people including the driver; and

(ii) the SUV shall not include vans or mini-vans;

(c) meet applicable United States department of transportation federal motor vehicle safety standards;

(d) comply with all applicable state statutes and comply with child restraint recommendations from the national highway traffic safety administration;

(e) have operable seat belts which all occupants are required to wear while the SUV is in motion;

(f) bear the words "SCHOOL VEHICLE" and the name of the LEA in reflective letters at least eight inches high on both sides of the SUV;

(g) bear the words "SCHOOL VEHICLE" and the name of the LEA in reflective letters on the rear of the SUV;

(h) be marked with reflective material that is at least one and three-fourths inches in width, placed horizontal and centerline of the SUV extending the length of both sides and rear of the SUV;

(i) be equipped with red LED strobe lights on the front and back of the SUV that shall be used during loading and unloading; and

(j) be equipped with electronic locks and child safety locks on all doors; all locks shall be engaged when the SUV is in motion.

(2) All SUVs used to transport students on to-and-from routes may:

(a) be equipped with a maximum speed limiter and shall be set at 75 miles per hour;

(b) have a two-way radio communication system;

(c) have an operable recording video camera;

(d) be equipped with a back-up camera; and

(e) be painted national school bus glossy yellow, in accordance with the colorimetric specification of national institute of standards and technology (NIST) federal standards no. 595a, color 13432, except that the hood should be either that color or lusterless black, matching NIST federal standard no. 595a, color 37038.

**D. Safety equipment.**

All SUVs used to transport students on to-and-from routes shall have:

(1) a first aid kit with contents pursuant to 6.40.2 NMAC, New Mexico School Bus Construction Standards;

(2) a seat belt cutter within the driver's reach while belted;

(3) operable seat belts available to all passengers;

(4) a fire extinguisher mounted inside the SUV;

(5) a reflective safety vest that must be worn by the driver when the driver is exiting the SUV;

(6) a cargo net to secure all items not under students' control; and

(7) a minimum of three triangular warning reflectors;

(a) the SUV driver shall be knowledgeable of the warning reflectors' operation and proper placement;

(b) the warning reflectors shall be used in the event of prolonged stops on the roadway as follows:

(i) one warning reflector at a distance of approximately 100 feet in front and one reflector approximately 100 feet in back of the disabled SUV in the center of the traffic lane occupied by the disabled SUV;

(ii) one warning reflector at the traffic side of the disabled SUV, not less than 10 feet from the front or rear of the disabled SUV;

(iii) if the SUV is disabled within 500 feet of a curve, crest of a hill, or other obstruction to view, the SUV driver shall place the warning reflector in that direction to afford ample warning. The warning reflector must in no case be less than 100 feet or more than 500 feet from the disabled SUV.

**E. Route requirements.** All to-and-from transportation shall adhere to route requirements.

(1) Loading and unloading shall occur, whenever possible, off of the roadway.

(2) Students shall not cross the roadway for loading or unloading purposes.

(3) The SUV driver shall load and unload at established route stops only unless an emergency dictates otherwise.

(4) The student shall load or unload only at the student's designated route stop unless the driver has written approval from the transportation administrator or designee.

(5) The SUV driver shall ensure all doors are closed and locked before putting the SUV in motion.

(6) The SUV driver shall keep the SUV clean, well ventilated, and properly heated when necessary.

(7) The SUV driver shall obey all traffic laws, ordinances, and rules of the road.

(8) The SUV driver shall report all hazards, whether potential or existing, on the route and all causes for failure to operate on schedule to the transportation

administrator or designee.

**F. Loading and unloading on route.** All to-and-from transportation shall adhere to loading and unloading requirements.

(1) The SUV driver shall use mirrors to check traffic when approaching the stop.

(2) The SUV driver shall reduce the SUV's speed.

(3) The SUV driver shall activate the strobe lights not less than 100 feet nor more than 300 feet from a route stop in urban areas and not less than 300 feet nor more than 1,000 feet from a route stop in rural areas to warn motorists that the SUV is about to stop.

(4) On morning routes, a complete stop shall be made at all established route stops whether students are present or not, unless a parent or guardian or transportation administrator has notified the driver that the student will be absent. The SUV driver shall not wait for students unless they are observed making an effort to reach the route stop or unless otherwise specified in the student's IEP.

(5) When loading students, the SUV shall be brought to a complete stop, the transmission put in park and the emergency brake activated.

(6) When unloading students, the SUV shall be brought to a complete stop, the transmission put in park and the emergency brake activated.

(7) When the SUV driver leaves the driver's seat, the keys shall be removed from the ignition switch.

(8) When all students have been completely and safely loaded or unloaded, the strobe lights shall be turned off.

(9) The SUV driver shall check mirrors and make a thorough live sight inspection of all traffic before resuming travel.

**G. Loading and unloading at schools.** All to-and-from transportation shall adhere to requirements when loading and unloading at schools.

(1) The SUV

driver shall load and unload students in the same location that loading and unloading of school buses occur.

(2) The SUV shall be parked in place for loading prior to dismissal of school. If loading or unloading on the street, the SUV shall be stopped parallel to the curb. Strobe lights shall not be activated unless the SUV is stopped on the traveled portion of the roadway.

(3) The vehicle shall be brought to a complete stop, the transmission put in park, and the emergency brake activated before loading or unloading students.

(4) When the SUV driver leaves the driver's seat, the keys shall be removed from the ignition switch.

(5) The driver shall not back up the SUV on school grounds unless absolutely necessary.

**H. Operating on interstate highways.** All to-and-from transportation shall adhere to operating requirements on interstate highways.

(1) The SUV driver shall not make any stop except in an emergency nor shall any student load or unload while the SUV is on the interstate. All loading or unloading shall be done at points off the interstate.

(2) The SUV driver shall not drive the SUV onto an opposite roadway or make any other similar maneuver except at interchanges and then only in a manner consistent with the proper procedures at any given interchange.

**I. Railroad crossings.** The driver shall use extreme caution when approaching and crossing highway-grade railroad crossings.

**J. Continuing standards for drivers:** An SUV driver shall no longer be eligible to transport students:

(1) for three years if they receive a conviction for DWI or DUI. They may requalify if a written verification from a licensed counselor or physician is provided that the person has successfully completed an alcohol or drug abuse

program. On-line programs are not acceptable. They are permanently ineligible if they have two or more DWI or DUI convictions;

(2) for five years receive a suspension or revocation of their driver's license for any serious traffic offense;

(3) for three years receive convictions for more than three serious traffic offenses;

(4) if they receive any convictions pursuant to Paragraph (2) of Subsection P of 6.41.4.9 NMAC; or

(5) if they do not complete the previous semester's required in-service training; to become eligible again, they must complete the training.

**K. Driver files.** LEAs shall maintain SUV driver files that include the following:

(1) annual driving record check;

(2) copy of current medical examiner's certificate from the physical;

(3) copy of current and valid driver's license;

(4) pre-service training record;

(5) documentation of required in-service training pursuant to item (iii) of Subparagraph (d) of Paragraph (1) of Subsection S of 6.41.4.9 NMAC and Paragraph 7 of Subsection A of 6.41.4.14 NMAC;

(6) proof that the driver is enrolled in a random drug and alcohol testing program; and

(7) a current first aid and CPR certificate pursuant to the requirements in Paragraph (4) of Subsection A of 6.41.4.13 NMAC.

[6.41.4.14 NMAC - Rp, 6.41.4.14 NMAC, 3/27/2018]

**HISTORY OF 6.41.4 NMAC:**

6.41.4 NMAC, Standard for Providing Transportation for Eligible Students; filed 12/31/1998 - Repealed and Replaced with 6.41.4 NMAC, Standard for Providing Transportation for Eligible Students, effective 3/27/2018.

**PRE-NMAC REGULATORY**

**FILING HISTORY:** The material in this regulation was derived from that previously filed with the State Records Center and Archives under State Board of Education Regulation 95-1 Standards for Providing Transportation for Eligible Students, filed February 2, 1995; and State Board of Education Regulation 83-3 State of New Mexico Standards for School Bus Operations, filed July 12, 1983, State Board of Education Regulation 83-3 State of New Mexico Standards for School Bus Operations Amendment #1, filed December 5, 1988; and State Board of Education Regulation 83-3 State of New Mexico Standards for School Bus Operations Amendment #2, filed January 24, 1990; and State Board of Education Regulation 77-6 Governing the Transportation of School Age Children Participating in School Sponsored Activities, filed September 13, 1977; State Board of Education Regulation 77-12 School Bus Driver's Manual, Revised Edition, filed January 16, 1978; and State Board of Education Regulation 77-12 Amendment #1 Special Education Supplement to the School Bus Driver's Handbook, filed August 21, 1978; and State Board of Education Regulation 71-9 School Bus Driver's Handbook, filed September 22, 1971; and State Board of Education Regulation 68-4 Regulations, Operating Procedures and Information for School Bus Drivers, filed March 12, 1968.

**HISTORY OF REPEALED**

**MATERIAL:** 6.41.4 NMAC, Standard for Providing Transportation for Eligible Students; filed 12/31/1998 - Repealed effective 3/27/2018.

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

By the Superintendent's order dated 3/8/2018, the Office of the Superintendent of Insurance repeals its rule 13.4.2 NMAC entitled Resident Agents and Solicitors. (Filed 7/1/97; Recompiled 11/30/01) and

replaces it with a new rule 13.4.2 NMAC, entitled Resident Producers and Other Resident Licensees, (adopted 3/8/2018) and effective 4/2/2018.

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

**TITLE 13 INSURANCE  
CHAPTER 4 LICENSING OF INSURANCE PROFESSIONALS  
PART 2 RESIDENT PRODUCERS AND OTHER RESIDENT LICENSES**

**13.4.2.1 ISSUING**

**AGENCY:** New Mexico Office of Superintendent of Insurance, Producer Licensing Bureau (PLB).

[13.4.2.1 NMAC – Rp, 13.4.2.1 NMAC, 4/2/2018]

**13.4.2.2 SCOPE:** This rule applies to persons seeking licensure to engage in insurance-related activities as defined in Articles 1 and 7 of Section 59A NMSA 1978 and that shall be licensed pursuant to articles of the Insurance Code.

[13.4.2.2 NMAC – Rp, 13.4.2.2 NMAC, 4/2/2018]

**13.4.2.3 STATUTORY**

**AUTHORITY:** Sections 28-2-1 et seq., 40-5A-1 et seq., 59A-1-13, 59A-1-14, 59A-2-8, 59A-2-8.1, 59A-2-9, 59A-6-1, 59A-7-1 et seq., 59A-11-1 et seq., 59A-11A-1 et seq., 59A-12-1 et seq., 59A-12B-1 et seq., 59A-12D-1 et seq., 59A-14-1 et seq., 59A-16-8, 59A-16-12, 59A-30-3, 59A-30-4, 59A-32A-1 et seq., 59A-44-1 et seq., 59A-46-1 et seq., 59A-48-1 et seq., 59A-49-1 et seq., 59A-50-1 et seq., 59A-60-1 et seq., 59A-61-1 et seq. NMSA 1978 and 18 U.S.C. Section 1033.

[13.4.2.3 NMAC – Rp, 13.4.2.3 NMAC, 4/2/2018]

**13.4.2.4 DURATION:** Permanent.

[13.4.2.4 NMAC – Rp, 13.4.2.4 NMAC, 4/2/2018]

**13.4.2.5 EFFECTIVE DATE:** April 2, 2018, unless a later date is cited at the end of a section. [13.4.2.5 NMAC – Rp, 13.4.2.5 NMAC, 4/2/2018]

**13.4.2.6 OBJECTIVE:**

**A. Covered by this rule.** The purpose of this rule is to implement Chapter 59A, Articles 11 and 12 NMSA 1978, and other articles within the Insurance Code that address licensing of insurance professionals by the superintendent of insurance. This rule establishes requirements for obtaining a license as a resident insurance producer, insurance consultant, producer for prepaid dental plans, producer for sales of membership in a health maintenance organization, producer for a fraternal benefit society, vendor selling portable electronics insurance, salesperson for prearranged funeral plans, title insurance producer, pharmacy benefit manager, reinsurance intermediary, managing general agent, registered motor club representative, rental car insurance producer or endorsee, temporary insurance producer or travel insurance producer. This rule also establishes requirements for qualifying examinations and the issuance, duration, continuation and termination of all such licenses, appointments and registrations, referred to herein as “licenses.”

**B. Covered under other rules.** For licensing of bail bondsmen and their solicitors, refer to 13.20.2 NMAC. For licensing of surplus lines brokers, refer to Section 59A-14-1 et seq. NMSA 1978 and 13.4.4 NMAC. For licensing of resident annuity or securities salespersons, refer to Section 59A-35-1 et seq. NMSA 1978 and 13.3.6 NMAC. For licensing of staff, independent and public adjusters refer to Section 59A-13-1 et seq. NMSA 1978 and 13.4.8 NMAC. For licensing of third-party administrators, refer to 13.4.5 NMAC. For appointment of licensed producers to transact credit life and credit health insurance, refer to Section 59A-25-1 et seq. NMSA 1978

and 13.18.2 NMAC. [13.4.2.6 NMAC – Rp, 13.4.2.6 NMAC, 4/2/2018]

**13.4.2.7 DEFINITIONS:**

For the purposes of this rule:

**A. “affiliate”** means a person that controls, is controlled by or is under common control with an insurance producer;

**B. “appointment”** means official authorization by an insurer of a licensed producer to transact insurance on the insurer’s behalf upon application and the payment of required fees by the insurer to the superintendent;

**C. “broker”** means a type of insurance producer who, not being an agent of the insurer, but as an independent contractor and on behalf of the insured, solicits, negotiates or procures insurance or annuity contracts or the renewal or continuation thereof for insureds or prospective insureds other than the broker. In any controversy between an insured or an insured’s beneficiary and the insurer issuing the insurance through its licensed insurance producer at the request of a broker, the broker shall be held to be the agent of the insured unless under particular circumstances it is found that the broker is representing the insurer or in instances of fraud or attempted fraud by the insured. “Broker” does not include a surplus lines broker as defined in Chapter 59A, Article 14 NMSA 1978;

**D. “business entity”** means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity;

**E. “compensation”** means payments, commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes or any other form of valuable consideration, whether or not payable pursuant to a written agreement;

**F. “designated home state”** means a state in which an insurance producer is licensed and which the producer designates for purposes of compliance with licensing

regulations;

**G. “designated responsible licensed producer”** or “DRLP” is as defined in Subsection B of 13.4.2.10 NMAC;

**H. “errors and omissions policy”** or “professional indemnity insurance” means a form of casualty insurance that helps to protect individuals and companies from costs of defending against a negligence claim based on allegations of loss caused by an error or omission in the service sold;

**I. “escrow”** means a transaction in which funds are delivered or given to a person not otherwise having any right, title or interest in them, to be held by that person for delivery or disbursement to another person upon the occurrence of a specified event or the performance of a specified condition;

**J. “home state”** means the District of Columbia or any state or territory of the United States which is the principal place of residence or principal place of business for an insurance producer and in which the producer is licensed to transact insurance;

**K. “insurance”** has the meaning set forth in Section 59A-1-5 NMSA 1978;

**L. “insurance consultant”** means a person who, under an agreement with an insured or potential insured, provides professional advice regarding a policy, annuity or other instrument of insurance in exchange for a fee, as set forth in Section 59A-11A-1 NMSA 1978.

**M. “insurance producer”** means a person required to be licensed in this state to sell, solicit or negotiate insurance. A licensed insurance producer appointed by an insurer shall, in any controversy between an insured or an insured’s beneficiary and the insurer, be held to be the agent of the insurer that issued the insurance solicited or applied for;

**N. “insurer”** has the meaning set forth in Section 59A-1-8 NMSA 1978;

**O. “license”** means a document issued by

the superintendent of insurance authorizing a person to act as an insurance producer for the lines of authority specified in the document or to engage in other insurance transactions based on the type of license;

**P. “limited lines insurance”** means those lines of insurance as set forth in Sections 59A-12-18, 59A-12-18.1 and 59A-60-1 et seq. NMSA 1978, or any other line of insurance that the superintendent deems necessary;

**Q. “limited lines insurance producer”** means a licensed insurance producer who is qualified to solicit and sell limited lines insurance;

**R. “managing general agent”** means a specialized type of licensed insurance producer as defined in Subsection C of Section 59A-12B-2 NMSA 1978;

**S. “NAIC”** means the national association of insurance commissioners;

**T. “negotiate”** means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers;

**U. “offer and disseminate”** means providing general information, such as a description of coverage and price, processing applications, collecting premiums and performing other insurance-related activities for which a license is not required by this state;

**V. “pharmacy benefits manager”** means a person or its subsidiary that provides claims administration, benefit design and management, pharmacy network management, negotiation and administration of product discounts, rebates and other benefits or other prescription drug or device services to third parties, as further described in Subsection G of Section 59A-61-2 NMSA 1978;

**W. “prearranged funeral plan”** means a contract for future delivery of a funeral plan as defined in Subsections A, B and C of Section 59A-49-4 NMSA 1978;

**X. “prepaid dental plan”** means a contractual arrangement whereby a prepaid dental plan organization undertakes to directly provide or to arrange for the provision of prepaid dental services and to pay or make reimbursement for any remaining portion of such prepaid dental services on a prepaid basis through insurance or otherwise;

**Y. “principal”** means a person who gives authority to another to act on the person’s behalf;

**Z. “rental car endorsee”** means a rental car agent’s employee who offers, sells, binds, effects, solicits or negotiates rental car insurance and who satisfies the requirements of Subsection C of 13.4.2.15 NMAC;

**AA. “rental car insurance”** means insurance sold in connection with and incidental to the rental of a vehicle and that applies only to the vehicle that is the subject of the rental agreement, and as further defined in Subsection E of Section 59A-32A-2 NMSA 1978;

**BB. “rental car producer”** means a person or entity in the business of renting rental cars to the public and that is licensed to offer, sell, bind, effect, solicit or negotiate rental car insurance;

**CC. “resident of the state”** means an individual who maintains a principal home in New Mexico and holds no active resident insurance license in another state;

**DD. “sell”** means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer;

**EE. “service representative”** means an individual regularly employed and salaried by an insurer, group of insurers or managing general agent who assists insurance producers in soliciting, negotiating and effectuating insurance for the insurer, group or managing general agent and who, in the conduct of their business, receives no part of the

commission on insurance written. A service representative is not required to be licensed, nor shall the service representative independently solicit or negotiate insurance or annuity contracts;

**FF. “solicit”** means to attempt to sell insurance or ask or urge a person to apply for a particular kind of insurance from a particular insurer;

**GG. “superintendent”** means the superintendent of insurance, the office of superintendent of insurance or employees of the office of superintendent of insurance acting within the scope of the superintendent’s official duties and with the superintendent’s authorization;

**HH. “terminate”** means to cancel the relationship between an insurance producer and the insurer or to terminate a licensed insurance professional’s authority to transact insurance;

**II. “title abstract plant”** is as defined in Section 59A-12-13 NMSA 1978;

**JJ. “title insurance policy”** means an insurance contract indemnifying against loss or damages, as set forth in Subsection H of Section 59A-30-3 NMSA 1978;

**KK. “title insurance business”** means the types of business set forth in Subsection C of Section 59A-30-3 NMSA 1978;

**LL. “title insurance producer”** is a person licensed in this state to engage in the business of title insurance and who has been appointed to perform escrow, closing and settlement functions of a real estate transaction by a title insurer;

**MM. “travel insurance policy”** means insurance coverage for personal risks incident to planned travel as defined in Paragraph (3) of Subsection H of Section 59A-12-18.1 NMSA 1978; and

**NN. “travel retailer”** means a business entity that makes, arranges or offers travel services. [13.4.2.7 NMAC – Rp, 13.4.2.7 NMAC, 4/2/2018]

**13.4.2.8 TYPES OF INSURANCE LICENSES:**

**A. License required.**

(1) No individual or business entity shall sell, solicit or negotiate insurance in this state unless licensed by the superintendent as an insurance producer for that line of insurance. Any person who is compensated for soliciting or accepting applications for health maintenance organization membership from the public shall be licensed as a health insurance producer in accordance with the provisions of Section 59A-46-17 NMSA 1978.

(2) A business entity that is licensed as an insurance producer shall employ licensed individual insurance producers to transact the types of insurance for which the business entity is licensed. Such an individual insurance producer shall hold a license of the same type as that of the business entity employer.

(3) Persons who engage in other transactions that are subject to the Insurance Code shall be licensed according to requirements set forth under relevant sections.

**B. Producer license types based on lines of authority.**

An insurance producer may be qualified for one or more of the following lines of authority:

(1) casualty insurance, including coverage against legal liability, including for death, injury, disability or damage to real or personal property;

(2) property insurance, including coverage for direct or consequential loss or damage to property of every kind;

(3) accident and health or sickness insurance, including coverage for sickness, bodily injury or accidental death and may include benefits for disability income;

(4) life insurance, including coverage on human lives, benefits of endowment and annuities, and other benefits in the event of death or dismemberment by

accident and may include benefits for disability income;

(5) variable life and variable annuity insurance, including contracts deemed to constitute securities that require that the producer also possess a license as a security salesman under other applicable state laws; and

(6) personal lines, including property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes.

**C. Producer licenses for limited lines.** An insurance producer may also be licensed for any of the following limited lines:

(1) credit insurance, as sold by individual producers who are employed full time by a vendor of merchandise or other property or by a financial institution that executes consumer loans which require credit life insurance, credit disability insurance, credit property insurance or credit involuntary unemployment insurance as set forth in Section 59A-25-1 et seq. NMSA 1978;

(2) travel insurance, as sold by producers who are qualified to solicit or sell travel insurance as set forth in Section 59A-12-18.1 et seq. NMSA 1978 and 13.4.2.14 NMAC;

(3) portable electronics insurance, as sold by vendors and their employees and representatives in accordance with the provisions of the Portable Electronics Insurance Act found at Section 59A-60-1 et seq. NMSA 1978 and as set forth in 13.4.2.21 NMAC;

(4) rental car insurance, as sold in connection with and incidental to the rental of vehicles by a rental car company and in accordance with the provisions of the Rental Car Insurance Limited Producer License Act found in Section 59A-32A-1 et seq. NMSA 1978 and as set forth in 13.4.2.15 NMAC;

(5) title insurance, as sold by title insurance business entities and the title insurance producers employed

by them in accordance with the provisions of the New Mexico Title Insurance Law found in Section 59A-30-1 et seq. NMSA 1978 and as set forth in 13.4.2.13 NMAC; or

(6) motor club services, as sold by a registered representative and provided by a motor club holding a certificate of authority in this state in accordance with the provisions of the Motor Club Law found in Section 59A-50-1 et seq. NMSA 1978 and as set forth in 13.4.2.16 NMAC.

**D. Other licenses required.** Persons engaging in any of the following types of transaction under the insurance code shall also be licensed:

(1) persons acting as pharmacy benefits managers in accordance with provisions of the Pharmacy Benefits Manager Regulation Act found at Section 59A-61-1 et seq. NMSA 1978 and as set forth in 13.4.2.17 NMAC;

(2) persons offering membership in a prepaid dental plan in accordance with the provisions of the Prepaid Dental Plan Law found in Section 59A-48-1 et seq. NMSA 1978 and as set forth in 13.4.2.18 NMAC;

(3) persons engaged in the sale of prearranged funeral plans in accordance with the provisions of the Prearranged Funeral Plan Regulatory Law found in Section 59A-49-1 et seq. NMSA 1978 and as set forth in 13.4.2.19 NMAC;

(4) persons offering benefits to members through a fraternal benefit society as set forth in Section 59A-44-1 et seq. NMSA 1978 and 13.4.2.20 NMAC;

(5) persons acting as reinsurance intermediaries in accordance with the provisions of the Reinsurance Intermediary Law found at Section 59A-12D-1 et seq. NMSA 1978 and as set forth in 13.4.2.22 NMAC;

(6) persons selling services as insurance consultants in accordance with the provisions of Section 59A-11A-1 et seq. NMSA 1978 and as set forth in 13.4.2.23 NMAC;



(7) third-party administrators performing or providing any service, function, duty or activity in respect to any insurance plan, self-insurance or alternative to insurance in an administrative or management capacity in this state with respect to risks located or partially located in this state or on behalf of persons in this state in accordance with the provisions of Section 59A-12A-1 et seq. NMSA 1978 and as set forth in 13.4.5 NMAC;

(8) persons acting as independent, public and staff adjusters in accordance with the provisions of Section 59A-13-1 et seq. NMSA 1978 and as set forth in 13.4.8 NMAC; and

(9) persons acting as surplus lines brokers in accordance with the provisions of Section 59A-14-1 et seq. NMSA 1978 and as set forth in 13.4.4 NMAC. [13.4.2.8 NMAC – Rp, 13.4.2.11 NMAC, 4/2/2018]

**13.4.2.9 LICENSING REQUIREMENTS FOR INDIVIDUALS:**

The superintendent will issue, renew and continue resident licenses for individual insurance producers to transact the kinds of insurance as set forth in 13.4.2.8 NMAC.

**A. General requirements.**

(1) An applicant shall be at least 18 years of age;

(2) an applicant shall file an application electronically or as otherwise specified by the superintendent;

(3) an applicant shall pay the fees required by Section 59A-6-1 NMSA 1978 as well as providing any additional bond, liability coverage or letter of credit that may be required by the license applied for;

(4) an applicant shall not have committed an act that is a ground for license denial, suspension or revocation under the Insurance Code; and

(5) an

applicant shall have passed the examination required for each line of authority for which the license is sought, if examination is required by 13.4.2.11 NMAC.

**B. Application form.**

(1) The application form may require the following information about the applicant:

(a) proof of the applicant’s identity;

(b) name, date of birth, social security number and residence and business address;

(c) personal history;

(d) business experience, including experience, special training or education in the kind of business to be transacted under the license applied for;

(e) previous licensing information, including:

(i) whether the applicant was ever previously licensed to transact insurance in this state or elsewhere;

(ii) whether any license was ever refused, suspended or revoked;

(iii) whether any insurer claims that the applicant is indebted to it, and if so, the details of the claim; and

(iv) whether the applicant has ever had an insurance agency contract or appointment canceled and, if so, the facts of the cancellation;

(f) type of license applied for and kinds of insurance or transactions to be covered thereby;

(g) if the applicant will be adjusting workers’ compensation claims, then an in-state physical address for the business entity;

(h) the NAIC number and name of the company holding a New Mexico certificate of authority that is sponsoring the applicant, if applicable;

(i) additional information relating to a particular type of license; and

(j) such other pertinent information and matters as the superintendent may reasonably require.

(2) The superintendent may require any application to be in the applicant’s handwriting and under the applicant’s oath.

**C. Approval.** Before approving a license application and issuing a license the superintendent shall confirm that:

(1) all of the applicant’s answers to the questions on the application are complete, truthful and satisfactory, including acknowledgment and explanation of any prior criminal charges;

(2) the applicant does not currently hold an active New Mexico resident or nonresident license or an active resident license in another state;

(3) the applicant has provided at least five years of employment history without gaps in the employment record;

(4) the applicant has provided an in-state residential or business address (a post office box does not satisfy this requirement);

(5) the applicant’s fingerprints have been submitted for purposes of a state and federal background check, and

(a) pursuant to 18 U.S.C. Section 1033, no individual who has been convicted of a felony involving dishonesty or a breach of trust may be licensed as a resident producer, unless the person has the written consent of the superintendent;

(b) pursuant to the Criminal Offender Employment Act found at Section 28-2-1 et seq. NMSA 1978, any prior criminal record shall be considered in connection with application for any license under this article; and

(c) if the results of the background check have not been received or indicate

a need for further investigation, the application will not be approved pending further review;

(6) the applicant has satisfied both the general and specific requirements and has provided any additional information necessary for the type of license requested or as required by the superintendent based the initial application answers;

(7) the applicant shall not use or intend to use the license solely to write insurance on the applicant’s own life for the purpose of evading in spirit or intent the anti-rebate or anti-discrimination laws relating to insurance;

(8) if the applicant is a citizen of a foreign county, then the application shall include proof that the applicant is eligible to reside and work in the United States; and

(9) the applicant has passed any required examination based on the type of license requested, as set forth in 13.4.2.11 NMAC.

**D. Prohibitions.**

Pursuant to Section 59A-12-11 NMSA 1978, the superintendent shall not license as an insurance producer or permit any such license to continue if the superintendent finds that an applicant for license intends to offer, give or sell stock or other ownership or participating interest in the agency or brokerage as inducement to or in connection with purchase of insurance or that the licensee has previously done so.

**E. Contents of license.**

The contents of the license shall be consistent with the requirements set forth in Section 59A-11-9 NMSA 1978.

**F. Special licensing requirements.**

(1) Limited line credit insurance license applicants shall include evidence that the insurer will provide a program of instruction to include selling, soliciting and negotiating credit insurance that has been approved by the superintendent.

(2) Variable life and variable annuity or fraternal

variable life and variable annuity license applications shall be deferred and reviewed manually by the superintendent. The applicant’s FINRA and CRD numbers shall be supplied.

(3) Applicants shall apply for or actively hold a producer license for the life line of authority within the requested license class as follows:

(a) A variable life or a variable annuity producer license requires a life producer license.

(b) A variable life or a variable annuity consultant license requires a life insurance consultant license.

(c) A fraternal variable life or a variable annuity producer licenses requires a fraternal life producer license.

(d) A temporary variable life or a variable annuity producer license requires a temporary producer license.

(e) A viatical variable life or a variable annuity broker license requires a viatical life broker license.

(4) Surplus lines broker applicants shall actively hold both current property and casualty producer licenses prior to applying for a surplus lines broker license.

[13.4.2.9 NMAC – Rp, 13.4.2.8 NMAC, 4/2/2018]

**13.4.2.10 LICENSING REQUIREMENTS FOR BUSINESS ENTITIES:**

**A. General**

**requirements.** A business entity acting as an insurance producer is required to obtain an insurance producer license pursuant to Sections 59A-11-3 NMSA 1978 and 59A-12-15 NMSA

(1) When licensing of a business entity is required, the application shall be filed by the business entity.

(2) The application shall be submitted electronically using the uniform business entity application or

as otherwise specified by the superintendent.

(3) The business entity shall specify the business type as one of the following legal business types:

- (a) partnership;
- (b) limited liability company (LLC);
- (c) limited liability partnership (LLP); or
- (d) corporation.

A sole proprietorship may not apply for a business insurance producer license.

(4) The application shall be accompanied by payment of fees, as follows:

(a) all fees required pursuant to Section 59A-6-1 NMSA 1978;

(b) any bond or letter of credit required for the license applied for; and

(c) an additional license application filing fee for each individual in excess of one who is to exercise the license powers of the business entity, if not a general partner therein.

(5) The application shall be signed on behalf of the applicant by an authorized partner or corporate officer, under oath if required by the superintendent.

(6) If the business is a firm, then each individual who is not a bona fide general partner and who is to exercise license powers shall file an application for a producer license for the same kind or kinds of business as that applied for by the business entity.

(7) If the business is a corporation, then each individual, whether or not an officer, director, stockholder or in other relationship to the corporation, who is to exercise license powers shall file an application for a producer license for the same kind or kinds of business as that applied for by the business entity.

(8) If the business is a partnership, then each individual who is not a general partner and who is to exercise license

powers shall file an application for a producer license for the same kind or kinds of business as that applied for by the business entity.

**B. Application form.**

The application form may require information about the business entity as follows:

(1) the name, state of residence, proof of identity, business record, reputation and experience of each partner, officer, member of the board of directors and controlling stockholder of the business entity, and any additional information required of an individual applicant for a producer license as the superintendent deems necessary;

(2) evidence satisfactory to the superintendent that transaction of the business proposed to be transacted under the requested license is within the powers of the business entity as set forth in the entity’s articles of incorporation, charter, bylaws, partnership, operating agreement or other governing documents;

(3) at least one individual is specified as the designated responsible licensed producer (DRLP) who is actively licensed in this state as either a resident or nonresident producer for each of the lines of authority applied for by the business entity;

(a) The DRLP(s) designated by the business entity shall cumulatively be licensed for all lines of authority of the business entity; except that

(b) business entities of the following types seeking a producer license are not required to designate a DRLP: portable electronics, pharmacy benefits managers, rental car insurance producers and third party administrators; and

(4) such further information concerning the applicant, appointment of partners, corporate officers, directors and stockholders as may be requested by the superintendent.

**C. Approval.** The superintendent shall review the application and confirm that:

(1) all answers to the questions on the application are complete, truthful and satisfactory;

(2) the applicant does not already hold an active resident or nonresident license in New Mexico or an active resident license in another state;

(3) the business entity has paid the fees set forth in Section 59A-6-1 NMSA 1978, as well as providing any additional bond, liability coverage or letter of credit that may be required by the type or types of license applied for;

(4) the business entity application lists at least one individual as an owner, officer, partner or director;

(5) the business entity has designated a licensed insurance producer responsible for the business entity’s compliance with the insurance laws of this state for every line of authority listed in the application;

(6) the application sets forth the names of all the members, officers and directors of the business entity and the names of each individual who is to exercise the powers conferred by the license upon the business entity;

(7) the business entity license application uses the entity’s legal name, unless an assumed name has been previously approved in writing by the superintendent; and

(8) at least one licensed insurance producer who is to exercise license powers is affiliated by submission of an application, and the application for affiliation was submitted with payment as required in Section 59A-6-1 NMSA 1978.

**D. Prohibitions, Contents of license, Special licensing requirements.**

The provisions of Subsections D, E and F of 13.4.2.9 NMAC apply also to business entities seeking a producer license.

[13.4.2.10 NMAC – N, 4/2/2018]

**13.4.2.11 EXAMINATION OF APPLICANTS:**

**A. Applications requiring examination.**

(1) Individuals applying for the following types of resident licenses shall take and pass the examination required for issuance of the license by the superintendent:

(a) insurance producer – producer examination;

(b) independent, public or staff adjuster – adjuster examination;

(c) insurance consultant – producer or consultant examination;

(d) viatical broker – producer examination;

(e) surplus lines broker – surplus lines broker examination; and

(f) title insurance producer – title insurance producer examination.

(2) Separate exams may be required for different lines of insurance or license types and may be administered at different times and locations.

**B. Examination exemptions.**

(1) Pursuant to Section 59A-11-10 NMSA 1978, reexamination is not required for renewal or continuance of current resident licenses unless ordered by the superintendent.

(2) Reexamination is not required for resident applicants who have been licensed in this state within the five years prior to the date of the new application and who seek to be relicensed for the same line or lines of insurance. This exemption does not apply if the previous license was suspended or revoked, if continuation of the license was refused by the superintendent or if the applicant did not previously take and pass an exam in this state.

(3) Examination is not required for:

(a) Applicants seeking a limited lines license in order to transact credit, travel or portable electronics

insurance;

(b) Applicants seeking to be licensed as a life and annuity or accident and health insurance producer who hold the Chartered Life Underwriter (C.L.U.) designation by the American College of Life Underwriters;

(c) Applicants seeking to be licensed as a property or casualty insurance producer who hold the designation of Chartered Property and Casualty Underwriter (C.P.C.U.) by the American Institute of Property and Casualty Underwriters;

(d) Applicants seeking a rental car endorsement to transact rental car insurance under the supervision of a rental car producer that has previously provided a training course that has been submitted to and approved by the superintendent pursuant to Subsection D of Section 59A-32A-5 NMSA 1978;

(e) Applicants for a temporary license; or

(f) Applicants for registration as a motor club representative.

(4) Examination is not required for applicant who have taken and passed a similar examination and received a license for the same line or lines of authority in a state in which the reciprocal provisions of Section 59A-5-33 NMSA 1978 apply and:

(a) the license in the other state is current, or

(b) the application is received within 90 days after of cancellation of the previous license. If the license has been canceled, then the following is required:

(i) a certification from the reciprocal state that at the time of cancellation the applicant was in good standing in that state; or

(ii) records maintained by the NAIC indicate that the insurance producer is or was licensed in good standing for the line of authority requested.

(5) Examination is not required for an applicant currently licensed as an insurance producer in another state who moves to this state and applies to become a resident insurance producer within 90 days of establishing legal residence. For such applicants, the examination requirement is waived as to licensure for any line of authority previously held in the prior state, unless otherwise determined by the superintendent.

(6) Examination is not required for an applicant for a license who is a transportation ticket selling agent of a common carrier and who acts under the license only in reference to the issuance of health and accident insurance policies, or insurance on personal effects while being carried as baggage, in connection with the transportation provided by the transportation ticket.

**C. Conduct of examinations.**

(1) Applicants shall submit a nonrefundable examination fee as set forth in Section 59A-6-1 NMSA 1978.

(2) The superintendent may designate an outside testing service to register applicants and collect examination fees, develop and administer exams, and score and report exam results subject to these requirements:

(a) The activities of the testing service shall be supervised by the superintendent.

(b) Any examination that is developed by the testing service or other outside source shall be reviewed and approved by the superintendent before it is administered. Each examination question and answer shall be verified and approved as to correctness, relevance, content and other factors.

(3) Each examination, as a whole, shall provide a comprehensive test of the applicant's knowledge necessary for the type of license applied for, the duties and responsibilities of the licensee and the insurance laws and

regulations of this state.

(4) All examinations shall be conducted in an appropriate setting.

(5) Each examination shall be offered to applicants for a particular license type at least once each month at places within this state designated by the superintendent.

(6) Registration for each offering of the required examinations shall be available online or as otherwise directed by the superintendent.

(7) All examinations shall be available in the Spanish language upon request.

(8) Examination site accommodations shall be available upon request.

**D. Examination scoring; pass and fail.**

(1) Each examination shall require examinees to answer questions.

(2) The examination shall be scored for all examinees in a fair, impartial and non-discriminatory manner using a consistent scoring process.

(3) An examinee shall achieve a minimum score of seventy percent in order to pass the examination.

(4) An applicant who registers to take an examination but fails to appear as scheduled or fails to pass the examination may reapply and shall resubmit all required fees and forms before being scheduled for another examination.

(5) Any applicant who fails to pass an examination may retake the examination at any subsequent scheduled examination date. However, an applicant who has taken and failed to pass the same examination four times shall not be entitled to take another examination until at least six months after the date of the last examination failed.

**E. Examination preparation.**

(1) The superintendent may prepare and

make available a manual showing the general type and scope of all required examinations.

(2)

Information and access to manuals will be provided through the OSI website or as otherwise determined by the superintendent.

[13.4.2.11 NMAC – Rp, 13.4.2.13 NMAC, 4/2/2018]

### 13.4.2.12 COMMISSIONS AND COMPENSATION:

#### A. Payment of commissions and compensation.

(1) An insurance company or insurance producer shall not pay to a person nor shall a person accept a commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in this state unless that person is licensed as required by this state.

(2) Renewal and other deferred commissions may be subsequently paid to a person for selling, soliciting or negotiating insurance in this state if the person was licensed as required at the time of the transaction.

(3) An insurer or insurance producer shall not pay or assign commissions, service fees or other valuable consideration derived from insurance of risks in this state to an individual or business entity who is not licensed to sell, solicit or negotiate insurance in this state.

#### B. Sharing of commissions and compensation.

(1) Sharing in commissions and compensation between licensees shall be infrequent and shall not be used to avoid appointment of producers by insurers.

(2) A licensee shall not receive a share in commissions or compensation unless the licensee is licensed as to the type of transaction or kind of insurance placed.

(3) An insurance producer shall share commissions or compensation for or on account of the solicitation or negotiation of insurance on individuals, property or risks in

this state only with a duly licensed producer appointed by the insurer with which the insurance was placed, or with a duly licensed broker.

(4) The purchase price of a business entity may include ongoing payments or partial payments of accruing commissions to or on behalf of a former owner, whether or not the former owner maintains a current insurance producer license.

(5) Payment of commissions, compensation or other valuable consideration may be made to the personal representative, trust or beneficiary of a deceased insurance producer or broker, or to the deceased producer or broker's heirs or devisees if the estate has been distributed and the decedent would otherwise be entitled to the payment.

#### C. Disclosure of compensation.

When any insurance producer or any affiliate of the insurance producer receives any compensation from a customer for the placement of insurance or represents the customer with respect to placement of insurance, that producer or affiliate shall comply with the disclosure requirements set forth in Section 59A-12-29 NMSA 1978.

[13.4.2.12 NMAC – N, 4/2/2018]

### 13.4.2.13 LICENSING OF TITLE INSURANCE PRODUCERS, ESCROW OFFICERS AND TITLE ABSTRACT PLANTS:

#### A. License required.

(1) Title agents and escrow officers shall be licensed as title insurance producers. In addition to the requirements in this section, they shall also comply with additional requirements set forth in Section 59A-30-1 et seq. NMSA 1978 and in 13.14.1 through 13.14.19 NMAC.

(2) An applicant for a title insurance producer license shall comply with the provisions of 13.4.2.9 NMAC for individual producers or 13.4.2.10 NMAC for business entities.

(3) All

applications for a title insurance producer license shall contain a statement that the applicant owns, operates, controls or is affiliated with a licensed title abstract plant or is employed by an individual or entity that does.

(4)

Applications shall specify only the county or counties that are supported by the title abstract plant and the title producer license shall permit the licensee to issue policies only on property located in the county or counties for which the licensee has the necessary title abstract plant.

**B. Title abstract plant defined.** The title abstract plant shall consist of a set of records in which an entry has been made for every document or matter that under the law imparts constructive notice affecting title to, interest in or encumbrances on real property, and that has been filed or recorded in the county for which the title abstract plant is maintained.

(1) The records shall cover a period of 20 years immediately prior to the date of application and shall consist of:

(a) an index or indices in which notations of or references to any documents that describe the property affected are posted, entered or otherwise included, sorted and filed according to the property described; or copies or briefs of all documents that describe the property affected which are sorted and filed according to the property described; and

(b) an index or indices in which all other documents are posted, entered or otherwise included, sorted and filed according to the name or names of the party or parties whose title to real property or any interest or encumbrance is affected.

(2) A title insurance producer license permits the licensee to issue title insurance only on property located in the county or counties for which the licensee has the necessary licensed title abstract plant.

(3) The title insurance producer shall be

responsible for maintaining and updating the records of the title abstract plant within 30 days of the courthouse land update schedule.

**C. Plant inspections.**

The title abstract plant shall be subject to inspection by the superintendent. During an inspection, the superintendent may inspect to ascertain that the plant's records are current and that all persons engaged in the business of transacting title insurance are properly licensed and have been appointed by all insurers for whom they transact business.

[13.4.2.13 NMAC – N, 4/2/2018]

**13.4.2.14 LICENSING OF LIMITED LINES TRAVEL INSURANCE PRODUCERS:**

**A. License required.**

(1) All

applicants for travel insurance producer licenses shall comply with the provisions of 13.4.2.9 NMAC for individual producers or 13.4.2.10 NMAC for business entities.

(2) Upon

licensure, the travel insurance producer shall create a register with information about each travel retailer that offers travel insurance on the producer's behalf as set forth in Paragraph (2) of Subsection B of Section 59A-12-18.1 NMSA 1978. The register shall be updated at least annually and made available to the superintendent upon request.

(3) The

travel insurance producer shall select a licensed individual insurance producer employee as its designated responsible producer who shall be responsible for the travel insurance producer's compliance with the travel insurance laws and rules of this state.

(4) The

designated responsible producer, president, secretary, treasurer and any other officers or persons who direct or control the travel insurance producer's operations shall comply with the fingerprinting and criminal background check requirements of Paragraphs (3) and (4) of Subsection B of Section 59A-12-12 NMSA 1978.

(5) The travel

insurance producer shall pay all

applicable fees set forth in Section 59A-6-1 NMSA 1978.

(6) The

travel insurance producer shall require training of employees and representatives of the retailer as set forth in Paragraph (6) of Subsection B of Section 59A-12-18.1 NMSA 1978.

**B. Travel insurance producer and travel retailer responsibilities.**

(1) A

travel insurance producer shall be responsible for acts of the travel retailer and shall reasonably ensure that the travel retailer complies with the requirements set forth in Section 59A-12-18.1 NMSA 1978.

(2) A travel

retailer may offer travel insurance under the license of a travel insurance producer only if:

(a)

the travel insurance producer or travel retailer provides to prospective purchasers of travel insurance the items required by Subsection C of Section 59A-12-18.1 NMSA 1978; and

(b) no

travel retailer employee or authorized representative who is not licensed as an insurance producer shall provide certain services as set forth in Subsection D of Section 59A-12-18.1 NMSA 1978.

(3) A travel

retailer's employees and authorized representatives whose insurance-related activities are limited to the offering and disseminating of travel insurance on behalf and under the direction of a licensed travel insurance producer may receive compensation for those activities.

(4) Travel

insurance may be placed as an individual, group or master policy.

**C. Travel insurance vending machines.**

(1) A licensed

insurance producer may solicit for and issue personal travel accident insurance policies of an authorized insurer by means of mechanical vending machines supervised by the insurance producer and placed at airports and other places of

convenience to the traveling public if the superintendent finds that:

(a)

the travel insurance policy provides reasonable coverage and benefits and is suitable for sale and issuance by vending machine and that use of such a machine in a proposed location would be of material convenience to the public;

(b)

the type of machine proposed to be used is reasonably suitable for the purpose;

(c)

reasonable means are provided for informing prospective purchasers of policy coverages and restrictions;

(d)

reasonable means are provided for the refund of money inserted in defective machines and which insurance so paid for is not received; and

(e)

the cost of maintaining such a machine at a particular location is reasonable.

(2) For each

travel insurance vending machine the superintendent shall issue a special vending machine license.

(a)

The license shall state the name and address of the insurer and insurance producer, the name of the policy to be sold and the serial number, type and operating location of the machine.

(b)

The license shall be subject to biennial continuation and to expiration, suspension or revocation coincidental with the license of the insurance producer.

(c)

The superintendent shall revoke the license for any vending machine if the superintendent finds that license qualifications no longer exist.

(d)

Proof of existence of a vending machine license shall be displayed on or about each machine in use in the manner that the superintendent reasonably requires.

[13.4.2.14 NMAC – N, 4/2/2018]

**13.4.2.15 LICENSING OF LIMITED LINES RENTAL CAR INSURANCE PRODUCERS AND ENDORSEES:**

**A. License required.**

(1) No rental car company nor its officers, director, employees or agents shall offer, sell, bind, effect, solicit or negotiate the purchase of rental car insurance unless that company is licensed as an insurance producer pursuant to Section 59A-32A-1 et seq. NMSA 1978.

(2) A rental car company may only act on behalf of an insurer that is authorized to write such insurance in this state.

(3) Rental car insurance may not be offered, except in connection with and incidental to a rental agreement.

(4) Neither a rental car insurance producer nor an endorsee shall represent itself as qualified or licensed as an insurance producer beyond the scope of the limitations set forth in Subsection B of Section 59A-32A-7 NMSA 1978.

(5) A rental car company may not compensate any person, including any of its employees, based solely on placement of rental car insurance.

**B. Rental car insurance producer license requirements.**

(1) All applicants for rental car insurance producer licenses shall comply with the provisions of 13.4.2.10 NMAC for business entities.

(2) The application shall include a list of all the locations within the state where the rental car insurance producer intends to offer, sell, bind, effect, solicit or negotiate rental car insurance.

(3) The rental car insurance producer license application shall include:

(a) a certificate filed by an insurer indicating that the insurer has reviewed the applicant's training program and believes that it satisfies the requirements of Subsection D of

59A-32A-5 NMSA 1978; and

**(b)**

the insurer intends to appoint the applicant to act as its rental car insurance producer if a license is granted to the applicant by the superintendent.

**(4) A**

rental car insurance producer shall be responsible for establishing a training program for its employees that satisfies the requirements of Subsection D of Section 59A-32A-5 NMSA 1978. The program shall be submitted to and approved by the superintendent prior to its use.

**(5) At the**

time of application, a rental car insurance producer license applicant shall establish, in a format prescribed by the superintendent, a list of its endorsees that also identifies a manager or supervisor for each of the applicant's locations. The list shall be updated quarterly and retained for three years by the applicant. The list shall be provided to the superintendent for inspection upon request.

**(6) A rental**

car insurance producer shall ensure that the actions of its endorsees are properly supervised at all of its locations and shall be held responsible for the actions of its endorsees.

**C. Rental car insurance endorsee requirements.**

(1) An endorsee shall be at least 18 years of age and an employee of a rental car insurance producer.

(2) An endorsee shall complete the rental car insurance producer's approved training program prior to transacting any rental car insurance.

(3) An endorsee shall act on behalf of the rental car insurance producer under the direct supervision of the manager or supervisor at the location where employed.

(4) An endorsee's authorization expires upon termination of employment with the rental car insurance producer.

(5) The rental car insurance endorsee may offer,

sell, bind, effect, solicit or negotiate rental car insurance on behalf of the rental car insurance producer subject to the above provisions and additional provisions set forth in Section 59A-32A-1 et seq. NMSA 1978. [13.4.2.15 NMAC – N, 4/2/2018]

**13.4.2.16 REGISTRATION OF MOTOR CLUB REPRESENTATIVES:**

**A. Registration**

**required.** No individual shall represent a motor club in this state unless that person is registered with the superintendent by a motor club holding a current certificate of authority issued pursuant to Section 59A-5-1 NMSA 1978.

**B. Qualifications**

**for registration.** An applicant for registration as a motor club representative shall, at a minimum:

(1) be at least 18 years of age;

(2) be of good personal and business reputation;

(3) not previously have had registration refused or revoked;

(4) be suitable and competent to act as such a representative; and

(5) intend in good faith to act and hold him- or herself out as such a representative.

**C. Procedures for registration.**

(1) Applications for motor club representative registrations are handled in the same manner as applications for casualty insurance producer licenses, except that no examination is required.

(2) Continuations, terminations, denials, suspensions and cancellations of motor club representative registrations are handled in the same manner as those for insurance producer licenses as set forth in 13.4.2.27 and 13.4.2.28 NMAC.

(3) Fees for motor club representative registrations and continuations are as set forth in Section 59A-6-1 et seq. NMSA 1978. [13.4.2.16 NMAC – N, 4/2/2018]

**13.4.2.17 LICENSING OF PHARMACY BENEFITS MANAGERS:**

**A. License required.**  
No person shall operate as a pharmacy benefits manager in this state unless licensed by the superintendent in accordance with Section 59A-61-1 et seq. NMSA 1978, nor shall a licensed pharmacy benefits manager transact insurance on behalf of an insurer that is not authorized in this state.

**B. License requirements.** The superintendent will consider an applicant for licensure as a pharmacy benefits manager upon receipt of the following:

(1) payment, in advance, of the fees prescribed in section 59A-6-1 NMSA 1978; and

(2) a completed application in the format required by the superintendent containing:

(a) the name of the pharmacy benefits manager;

(b) the name and business address of the contact person for the pharmacy benefits manager; and

(c) the federal employer identification number for the pharmacy benefits manager, if applicable.

**C. Denial, suspension or revocation of license.**

(1) The superintendent shall enforce the provisions of the Pharmacy Benefits Manager Regulation Act set forth in Section 59A-61-1 et seq. NMSA 1978 and may suspend, revoke or deny an application for or renewal of a pharmacy benefits manager's license for failure to comply with the requirements of the Pharmacy Benefits Manager Regulation Act.

(2) If the license of a pharmacy benefits manager is revoked:

(a) the pharmacy benefits manager shall proceed immediately following the effective date of the order of revocation to wind up its affairs and conduct no further business except

as may be essential to the orderly conclusion of its affairs; except that

(b) the superintendent may permit further operation of the pharmacy benefits manager if the superintendent finds it is in the best interest of patients to do so.

(3) A person whose pharmacy benefits manager license has been denied, suspended or revoked may seek review pursuant to the provisions of Section 59A-4-1 et seq. NMSA 1978.

**D. Renewal of license.** A pharmacy benefits manager applying for license renewal shall submit the required annual report and fees, including the annual continuation fee, as set forth in Section 59A-6-1 NMSA 1978. Failure to comply with these requirements shall result in cancellation of the license.

Instructions for completing the annual report, which is due on or before March 1, are available on the OSI website.

[13.4.2.17 NMAC – N, 4/2/2018]

**13.4.2.18 LICENSING OF PREPAID DENTAL PLAN MEMBERSHIP PRODUCERS:**

**A. License and appointment required.** No person shall solicit membership in a prepaid dental plan unless that person has been licensed by the superintendent as a health insurance producer and appointed by the prepaid dental plan organization to act in this state on the plan's behalf, pursuant to Section 59A-48-14 NMSA 1978. These persons shall comply with insurance producer licensing requirements.

**B. Qualifications for licensing.** Individuals shall be licensed as producers as described in 13.4.2.9 NMAC and business entities shall be licensed as producers as described in 13.4.2.10 NMAC. Individual licensees shall comply with the examination and continuing education requirements for health insurance producers.

**C. Fees and renewals.** Both individual producers and business entities that are licensed as

producers and acting on behalf of a prepaid dental plan shall comply with the fee and renewal schedules set forth in Section 59A-6-1 NMSA 1978.

[13.4.2.18 NMAC – N, 4/2/2018]

**13.4.2.19 LICENSING OF PREARRANGED FUNERAL PLAN PRODUCERS:**

**A. License required.** Any person engaged in the sale of prearranged funeral plans shall be licensed by the superintendent as a life insurance producer. Individuals shall be licensed as producers as described in 13.4.2.9 NMAC and business entities shall be licensed as producers as described in 13.4.2.10 NMAC. The licensee may have no association with the funeral service provider pursuant to Section 59A-49-5 NMSA 1978.

**B. Handling of funds.** Funds received in connection with sale of a prearranged funeral plan shall be deposited and withdrawn from a trustee subject to the fiduciary duties set forth in Subsection B of 13.4.2.23 NMAC. Strict controls shall be placed over sale of funeral plans and management of collected funds due to the longer anticipated time between the sale of a plan and delivery of the services. The trustee's records and accounting of funds shall be subject to review by the superintendent upon reasonable request.

[13.4.2.19 NMAC – N, 4/2/2018]

**13.4.2.20 LICENSING OF FRATERNAL BENEFIT SOCIETY PRODUCERS:**

**A. License required.** Individuals shall be licensed as producers as described in 13.4.2.9 NMAC and business entities shall be licensed as producers as described in 13.4.2.10 NMAC, except as follows:

(1) Fraternal benefit society producers are not required to fulfill the continuing education requirements set forth in 13.4.7 NMAC.

(2) Fraternal benefit society producers may be exempt from the qualifying



examination requirements of 13.4.7.11 NMAC if they do not receive commissions or compensation based on sales as set forth in Subsection B of Section 59A-44-33 NMSA 1978.

**B. Continuation, suspension, revocation and termination of licenses.** General provisions pertaining to the continuation, suspension, revocation and termination of producer licenses shall also apply to licenses issued to fraternal benefit society producers as set forth in 13.4.2.27 and 13.4.2.28 NMAC.

[13.4.2.20 NMAC – N, 4/2/2018]

**13.4.2.21 LICENSING OF PORTABLE ELECTRONICS INSURANCE VENDORS:**

**A. License required.**

A vendor of portable electronics shall not sell or offer insurance covering portable electronics unless licensed as a limited lines producer in accordance with Subsection B of Section 59A-12-18 NMSA.

(1) A vendor's application shall identify an individual employee or officer of the vendor's organization as the compliance officer with respect to requirements of the Portable Electronics Insurance Act, as set forth in Section 59A-60-1 et seq. NMSA 1978. The application shall also provide the address of the vendor's home office.

(2) Any employee or authorized representative of a licensed vendor may offer and sell insurance covering portable electronics to eligible customers at any location at which the vendor sells portable electronics without obtaining a separate license from the superintendent. These employees and representatives may not represent themselves as personally licensed as a limited lines producer.

(3) The insurer issuing the insurance or its designee shall be responsible for supervising the activities of the vendor's employees and administration of the insurance program.

(a)

The insurer shall develop and

deliver a training program for the vendor's employees or authorized representatives who offer or sell insurance covering portable electronics.

(b)

The training program shall comply with all of the requirements set forth in Paragraph (2) of Subsection D of Section 59A-60-4 NMSA 1978.

(4)

A vendor shall maintain a list of its locations that are authorized to sell portable electronics insurance in this state. The list shall be made available to the superintendent upon reasonable notice and request.

(5)

Compensation of employees who offer or sell portable electronics insurance on behalf of the vendor shall be in accordance with Section C of Section 59A-60-4 NMSA 1978.

**B. Offer and sale of insurance.**

A licensed vendor shall sell or offer portable electronics insurance only as incidental to the purchase or lease of portable electronics or related services sold or offered by the vendor. A licensed vendor shall provide all required insurance-related information to customers and prospective customers as set forth in Subsection A of Section 59A-60-4 NMSA 1978.

**C. Handling of payments and funds.**

Payments for portable electronics insurance and handling of funds shall be consistent with the requirements of Subsection C of Section 59A-60-4 NMSA 1978. Funds received by a vendor for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer as set forth in Subsection B of 13.4.2.23 NMAC.

**D. Penalties, fines and actions against the license.**

The superintendent may impose fines or suspend or revoke a vendor's right to transact portable electronics insurance at specific locations where a violation has occurred or may suspend the rights of an individual employee or representative for violation of the Portable Electronics Insurance Act.

[13.4.2.21 NMAC – N, 4/2/2018]

**13.4.2.22 LICENSING OF REINSURANCE INTERMEDIARIES:**

**A. License required.**

(1)

With respect to the Reinsurance Intermediary Law set forth at Section 59A-12D-1 et seq. NMSA 1978 and this section, "producer" means a licensed producer, broker or reinsurance intermediary. A reinsurance intermediary is as defined in Subsection E of Section 59A-12D-2 NMSA 1978.

(2) Any

person acting as either a reinsurance intermediary-broker or as a reinsurance intermediary-manager in this state and either domiciled or with an office located directly or indirectly in this state shall be licensed as a producer in this state.

(a)

Typically, an intermediary-broker represents the insurer who is seeking to cede risk to a reinsurer and solicits offers on behalf of the ceding insurer.

(b)

Typically, an intermediary-manager acts on behalf of and with authority to bind the reinsurer.

(c)

The intermediary's knowledge is imputed to the principal, which may result in adverse consequences to the principal in resolving a dispute.

(3) Any

person acting as either a reinsurance intermediary-broker or intermediary-manager in this state and with an office located in another state may be licensed as a producer in that state, if that state's licensing law is substantially similar to the Reinsurance Intermediary Law set forth at Subsection D of Section 59A-12D-1 et seq. NMSA 1978. Otherwise, that person shall be licensed as a producer in this state.

**B. Licensing requirements.**

(1) A

reinsurance intermediary must file and maintain either a fidelity bond or an errors and omissions policy for the protection of the reinsurer.

The fidelity bond or the errors and omissions policy must be issued by an admitted insurer or an eligible surplus lines insurer, be in an amount or at an aggregate limit equal to at least \$1,000,000 for the benefit of each reinsurer with whom the reinsurance intermediary contracts, and must provide that the superintendent be notified prior to its cancellation or nonrenewal.

(2)

The superintendent may issue a reinsurance producer license to an individual or a business entity as follows:

(a) to an individual who has complied with the producer licensing requirements described in 13.4.2.9 NMAC or to a business entity that has complied with the producer licensing requirements described in 13.4.2.10 NMAC;

(b) that has complied with the requirements of the Reinsurance Intermediary Law set forth in Section 59A-12D-1 et seq. NMSA 1978; and

(c) if a business entity, that has named in its application its members, officers, and designated employees who shall act on behalf of the reinsurance intermediary in this state.

**C. Denial, suspension or revocation of license.** The superintendent may refuse to issue, suspend or revoke a reinsurance intermediary's license in accordance with 13.4.2.27 and 13.4.2.28 NMAC. Furthermore, the superintendent may refuse, suspend or revoke a reinsurer's right to transact business in this state based on the acts of its reinsurance intermediaries done within the scope of their actual or apparent authority.

**D. Exception from licensing.** Attorneys holding a current license to practice law in this state are not required to be licensed as reinsurance producers when acting in their professional capacity.

**E. Duties of a reinsurance intermediary.**

(1) **Required contract provisions between insurers or reinsurers and reinsurance intermediaries.**

A reinsurance intermediary may not transact reinsurance in this state except pursuant to a written contract detailing the responsibilities and agreement between the reinsurance intermediary and the principal.

(a)

The contract shall be as set forth in Section 59A-23D-7 NMSA 1978 and shall be filed with the superintendent for approval at least thirty days in advance of its effective date.

(b)

**Duty of care and loyalty.** The contract shall clearly set forth the reinsurance intermediary's duty to clearly communicate the terms of a proposed reinsurance agreement, to disclose facts and circumstances including material information pertaining to underlying risks that may reasonably be expected to impact the obligations of the insurer or reinsurer, to negotiate terms and conditions of a contract for reinsurance, to assist in memorializing the agreement and to maintain records.

(c)

**Program of reinsurance.** Depending on the terms of the written contract, a reinsurance intermediary's duties may extend to developing a program of reinsurance on behalf of the insurer that includes modeling to estimate probabilities of potential loss outcomes, estimating costs of alternate programs, identifying a pool of potential reinsurers, presenting an information packet to reinsurers on behalf of the insurer, negotiating terms of a contract and assisting in drafting and execution of a contract for reinsurance.

(2) **Fiduciary**

**duty.** A reinsurance intermediary may act as a conduit between the insurer and reinsurer, including for collection and transmission of premiums, communication of loss and claim information, and collection of funds from a reinsurer on behalf of the insurer. A reinsurance intermediary has a fiduciary duty with respect to any funds held in trust by or transmitted through the reinsurance intermediary by either the insurer or reinsurer.

(3)

**Record-keeping requirements.**

A reinsurance intermediary shall annually file with the reinsurer a statement of its financial condition as set forth in Subsection K of Section 59A-12D-7 NMSA 1978. The reinsurance intermediary shall be subject to semi-annual review and inspection of its operations by the reinsurer. A reinsurance intermediary shall maintain complete records of all contracts and transactions for a minimum of ten years following the expiration of each contract for reinsurance.

[13.4.2.22 NMAC – N, 4/2/2018]

**13.4.2.23 LICENSING OF INSURANCE CONSULTANTS:**

**A. License required.**

No person shall examine or offer to examine in exchange for a fee an insurance policy, annuity, endowment contract or other insurance document in order to offer advice, counsel, a recommendation or other information as described in Subsection A of Section 59A-11A-1 unless licensed as an insurance consultant. Neither may a person offer such services through advertisements or any other means that indicate the person is in business for that purpose, unless licensed as an insurance consultant.

**B. Qualifications.**

(1) Individual applicants for an insurance consultant license shall apply as though for an individual producer's license as set forth in 13.4.2.9 NMAC.

(2) An applicant shall pay the examination application fee as set forth in Section 59A-6-1 NMSA 1978 and shall pass either the insurance producer license examination or the insurance consultant examination required by 13.4.2.11 NMAC.

(3)

The applicant shall demonstrate competence and knowledge of insurance contracts and practices of the insurance industry in the lines of insurance for which the license is applied.

**C. Limitations, exemptions and conflicts.**

(1) A licensed insurance producer may offer customary advice without holding an insurance consultant license.

(2) A licensee shall not receive compensation as either a producer or as a broker if the licensee receives a fee as a consultant for the same transaction as the subject of the consulting service provided.

(3) An attorney or a public accountant licensed to practice in this state is exempt from the insurance consultant licensing requirement when acting within the scope of their practice.

**D. Renewal of license.** The insurance consultant license is subject to biennial renewal according to the schedule set forth in 13.4.2.26 NMAC, and to suspension or revocation as set forth in 13.4.2.27 NMAC.

**E. Contracts and agreements; collection of consulting fees.**

(1) An insurance consultant shall not enforce an agreement to provide advice, counsel or a recommendation in exchange for a fee unless a written agreement has been executed between the insurance consultant and the advisee.

(2) At a minimum, the written agreement shall:

(a) be signed by the advisee;

(b) be executed in duplicate, with one copy retained by the advisee;

(c) state the amount paid by the advisee for the service if payment is made in advance, or the amount to be paid if payment is due following delivery of the service;

(d) state the terms of payment agreed upon by the parties if payment is not due immediately upon delivery of the service;

(e) specify the documents to be reviewed by the insurance consultant, and a copy of those documents shall be attached to the agreement, if

available;

(f) specify the services to be delivered by the insurance consultant and the format in which delivery shall be made to the advisee;

(g) state the date and method by which the services shall be delivered; and

(h) provide any other information required by the superintendent.

(3) At a minimum, the insurance consultant shall provide the following upon delivery of the agreed services:

(a) a signed statement specifying the advice, counsel, recommendation or information provided to the advisee;

(b) a receipt for the fee paid or a statement indicating the fee to be paid to the consultant.

**F. Recordkeeping requirements.**

(1) An insurance consultant shall maintain records consistent with good business practices and shall furnish records of business methods, policies and transactions of the licensee within ten days of a request by the superintendent.

(2) An insurance consultant shall, upon a request by the superintendent, furnish both the standard written agreement form used to document an agreement between the insurance consultant and an advisee and examples of executed agreements that confirm the insurance consultant's business practices. [13.4.2.23 NMAC – N, 4/2/2018]

**13.4.2.24 LICENSING OF MANAGING GENERAL AGENTS:**

**A. License required.**

(1) No person shall act as a managing general agent on behalf of any insurer with respect to risks located in this state unless licensed as a producer in this state.

(2) No person shall act as a managing general agent on behalf of an insurer domiciled in this state with respect to risks located

outside this state unless licensed as a producer in this state.

(3) The superintendent may issue a producer license to an individual managing general agent or a business entity acting as a managing general agent as follows:

(a) to an individual who has complied with the producer licensing requirements described in 13.4.2.9 NMAC or to a business entity that has complied with the producer licensing requirements described in 13.4.2.10 NMAC; and

(b) that has complied with the requirements of the Managing General Agents Law as set forth at Section 59A-12B-1 et seq. NMSA 1978.

**B. Examination and penalties.**

(1) The superintendent may refuse to issue, suspend or revoke a managing general agent's license in accordance with 13.4.2.27 and 13.4.2.28 NMAC.

(2) Actions of a managing general agent are considered to be those of the insurer on whose behalf the managing general agent is acting.

(3) The superintendent may examine a managing general agent as if examining the insurer on whose behalf the managing general agent is acting.

(4) If the superintendent determines that a managing general agent, an insurer or another person has failed to comply with the requirements of the Managing General Agents Law as set forth at Section 59A-12B-1 et seq. NMSA 1978, the superintendent may impose any of the penalties set forth in Subsection A of Section 59A-12B-7 NMSA 1978 or any other penalties permitted under the Insurance Code.

**C. Required contract provisions.** A managing general agent shall not act on behalf of an insurer except as pursuant to a written contract detailing the responsibilities and agreement between the managing general agent and the insurer as

set forth in Section 59A-23B-4 NMSA 1978. The contract between a managing general agent and an insurer shall not be assigned by a managing general agent.

**D. Record-keeping requirements.** A managing general agent shall maintain complete records of all contracts and transactions for a minimum of seven years following the expiration of each written agreement. The superintendent shall have access to the records for the purpose of examination, audit and inspection.

The insurer shall have access sufficient to permit the insurer to fulfill its contractual obligations to insured persons.

**E. Duties of insurers.** An insurer that has contracted with one or more managing general agents shall comply with the requirements as set forth in Section 59A-12B-5 NMSA 1978, including but not limited to those pertaining to inspection and oversight of the managing general agent's processes and records and those requiring specific notifications to the superintendent.

[13.4.2.24 NMAC – N, 4/2/2018]

**13.4.2.25 OBTAINING A TEMPORARY INSURANCE PRODUCER LICENSE:**

**A. Necessity and duration of license.** The superintendent may issue a temporary insurance producer license to an individual for a period not to exceed 180 days without requiring an examination if the superintendent determines that the temporary license is necessary for the servicing of an insurance business in the following situations:

(1) to the surviving spouse or court-appointed personal representative of a licensed individual insurance producer who dies or becomes mentally or physically disabled, in order to allow adequate time for the sale of the producer's insurance business, for the producer's recovery and return to the business or to provide for the training and licensing of new personnel to

operate the insurance producer's business;

(2) to an individual who is a member or employee of a business entity upon the death or disability of an individual who is a DRLP with respect to the business entity;

(3) to the designee of a licensed insurance producer entering active service in the armed forces of the United States; or

(4) in any other circumstance in which the superintendent determines that the public interest will best be served by issuance of the license.

**B. Limitations.**

(1) An applicant will not be issued a temporary license unless supervised by a suitable sponsor who is a licensed insurance producer or by an insurer who assumes responsibility for all acts of the temporary licensee.

(2) The superintendent may impose other limitations on the authority of any temporary licensee to protect insureds and the public.

(3) The superintendent may revoke a temporary insurance producer license if the interest of insureds or the public are endangered.

(4) A temporary license shall not continue after the owner or personal representative disposes of the business.

**C. Application granted.** Upon application for a temporary insurance producer license, the insurer and the applicant may assume that the license will be issued in due course, effective as of the date the application was filed with the superintendent, unless the superintendent notifies the insurer to the contrary within 15 days after the date of application.

[13.4.2.25 NMAC – N, 4/2/2018]

**13.4.2.26 OTHER DUTIES OF LICENSEES:**

**A. Place of business.**  
(1) A resident licensed insurance producer shall

have and maintain a place of business within this state that is accessible to the public and where the licensee transacts business under the license.

(2) With the exception of title insurance producers, a licensee's place of business may be in the licensee's residence.

(3) A licensee shall inform the superintendent in the format prescribed by the superintendent of a change in the licensee's legal name or address within 20 days of the change. Failure to timely inform the superintendent of a change in legal name or address shall result in a penalty of \$50 pursuant to Subsection G of Section 59A-12-17 NMSA 1978.

**B. Fiduciary duties.**

(1) All funds of others received by a licensee shall be held in a fiduciary capacity. A licensee who diverts or appropriates such funds for personal use or takes or secretes such funds with intent to embezzle without the consent of the person entitled to the funds is guilty of larceny by embezzlement.

(2) Subject to the terms of any agreement between a licensee and the licensee's principal or obligee, each licensee who does not make immediate remittance of funds to the insurer or other person entitled to them shall elect and follow one of the following methods:

(a) remit insurance charges or premiums collected (less applicable commissions, if any) and return premiums to the insurer or person entitled thereto within 15 days after receipt; or

(b) establish and maintain one or more fiduciary bank accounts separate from accounts holding personal, firm or corporate funds, and promptly deposit and retain therein all funds of others pending transmittal to the insurer or person thereto entitled.

(i) Funds belonging to more than one principal may be as deposited and held in the same account so long as the amount held for each principal is readily ascertainable from the records

of the licensee.

(ii) The licensee may commingle with such fiduciary funds in a particular account such additional funds as the licensee deems prudent for advancing premiums, reserves for the payment of return commissions or for other contingencies arising in the business of receiving and transmitting premiums or return premiums.

(3) The licensee may commingle with the licensee's own funds those funds of a particular principal who has expressly waived the segregation requirement in writing and in advance.

(4) Permitted commingling of the funds of others with funds of the licensee shall not alter the fiduciary duties of the licensee as to the others' funds.

(5) When requirements for handling of funds contained in other sections are in conflict with the requirements contained in this section, then those other requirements shall prevail as follows:

(a) Third-party administrators shall handle funds and pay, adjust and settle claims pursuant to the requirements of Sections 59A-12A-9 through 59A-12A-11 NMSA 1978.

(b) Title insurance producers shall manage escrow and other funds held in trust pursuant to the requirements of Section 59A-12-22 NMSA 1978 and 13.14.4 NMAC.

(c) Payments received in connection with the sale of prearranged funeral plans shall be subject to additional controls and shall be handled as set forth in 13.4.2.19 NMAC.

(d) Funds received by rental car insurance producers for the purchase of rental car insurance are not required to be treated as fiduciary funds or held in separate accounts.

**C. Recordkeeping requirements.**

(1) The requirements contained in this section apply generally to all licensees.

However, where these rules differ from the recordkeeping requirements that are applicable to specific types of insurance producers the insurance producer shall also comply with the duties imposed by other rules, where applicable.

(2) An insurance producer shall keep complete records of transactions made under the license in the insurance producer's place of business. For each insurance policy placed by or through the licensee, the record shall include:

(a) the names of the insurer and insured;

(b) the number and expiration date;

(c) the premium payable;

(d) the names of all other persons from whom business is accepted or to whom commissions are promised or paid;

(e) all premiums collected; and

(f) additional information as the superintendent may require.

(3) The records shall be available for the superintendent's examination, and the superintendent may at any reasonable time require the licensee to furnish any information kept or required to be kept in such records.

(4) Records shall be maintained for the statutory duration.

(a) Records of each insurance policy shall be retained for a minimum of three years after the policy's expiration, unless a longer period is required.

(b) Records pertaining to title insurance policies shall be retained for a minimum of 15 years after the issuance of the title insurance policy pursuant to Section 59A-30-11 NMSA 1978.

(c) Complete records of reinsurance transactions shall be retained by reinsurance intermediaries for at least ten years after the expiration of

each contract, pursuant to Section 59A-12D-5 NMSA 1978.

(d) A third-party administrator shall keep adequate books and records of all transactions between it, insurers and insured persons in its administrative office for the duration of its contractual duties and for five years thereafter, pursuant to Section 59A-12A-6 NMSA 1978.

(e) Licensees may be required to manage and retain additional records for a differing stated duration based on the provisions of the Insurance Code.

(5) Books and records shall be maintained in accordance with prudent standards of insurance record keeping.

**D. Duty to report any administrative actions, and civil and criminal prosecution.**

(1) A licensee shall report to the superintendent any administrative action taken against the licensee in any jurisdiction or by another governmental agency in this state within 30 days of the final disposition of the matter. The report shall include a copy of the order, consent to order or other relevant legal documents.

(2) A licensee shall report to the superintendent any criminal prosecution of the licensee taken in any jurisdiction within 30 days after the initial pretrial hearing date. The report shall include a copy of the initial complaint filed, any order resulting from the hearing and other relevant legal documents.

(3) A licensee shall report to the superintendent the filing and progress of any civil complaint filed against the licensee in any jurisdiction. The initial report shall include a copy of the complaint. Subsequent reports shall be filed as the case progresses, and the final report shall include the final order, if any, and any other relevant legal documents.

(4) Title insurance producers shall report to the superintendent in compliance with the requirements set forth in 13.14.4.12 NMAC.

**E. Duty to report license cancellation.** A licensee whose out-of-state resident or non-resident license is canceled through either the action or inaction of the licensee shall report the cancellation to the superintendent within 30 days.

**F. Duty to report fraud.**

(1) A licensed insurance professional that has a reasonable belief that an act of insurance fraud will be, is being or has been committed shall report to the superintendent pursuant to Section 59A-16C-6 NMSA 1978 and shall cooperate fully with any investigation conducted by the superintendent,

(2) Failure to comply with this duty to report actual of suspected fraud shall constitute grounds for the superintendent to impose an administrative penalty pursuant to Section 59A-1-18 NMSA 1978 in addition to any applicable suspension, revocation or denial of a license.

[13.4.2.26 NMAC – N, 4/2/2018]

**13.4.2.27 CONTINUATION, TERMINATION AND REINSTATEMENT OF LICENSES:**

**A. Continuation of producer licenses.** An insurance producer license is continuous, subject to payment of renewal fees as set forth in Section 59A-6-1 NMSA 1978 and completion and submission on or before the due date of the continuing education requirements described in 13.4.7 NMAC, unless the license is canceled, revoked, suspended or otherwise terminated.

(1) A licensed insurance producer who is unable to comply with license renewal requirements due to military service or other extenuating circumstance may request a waiver using forms available on the OSI website or as otherwise directed by the superintendent. An insurance producer in such circumstances may also request a waiver of an examination requirement or of a fine or sanction imposed for failure to comply with renewal procedures.

(2) For licenses issued to individuals:

(a) For licenses issued on or after July 1, 2017, biennial renewal fees shall be paid on or before the last day of the second occurrence of the individual’s birth month following issuance of the license.

(b) For licenses issued before July 1, 2017, details pertaining to biennial continuation and renewal of licenses are available on the OSI website for renewals due on March 1, 2018. Thereafter, the license shall be renewed according to the biennial schedule implemented on July 1, 2017.

(c) Continuing education requirements shall be satisfied during the 24 months immediately preceding the renewal date of the license. Additional information pertaining to continuing education requirements may be found in Section 13.4.7 NMAC.

(d) If the superintendent has reason to believe that the competence of any licensee or individual designated to exercise license powers is in question, the superintendent may require as a condition of continuation of the license or license powers that the licensee or individual take and pass the written examination that is required for new applicants for the same license.

(3) For licenses issued to business entities:

(a) Business entity licenses shall renew and continue on a biennial basis on March 1 of the biennial year except for those types of business entity licenses that renew and continue annually pursuant to Section 59A-6-1 NMSA 1978, which shall renew and continue on March 1 of every year.

(b) Business entity affiliations shall renew and continue on an annual basis on March 1 of every year, subject to payment of fees pursuant to Section 59A-6-1 NMSA 1978.

**B. Termination of licenses.**

(1) A license that is not continued by the licensee shall be deemed terminated at midnight on the last day of the licensee’s birth month in the renewal year if an individual license and at midnight of March 1 in the renewal year if a business entity license. However, at the superintendent’s discretion, a licensee’s request for continuation received within 30 days after the due date may be granted if accompanied by a continuation fee equal to one-hundred-and-fifty percent of the fee otherwise required.

(2) Authorization to transact business in this state shall automatically terminate without notice as of the date and time of termination of a license.

(3) Any license issued to an individual shall terminate upon the death of the person.

(4) If a corporation ceases to exist, its business entity license shall be tendered to the superintendent with notice of the dissolution.

(5) If a change occurs only in the officers or in the name of a corporation, it may continue to transact insurance under the license until action is taken by the superintendent upon a new application, if:

(a) within 30 days of the change, the surviving officers of the corporation file an application on a form prescribed by the superintendent for registration of a change in the officers or the name of the corporation and pay the required fees; and

(b) the application for registration of the change in officers is signed by the secretary or corresponding officer of the corporation.

(6) If the membership of a partnership changes, the surviving or continuing partner or partners may continue to transact insurance business under the license issued to the predecessor partnership until action is taken by the superintendent upon a new application, if:

(a) within 30 days, the surviving partner or partners file an application on a form prescribed by the superintendent for registration of a change in membership and pay the required fee;

(b) at least one person who exercises the producer powers of the predecessor entity continues to exercise those powers of the surviving or continuing partnership; and

(c) the application for registration of the change in membership is signed by a general partner.

**C. Reinstatement of licenses.**

(1) An individual licensee who allows the license to lapse may, within 12 months following the due date of the required renewal fee and completion of continuing education credits, reinstate the license without the necessity of passing a written examination.

(2) A penalty of double the unpaid renewal fee shall be required for a renewal received after the due date.

(3) If the producer has failed to comply with continuing education requirements during a lapse, the producer shall complete all continuing education hours that would have been necessary to keep the license in compliance. [13.4.2.27 NMAC – N, 4/2/2018]

**13.4.2.28 DENIAL, SUSPENSION, REVOCATION OR CANCELLATION OF LICENSES:**

**A. Effects of suspension.** While a license is suspended, the licensee shall not engage in any transaction for which the license is required, other than receipt and remittance of premiums paid for insurance or other business that was transacted by the licensee while the license was active.

**B. Reasons for probation, suspension, revocation or refusal to continue license.**

(1) The superintendent may take necessary action based on information obtained

via the NAIC attachment warehouse personal information capture system alerts or other appropriate mechanisms used to monitor actions against existing licensees.

(2) It shall be the duty of the superintendent to cancel a license if the superintendent is satisfied that:

(a) a licensee obtained the license by willful misrepresentation or fraud;

(b) a licensee obtained the license chiefly for the purpose of writing insurance on the licensee's own life, property or liability, or on the lives, property or liability of the licensee's associates;

(c) a licensee is not complying with all state and federal laws and regulations relating to insurance; or

(d) the interests of the insured or the public are not being properly served under the license.

(3) The superintendent may place on probation, suspend, revoke or refuse to issue or renew a license for any of the reasons set forth in in Section 59A-11-14 NMSA 1978.

(4) A business entity's license may be suspended, revoked or refused if the superintendent finds after hearing that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the partnership or corporation, the violation was not reported to the superintendent and no corrective action was taken.

(5) A rental car insurance producer's license may be revoked or suspended following a hearing by the superintendent for a violation by the producer or the producer's endorsees of the Rental Car Insurance Limited Producer License Act set forth at Section 59A-32A-8 NMSA 1978. The superintendent may also impose penalties or suspend a transaction of insurance at specific rental locations where such a violation has occurred.

**C. Suspension or**

**revocation of or refusal to continue a license.**

(1) If the superintendent suspends, revokes or refuses to continue a license, the superintendent shall notify the applicant in writing. The notice shall advise the applicant of the reason for the decision.

(2) Within 30 days of the date of issuance of the notice, the applicant may request a hearing in writing pursuant to Section 59A-4-15 NMSA 1978. The hearing shall be held within 90 days.

(3) The superintendent retains the authority to enforce the provisions of and impose any penalty or remedy authorized by the Insurance Code against any person who is under investigation for or charged with a violation of the Insurance Code even if the person's license has been surrendered or has lapsed by operation of law.

**D. Administrative fines.**

(1) In addition to, or in lieu of, any applicable suspension, revocation or denial of a license the superintendent may impose fees or administrative fines pursuant to Section 59A-1-18 NMSA 1978 or a specific section of the Insurance Code.

(2) The amount of the administrative fine shall be not less than \$100 nor more than \$500 unless a small or larger fine is set by a specific section of the Insurance Code.

(3) In the order imposing the fine, the superintendent shall specify the grounds therefor and the period, not to exceed 60 days, within which the licensee shall pay the fine.

(4) If at the end of the allowed payment period the licensee has not paid the fine in full, the license immediately shall be suspended or revoked, or its renewal denied, as the case may be, without further order.

**E. Duration of and reinstatement following suspension or revocation of license.**

(1) In the

order suspending a license, the superintendent shall state the period of suspension, which shall not exceed one year.

(a)

The period of suspension may be modified by the superintendent's further order.

(b)

At the end of the suspension period the license shall be reinstated upon request of the licensee unless the superintendent finds that the cause or causes of the suspension still exist or are likely to recur. If the superintendent so finds, he shall forthwith revoke the license by further order.

(2)

An applicant whose license has been administratively revoked or suspended shall contact the superintendent in order to request reinstatement of the license.

(3) A licensee

whose license has been revoked or suspended for noncompliance with the Parental Responsibility Act shall become compliant and provide evidence of compliance to the superintendent before the license may be reinstated.

(4) The

superintendent shall not relicense a former licensee whose license has been revoked or its continuation refused without evidence that the former licensee is otherwise qualified for the license and that the cause or causes of the prior revocation or refusal to continue no longer exists and will not recur.

[13.4.2.28 NMAC – N, 4/2/2018]

**13.4.2.29 APPOINTMENTS AND CANCELLATION OF PRODUCER CONTRACTS:**

A license itself does not create any authority, actual, apparent, or inherent in the licensee to represent or commit an insurer.

**A. Appointment of insurance producers.**

(1) An

insurance producer shall not act as an insurance producer on behalf of an insurer unless the insurance producer becomes an appointed insurance

producer of that insurer. An insurance producer who is not acting on behalf of an insurer is not required to become appointed.

(2) An insurer

shall appoint a producer using the online electronic application or as otherwise directed by the superintendent.

(a)

The appointment shall be filed within 15 days from the date that the agency agreement is executed or when the first insurance application is submitted by the insurance producer on behalf of the insurer.

(b)

An insurer may appoint an insurance producer to all or some insurers within the insurer's holding company system or group by the filing of a single appointment.

(c)

An insurer shall pay the filing appointment fee set forth in Paragraph (3) of Subsection E of Section 59A-6-1 NMSA 1978 for each insurance producer the insurer appoints, but may contract for reimbursement of the fee by agreement with the producer.

(3) In the

event of a merger between two or more insurers, appointments of producers by any of the insurers absorbed by the merger will continue with the resulting insurer.

**B. Continuation of appointment.**

(1)

Appointments of insurance producers shall be continuous subject to the insurer's payment of continuation fees as required by Section 59A-6-1 NMSA 1978 and filing of notice of continuation with the superintendent.

(2) Notice

of continuation and payment of continuation fees shall be filed annually with the superintendent on or before March 1 of each year. The annual filing shall include the name, address and license number of each insurance producer appointed by the insurer to solicit or transact business in this state on the insurer's behalf.

**C. Termination of appointment.**

(1) Insurance

producer appointments terminate automatically on April 30 of the year after issuance or continuation of appointment if the appointing insurer does not file a continuation of appointment.

(2) No insurer

authorized to transact property or casualty insurance business in this state shall terminate a contract appointing an independent insurance producer without giving the insurance producer written notice of the termination, including the specific reason for such action, at least 180 days prior to the termination except as provided in Subsection C of Section 59A-11-13 NMSA 1978.

(3) No insurer

shall terminate an appointment with a property or casualty insurance producer based on an adverse loss-ratio, as set forth in Subsection B of Section 59A-11-13 NMSA 1978.

(4) Notice

of termination of appointment by an insurer shall be provided to the superintendent using the online form, or as otherwise directed by the superintendent, within 30 days following the effective date of the termination.

(a)

If the reason for termination is one of the reasons for which the superintendent may cancel, suspend, revoke or refuse to issue a license as set forth in 13.4.2.27 and 13.4.2.28 NMAC, Subsection C of Section 59A-11-13 NMSA 1978 and Section 59A-11-14 NMSA 1978, or if the insurer has knowledge that the producer has been found by a court or regulatory agency to have engaged in any of the activities prohibited by 13.4.2.27 NMAC, the notice shall disclose it.

(b)

The insurer has a continuing obligation to report to the superintendent should additional information become available following the initial notification.

(c)

The insurer shall provide additional information about the reason for termination upon the superintendent's request.



(5) If the reason for the termination is one or more of the activities listed in 13.4.2.27 NMAC, the insurer shall provide a copy of the notice via certified mail to the insurance producer’s last known address within 15 days following submission of the notice to the superintendent.

(6) The insurance producer may provide to the superintendent additional information in response to the notice filed by the insurer within 30 days; both the insurer’s notice and the insurance producer’s response shall be made a permanent part of the file retained by the superintendent.

(7) Any documents and materials related to termination or cancellation of an insurance producer’s appointment that are provided to the superintendent shall be handled in a manner that is consistent with the confidentiality provisions set forth in Subsection K of Section 59A-11-13 NMSA 1978.

(8) An insurer may terminate its relationship with an insurance producer for any of the reasons set forth in Subsection C of Section 59A-11-13 NMSA 1978. The provisions of Paragraphs (2) and (3) of Subsection C of 13.4.2.19 NMAC shall not apply for such terminations.

(9) When an insurer ceases operation in this state, all producers and other principals that have been appointed by the insurer shall cease to be authorized to transact business in this state on behalf of the insurer as of the date of such cessation and shall immediately cease all activity on behalf of the insurer. [13.4.2.29 NMAC – N, 4/2/2018]

**13.4.2.30 SUPERINTENDENT’S LICENSING RECORDS:**

A. The superintendent shall keep a record of:

- (1) each licensee’s name, address, date of license, kind of business transacted and qualifications;
- (2) the name of the principal or insurer represented; and
- (3)

all cancellations, suspensions or revocations of a license and notifications submitted by an insurer to the superintendent that pertain to a licensee.

B. Except for confidential information and other matters withheld by the superintendent pursuant to Sections 59A-2-12, 59A-4-11 and 59A-11-13 NMSA 1978, these records shall be made available for public inspection upon request. [13.4.2.30 NMAC – N, 4/2/2018]

**HISTORY OF 13.4.2 NMAC:**

Pre-NMAC History: The material in this rule was originally filed with the State Records Center as: ID 67-1, Sections 5-3-1 through 5-3-13 and 5-4-1 through 5-4-16, New Mexico Official Administrative Rules and Regulations Code, filed 12/1/1967.

**History of Repealed Material:**

13.4.2 NMAC - Resident Agents And Solicitors filed 7/1/1997, was Repealed effective 4/2/2018.

**Other History:**

13.4.2 NMAC - Resident Agents And Solicitors filed 7/1/1997, was Repealed and Replaced by 13.4.2 NMAC - Resident Producers And Other Resident Licenses effective 4/2/2018

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

**TITLE 13 INSURANCE  
CHAPTER 6 LIFE AND HEALTH INSURANCE POLICIES AND RATES  
PART 1 LIFE AND HEALTH MATRIX POLICY  
FORM FILING**

**13.6.1.1 ISSUING**

**AGENCY:** NM Office of Superintendent of Insurance, P.O. Box 1689, Santa Fe, NM 87504-1689. [13.6.1.1 NMAC - N, 04/01/2018]

**13.6.1.2 SCOPE:** This rule applies to all life and health insurers

issuing individual life or health insurance policies or group life or health insurance policies situated in New Mexico. [13.6.1.2 NMAC - N, 04/01/2018]

**13.6.1.3 STATUTORY**

**AUTHORITY:** Sections 59A-1-10 through 59A-1-17; 59A-2-7 through 59A-2-9; 59A-5-10; 59A-6-1; 59A-18-12; 59A-18-13.2; 59A-18-16.1; 59A-18-16.2; 59A-21-1 et seq.; 59A-22-1 et seq. NMSA 1978. [13.6.1.3 NMAC - N, 04/01/2018]

**13.6.1.4 DURATION:**

Permanent. [13.6.1.4 NMAC - N, 04/01/2018]

**13.6.1.5 EFFECTIVE**

**DATE:** April 1, 2018 unless a later date is cited at the end of a section. [13.6.1.5 NMAC - N, 04/01/2018]

**13.6.1.6 OBJECTIVE:**

The purpose of this rule is to address the use of forms previously filed and approved on a matrix basis for New Mexico-sitused group policyholders or for individual policies issued to New Mexico residents. [13.6.1.6 NMAC - N, 04/01/2018]

**13.6.1.7 DEFINITIONS:**

**As used in this rule:**

**A. “Group policy”** means a contract for group life or group health insurance made between an insurer and an employer, association, trust or other group that covers individuals based on their relationships to the group policy holder with or without the covered individuals’ dependents. Group policy does not include the certificate of insurance delivered to individuals insured under such contracts.

**B. “Health insurance”** has the meaning as set forth in Section 59A-7-3 NMSA 1978.

**C. “Individual”** has the meaning set forth in Subsection B of Section 59A-1-10 NMSA 1978.

**D. “Insurer”** has the meaning set forth in Section 59A-1-8 NMSA 1978.

**E. “Life insurance”**

has the meaning as set forth in Section 59A-7-2 NMSA 1978.

**F. “Matrix form”**

means a policy or certificate consisting of multiple insert pages or paragraphs each with its own unique identifiable form number, allowing for the creation of multiple policies, certificates or applications by using combinations of the insert pages and paragraphs. Matrix forms do not include riders, amendments, endorsements, declaration pages, schedule pages and certificate/policy specification pages and a matrix form is not created by the addition of such forms.

**G. “SERFF”** means the national association of insurance commissioners (NAIC) system for electronic rate and form filings.

**H. “Subscriber”**

means an individual whose employment or other group status, except family dependency, is the basis for their coverage for group insurance.

[13.6.1.7 NMAC - N, 04/01/2018]

**13.6.1.8 ISSUANCE OF MATRIX FORMS PROHIBITED:**

No insurance policies or related certificates issued to New Mexico - sitused group policyholders or individual insurance policies issued to New Mexico residents with effective dates of July 1, 2019, or later may include matrix-based forms, subject to the exception as described in 13.6.1.9 NMAC.

[13.6.1.8 NMAC - N, 04/01/2018]

**13.6.1.9 EXCEPTIONS FOR PREVIOUSLY APPROVED MATRIX FORMS:**

Matrix forms previously filed with and approved by the superintendent may continue to be used as follows:

**A.** Matrix forms previously filed with and approved by the superintendent may continue to be marketed and sold in this state, provided that the individual policy or group policy becomes effective on or before July 1, 2019.

**B.** Coverage provided under individual policies or group policies and certificates that include

matrix-based forms may continue if the individual policy or group policy was issued prior to July 1, 2019.

Coverage may also be extended to new subscribers under existing group insurance plans that use matrix-based forms that have been approved and are in use as of July 1, 2019.

**C.** Changes to policies or certificates using previously filed and approved matrix forms, affiliated forms, and rates subject to Subsections A and B of this section, including but not limited to changes required to maintain compliance with state or federal statutory or regulatory laws or requirements, shall not require an insurer to issue new non-matrix forms and will be permitted, provided the following requirements are met:

**(1)** Any changes that fall outside the scope of approved variability of previously approved matrix-based forms shall require a form filing of a rider, endorsement, or amendment and must be submitted to the superintendent for approval;

**(2)** A sample issue specimen of the applicable matrix-based policy or certificate forms including every insert page and form to be included in the policy or certificate as it will be issued to the policyholder or certificate holder and that is the subject of the filing must be provided with the SERFF filing in the supporting document tab;

**(3)** any modification in a matrix-based form that also requires a change to the previously approved rates must include a corresponding rate filing; and

**(4)** A rate filing subject to Subsections A and B of this section affecting an entire class or block of coverage under this section, will be subject to the superintendent’s review and approval.  
[13.6.1.9 NMAC - N, 04/01/2018]

**History of 13.6.1 NMAC:**  
[RESERVED]

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**End of Adopted Rules**

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# 2018 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXIV, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 16
Issue 2	January 18	January 30
Issue 3	February 1	February 13
Issue 4	February 15	February 27
Issue 5	March 1	March 13
Issue 6	March 15	March 27
Issue 7	March 29	April 10
Issue 8	April 12	April 24
Issue 9	April 26	May 15
Issue 10	May 17	May 29
Issue 11	May 31	June 12
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Issue 20	October 18	October 30
Issue 21	November 1	November 13
Issue 22	November 15	November 27
Issue 23	November 29	December 11
Issue 24	December 13	December 27

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