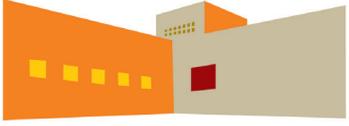


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# New Mexico Register

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 19

October 16, 2018

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## Notices of Rulemaking and Proposed Rules

### ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION COMMISSION

#### NOTICE OF LIMITED REHEARING IN RULEMAKING

The State of New Mexico through its Oil Conservation Commission (Commission) hereby gives notice of the limited rehearing to be held in the following rulemaking:

**Case No. 16078: IN THE MATTER OF PROPOSED AMENDMENTS TO THE COMMISSION'S RULES ON FINANCIAL ASSURANCE AND PLUGGING AND ABANDONMENT OF WELLS, 19.15.2, 19.15.8, AND 19.15.25 NMAC**

**Rehearing.** The Commission will commence the public rehearing on the portion of the proposed rule amendments covering financial assurance in 19.15.8 NMAC, and, in particular, the applicability of 19.15.8 NMAC to wells that are covered by federally required financial assurance, at the Commission meeting at 9:00 A.M. on November 15, 2018, in Porter Hall, 1st Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

**Proposed Rule Amendments.** The Oil Conservation Division (OCD) proposes to amend 19.15.2, 19.15.8, and 19.15.25 NMAC to make changes concerning financial assurance and plugging and abandonment of wells and related matters. The proposed rule changes include: (a) amending 19.15.2.7 NMAC to add definitions of terms used in financial assurance provisions; (b) amending 19.15.8.9 NMAC to provide for the increase in blanket bond amounts authorized by the Legislature and to change the amount of single well bonds to conform to statutory requirements; and (c) amending 19.15.25 NMAC to coordinate approved temporary

abandonment with financial assurance requirements and to limit the use of approved temporary abandonment.

On July 19 and 20, 2018, the Commission held a hearing on the OCD's application to amend 19.15.2.7, 19.15.8, and 19.15.25 NMAC and on August 20, 2018 issued Order R-14834 to adopt certain changes to those rules. On September 13, 2018, the Commission, granted a limited rehearing to review the scope of the financial assurance requirements of 19.15.8 NMAC, and, in particular, the applicability of 19.15.8 NMAC to wells which are covered by federal financial assurance.

**Purpose of Proposed Rule Amendments.** The proposed changes will further the goals of the Oil and Gas Act by providing financial assurance that more accurately reflects the actual cost of well plugging, by implementing changes promulgated by the 2018 Legislature, and by limiting the overuse of approved temporary abandonment.

**Legal Authority.** The proposed rule amendments and rehearing are authorized by the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, and specifically Section 70-2-11 (which authorizes the adoption of rules to carry out the purposes of the Act and to prevent waste), Section 70-2-12(B)(1) (which authorizes the adoption of rules on plugging and financial assurance), and Section 70-2-14 (which requires the agency to establish categories of financial assurance). The rulemaking proceeding, including the rehearing, is governed by the Commission's rule on rulemaking, 19.15.3 NMAC.

Written or electronic comments on the portions of the proposed rule amendments for which the Commission granted the rehearing may be hand delivered or mailed to the Commission Clerk, Florene Davidson, 3rd floor, 1220 South St. Francis Drive, Santa Fe, NM 87505,

or e-mailed to [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us). Written or electronic comments shall be limited to the scope of the rehearing. All written or electronic comment must be received by the Commission Clerk no later than 9:00 A.M. on November 15, 2018, unless the Commission or the Commission Chair extends this deadline.

Persons intending to submit proposed modifications to the proposed rule amendments to 19.15.8 NMAC that are the subject of the rehearing, present technical testimony at the rehearing, or cross-examine witnesses must file six copies of a Pre-hearing Statement conforming to the requirements of Subsection B of 19.15.3.11 NMAC, no later than 5:00 P.M. on November 1, 2018. Pre-hearing Statements must be hand delivered, mailed, or e-mailed to the Commission Clerk at the above address.

Any person who has not submitted a pre-hearing statement may present non-technical testimony or make an unsworn statement at the rehearing. Non-technical testimony or unsworn statements shall be limited to the scope of the rehearing. A person may also offer exhibits with the testimony so long as the exhibits are relevant to the scope of the rehearing and do not unduly repeat the testimony. Any person who wishes to present non-technical testimony should indicate his or her intent on a sign-in sheet at the hearing. A person who testifies at the rehearing is subject to cross-examination by the commissioners, commission counsel, or a party on the subject matter of the person's direct testimony.

The full text of the proposed rule amendments is available from Commission Clerk, Florene Davidson at (505) 476-3458 or can be viewed on the Rules page at the Oil Conservation Division's website at <http://www.emnrd.state.nm.us/ocd>, or at Oil Conservation Division offices in Santa Fe, Hobbs, Artesia, or

Aztec. Information on the summary and purpose of the proposed rule, the legal authority for the proposed rule, and the order granting the rehearing is also available at the Rules page.

Technical Information that served as a basis for the proposed rule amendments includes:

OCD Well Plugging Costs FY2014-FY2018 (spreadsheet)

These materials can be viewed on the Rules page.

If you are an individual with a disability who needs 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 Ms. Davidson at (505) 476-3458 or through the New Mexico Relay Network at 1-800-659-1779 by November 1, 2018. Public documents can be provided in various accessible forms. Please contact Ms. Davidson if a summary or other type of accessible form is needed. A party who plans to use projection equipment at a hearing must contact Ms. Davidson seven business days prior to the hearing requesting the use of the projection equipment. Wireless internet is available; however, the person requesting to use the wireless connection must provide a laptop computer.

**GAME AND FISH,  
DEPARTMENT OF**

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

The New Mexico State Game Commission (“Commission”) has scheduled a regular meeting and rule hearing for Friday, November 30, 2018, beginning at 9:00 a.m. at the Roswell Convention and Civic Center, 912 N. Main St, Roswell, NM 88201, to hear and consider action as appropriate on the following: Presentation of proposed changes to the Private Land Elk Allocation rule.

**Synopsis:**

The proposal is to adopt a new Private Land Elk Allocation rule, 19.30.5 NMAC, which will become effective April 1, 2019. The current Private Land Elk Allocation rule is a permanent rule.

The proposed new rule creates commission approved guidelines to evaluate properties currently participating in or applying for the Elk Private Land Use System (EPLUS). Properties that do not meet minimum participation requirements based on the guidelines would be removed from the EPLUS program and any property submitting acre changes would be re-evaluated by the guidelines. The proposed new rule also changes the current distribution of private land elk authorizations by running the bonus and 2 year unconverted allocations through the small contributing ranch (SCR) pool first. Further proposed rule changes include removing the draw history system for SCRs and creating a random, weighted draw. It is also being proposed that properties in the secondary management zone will be able to purchase private land elk licenses over-the-counter with an assigned ranch code.

A more detailed summary, and the full text of changes, is available on the Department’s website at: [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us).

Interested persons may submit comments on the proposed changes to the Private Land Elk Allocation rule at [DGF-EPLUS-Rules@state.nm.us](mailto:DGF-EPLUS-Rules@state.nm.us); or individuals may submit written comments to the physical address below. Comments are due by 5:00 p.m. on November 28, 2018. The final proposed rule will be voted on by the Commission during a public meeting on November 30, 2018. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on November 30, 2018.

Full copies of text of the proposed new rule, technical information

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

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

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

**GAME AND FISH,  
DEPARTMENT OF**

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

The New Mexico State Game Commission (“Commission”) has scheduled a regular meeting and rule hearing for Friday, November 30, 2018, beginning at 9:00 a.m. at the Roswell Convention and Civic Center, 912 N. Main St, Roswell, NM 88201, to hear and consider action as appropriate on the following:

Presentation of proposed changes to the Deer rule.

**Synopsis:**

The proposal is to adopt a new Deer rule, 19.31.13 NMAC, which will become effective April 1, 2019. The current Deer rule is set to expire on March 31, 2019.

The proposed new rule adjusts seasons for calendar date shifts. It also adjusts draw license numbers based on biological data and management goals. Archery season is divided into a separate September and a separate January season when a split September and/or January season currently exists. Several new hunting opportunities have been created, including additional archery hunts in the Northeast and Northwest Areas. Most youth hunts are standardized to a nine day hunt surrounding Thanksgiving week. A more detailed summary, and the full text of changes, is available on the Department's website at: [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us).

Interested persons may submit comments on the proposed changes to the Deer rule at [DGF-Deer-Rules@state.nm.us](mailto:DGF-Deer-Rules@state.nm.us); or individuals may submit written comments to the physical address below. Comments are due by 5:00 p.m. on November 28, 2018. The final proposed rule will be voted on by the Commission during a public meeting on November 30, 2018. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on November 30, 2018.

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

8000, or the Department's website at [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us) for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

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

**GAME AND FISH,  
DEPARTMENT OF**

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

The New Mexico State Game Commission ("Commission") has scheduled a regular meeting and rule hearing for Friday, November 30, 2018, beginning at 9:00 a.m. at the Roswell Convention and Civic Center, 912 N. Main St, Roswell, NM 88201, to hear and consider action as appropriate on the following: Presentation of proposed changes to the Elk rule.

**Synopsis:**

The proposal is to adopt a new Elk rule, 19.31.14 NMAC, which will become effective April 1, 2019. The current Elk rule is set to expire on March 31, 2019.

The proposed new rule adjusts seasons for calendar date shifts. Youth Encouragement hunts are

limited to resident youth who put in for the draw but were unsuccessful. If hunts are undersubscribed after 14 days, licenses will also become available to resident seniors (65 years and older) who put in for the draw but were unsuccessful. Antler Point Restriction (APR) hunts are moved into the big game draw (Game Management Units (GMUs) 12, 34, 37). Boundaries in the Core Occupied Elk Range (COER)/ primary management zone are being adjusted. Primary management zone is defined as that portion of land within the boundaries of a GMU, as designated by the department, upon which elk management goals and subsequent harvest objectives are based. License numbers allocated to the public-private split are being adjusted where COER boundary modifications occur and in situations where land ownership has changed. A more detailed summary, and the full text of changes, is available on the Department's website at: [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us).

Interested persons may submit comments on the proposed changes to the Elk rule at [DGF-Elk-Rules@state.nm.us](mailto:DGF-Elk-Rules@state.nm.us); or individuals may submit written comments to the physical address below. Comments are due by 5:00 p.m. on November 28, 2018. The final proposed rule will be voted on by the Commission during a public meeting on November 30, 2018. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on November 30, 2018.

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

8000, or the Department’s website at [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us) for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

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

**HIGHER EDUCATION DEPARTMENT**

**NOTICE OF PROPOSED RULEMAKING**

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or department) will hold a public rulemaking hearing on November 16, 2018. The hearing will begin at 9:00 a.m. and will be held at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505. The purpose of the rulemaking hearing is to take public comment regarding proposed amendments to 5.7.2 NMAC, NEW MEXICO HEALTH PROFESSIONS: STUDENT LOAN-FOR-SERVICE ACTS.

Amendments:

- 5.7.2.6 NMAC, OBJECTIVES AND PURPOSE
- 5.7.2.7 NMAC, definitions

Purpose:

The purpose of the proposed rule change is to modify definitions of eligible health professions and eligible institutions for the Medical Loan-For-Service Program and Osteopathic Medical Loan-For-Service Program. The proposed amendments are based upon changes that were made to the programs through the enactment of H.B.126, 53rd Leg., 1st Sess. (N.M. 2017). The Medical Loan-For-Service Program was modified to statutorily add Osteopathic Physicians and Osteopathic Physician Assistants as eligible professions. Additionally, preference in awarding Medical Student Loan-For-Service Program funds was expanded to students attending any accredited New Mexico medical school.

**Summary of proposed changes:**

The amendment to Section 5.7.2.6 NMAC is a non-substantive change to comply with the Legislative Style Manual.

Amendments to Section 5.7.2.7 modify definitions of “eligible health profession” and “eligible institution” for the Medical Loan-For-Service Program. The definition of “eligible health profession” is modified to include Osteopathic Physicians and Osteopathic Physician Assistants. The definition of “eligible institution” is amended to eliminate the requirement that the institution be public. The definition of “eligible institution” is amended to allow preference in awards be made to students attending any accredited New Mexico medical school.

Additionally, amendments to 5.7.2.7 modify definitions of “eligible health profession” and “eligible institution” for the Osteopathic Medical Loan-For-Service Program. The terminology in the definition of “eligible health profession” is updated. The definition of “eligible institution” is amended to allow awards be made to students attending any accredited program of osteopathic education in the United States.

**Details for Obtaining a Copy,**

**Public Hearing and Comments:** The proposed rule is available at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505-2100. The proposed rule is also posted on the NMHED website and may be accessed at <http://www.hed.state.nm.us/> under the “Events” section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us) or (505)476-8411.

A public hearing will be held from 9:00 a.m. until 9:30 a.m. at NMHED on November 16, 2018. Any person who is or may be affected by this proposed rule may appear and testify. **Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us). Written comments must be received no later than 4:00 p.m. on November 15, 2018.** Please note that any written comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978, Section 21-1-26 NMSA 1978, Section 21-22-1 et seq. NMSA 1978, 21-22A-1 et seq. NMSA 1978, 21-22B-1 et seq. NMSA 1978, and 21-22C-1 et seq. NMSA 1978.

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

**HIGHER EDUCATION DEPARTMENT**

**NOTICE OF PROPOSED RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the New Mexico Higher Education Department (NMHED or department) will hold a public rulemaking hearing on November 16, 2018. The hearing will begin at 9:30 a.m. and will be held at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505. The purpose of the rulemaking hearing is to take public comment regarding proposed amendments to **5.7.3 NMAC, NEW MEXICO HEALTH PROFESSIONAL LOAN REPAYMENT PROGRAM (HPLRP)**.

**Amendments:**

5.7.3.9 NMAC, PARTICIPANT ELIGIBILITY  
5.7.3.10 NMAC, SELECTION OF LOAN REPAYMENT PARTICIPANTS  
5.7.3.11 NMAC, PARTICIPATION AGREEMENT  
5.7.3.12 NMAC, PENALTIES

**Purpose:**

The purpose of the proposed rule change is to modify the provisions for the Health Professional Loan Repayment Program award preferences. The proposed amendment is based upon changes that were made to the program through the enactment of H.B.126, 53rd Leg., 1st Sess. (N.M. 2017). The program was modified to statutorily allow preference in awarding Health Professional Loan Repayment Program funds to graduates of any New Mexico post-secondary institution.

**Summary of proposed changes:**

The amendments to Section 5.7.3.9 NMAC, 5.7.3.11 NMAC, and 5.7.3.12 NMAC are non-substantive changes to comply with the Legislative Style Manual.

The amendment to Section 5.7.3.10 NMAC expands the preference in awarding Health Professional Loan Repayment Program funds to health professionals that graduated from any New Mexico post-secondary institution.

**Details for Obtaining a Copy, Public Hearing and Comments:**

The proposed rule is available at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505-2100. The proposed rule is also posted on the NMHED website and may be accessed at <http://www.hed.state.nm.us/> under the "Events" section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us) or (505) 476-8411.

A public hearing will be held from 9:30 a.m. until 10:00 a.m. at NMHED on November 16, 2018. Any person who is or may be affected by this proposed rule may appear and testify. **Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us). Written comments must be received no later than 4:00 p.m. on November 15, 2018.** Please note that any written comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978, Section 21-1-26 NMSA 1978, and Section 21-22D-1 et seq. NMSA 1978.

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

**HIGHER EDUCATION  
DEPARTMENT**  
**NOTICE OF PROPOSED  
RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the New Mexico Higher Education Department (NMHED or department) will hold a public rulemaking hearing on November 16, 2018. The hearing will begin at 10:00 a.m. and will be held at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505. The purpose of the rulemaking hearing is to take public comment regarding proposed amendments to **5.100.5 NMAC, EXEMPTION UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT**.

**Amendments:**

5.100.5.3 NMAC, STATUTORY AUTHORITY  
5.100.5.6 NMAC, OBJECTIVES AND GENERAL PRINCIPLES  
5.100.5.7 NMAC, DEFINITIONS  
5.100.5.8 NMAC, GENERAL STANDARD FOR OBTAINING EXEMPTION STATUS BY THE DEPARTMENT

**Purpose:**

The purpose of the proposed rule change is to update the definition of physical presence and to provide a more comprehensive list of activities that trigger a postsecondary institution to have a physical presence under the Post-Secondary Educational Institution Act. The proposed amendment also provides a more comprehensive list of activities that do not trigger a physical presence in New Mexico. Definitions have been updated to provide additional clarity. Statutory and administrative code citation have been added within the text of the rule to provide more specificity. Grammatical and stylistic changes have been made throughout.

**Summary of proposed changes:**

Amendment to Section 5.100.5.3 NMAC adds additional statutory authority for the rule.

Amendments to Section 5.100.5.6 NMAC include a non-substantive change to comply with the Legislative Style Manual and the addition of listed activities that trigger a post-secondary institution to have a

physical presence under the Post-Secondary Educational Institution Act. The proposed amendment also provides a list of activities that do not trigger a physical presence in New Mexico. The amendments include stylistic changes.

Amendments to Section 5.100.5.7 NMAC update various definitions including the definition of “Physical Presence” in relation to the proposed new language regarding physical presence in Section 5.100.5.6 NMAC. Definition of “Registration” or “Registered” is modified for grammatical clarity. Language in the definition of “State Authorization” is updated to further clarify State Authorization is not an endorsement by NMHED and to include stylistic changes. The definition of “Post-secondary educational institution” adds the alternate terms “institution” or “post-secondary institution”, all of which have the same meaning. The definition of “Exemption” adds the alternate term “Exempt”, which has the same meaning.

Amendments to Section 5.100.5.8 NMAC adds additional statutory and administrative code citations.

#### **Details for Obtaining a Copy, Public Hearing and Comments:**

The proposed rule is available at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505-2100. The proposed rule is also posted on the NMHED website and may be accessed at <http://www.hed.state.nm.us/> under the “Events” section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us) or (505) 476-8411.

A public hearing will be held from 10:00 a.m. until 10:30 a.m. at NMHED on November 16, 2018. Any person who is or may be affected by this proposed rule may appear and testify. **Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us). Written**

**comments must be received no later than 4:00 p.m. on November 15, 2018.** Please note that any written comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978, Section 21-1-26 NMSA 1978 and Section 21-23-1 et seq. NMSA 1978.

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

## **HIGHER EDUCATION DEPARTMENT**

### **NOTICE OF PROPOSED RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the New Mexico Higher Education Department (NMHED or department) will hold a public rulemaking hearing on November 16, 2018. The hearing will begin at 10:30 a.m. and will be held at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505. The purpose of the rulemaking hearing is to take public comment regarding proposed amendments to **5.100.6 NMAC, REGISTRATION UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT.**

**Amendments:**  
5.100.6.3 NMAC, STATUTORY AUTHORITY  
5.100.6.6 NMAC, OBJECTIVES

AND GENERAL PRINCIPLES  
5.100.6.7 NMAC, DEFINITIONS  
5.100.6.16 NMAC, RECORD MAINTENANCE AND RETENTION POLICY  
5.100.6.19 NMAC, APPLICABLE FEES

#### **Purpose:**

The purpose of the proposed rule change is to update the definition of physical presence and to provide a more comprehensive list of activities that trigger a postsecondary institution to have a physical presence under the Post-Secondary Educational Institution Act. The proposed amendment also provides a more comprehensive list of activities that do not trigger a physical presence in New Mexico. Definitions have been updated to provide additional clarity. Grammatical and stylistic changes have been made throughout. Institutional records maintenance and retention policy requirements have been modified to include compliance with the laws of other oversight entities.

#### **Summary of proposed changes:**

Amendment to Section 5.100.6.3 NMAC adds additional statutory authority for the rule.

Amendments to Section 5.100.6.6 NMAC include a non-substantive change to comply with the Legislative Style Manual and the addition of listed activities that trigger a post-secondary institution to have a physical presence under the Post-Secondary Educational Institution Act. The proposed amendment also provides a list of activities that do not trigger a physical presence in New Mexico. The amendments include stylistic changes and insertion of additional language to further specify the types of institutions required to obtain registration.

Amendments to Section 5.100.6.7 NMAC update various definitions including the definition of “Physical Presence” in relation to the proposed new language regarding physical presence in Section 5.100.6.6

NMAC. Definition of “Registration” or “Registered” is modified for grammatical clarity. Language in the definition of “State Authorization” is updated to further clarify State Authorization is not an endorsement by NMHED and to include stylistic changes. The definition of “Post-secondary educational institution” adds the alternate term “post-secondary institution”, which has the same meaning. The definition of “Institution” has been inserted and additional stylistic and sequencing changes have been made within the section. Non-substantive change have been made to comply with the Legislative Style Manual. Amendment to Section 5.100.6.16 NMAC modifies the institutional records maintenance and retention policy requirements to include compliance with the laws of other oversight entities.

Amendment to Section 5.100.6.19 NMAC includes stylistic changes.

**Details for Obtaining a Copy, Public Hearing and Comments:**

The proposed rule is available at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505-2100. The proposed rule is also posted on the NMHED website and may be accessed at <http://www.hed.state.nm.us/> under the “Events” section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us) or (505) 476-8411.

A public hearing will be held from 10:30 a.m. until 11:00 a.m. at NMHED on November 16, 2018. Any person who is or may be affected by this proposed rule may appear and testify. **Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us). Written comments must be received no later than 4:00 p.m. on November 15, 2018.** Please note that any written comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If

submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978, Section 21-1-26 NMSA 1978 and Section 21-23-1 et seq. NMSA 1978.

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

## HIGHER EDUCATION DEPARTMENT

### NOTICE OF PROPOSED RULEMAKING

**NOTICE IS HEREBY GIVEN** that the New Mexico Higher Education Department (NMHED or department) will hold a public rulemaking hearing on November 16, 2018. The hearing will begin at 11:00 a.m. and will be held at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505. The purpose of the rulemaking hearing is to take public comment regarding proposed amendments to **5.100.7 NMAC, LICENSURE UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT.**

**Amendments:**

5.100.7.3 NMAC, STATUTORY AUTHORITY  
 5.100.7.6 NMAC, OBJECTIVES AND GENERAL PRINCIPLES  
 5.100.7.7 NMAC, DEFINITIONS  
 5.100.7.8 NMAC, GENERAL STANDARDS FOR LICENSURE  
 5.100.7.10 NMAC, APPLICATION REQUIREMENTS  
 5.100.7.13 NMAC, APPLICABLE FEES

### 5.100.7.15 NMAC, SITE VISITS AND RECORDS INSPECTION

**Purpose:**

The purpose of the proposed rule change is to update the definition of physical presence and to provide a more comprehensive list of activities that trigger a post-secondary institution to have a physical presence under the Post-Secondary Educational Institution Act. The proposed amendment also provides a more comprehensive list of activities that do not trigger a physical presence in New Mexico. Definitions have been updated to provide additional clarity. Grammatical and stylistic changes have been made throughout. Institutional records maintenance and retention policy requirements have been modified to include compliance with the laws of other oversight entities.

**Summary of proposed changes:**

Amendment to Section 5.100.7.3 NMAC adds additional statutory authority for the rule.

Amendments to Section 5.100.7.6 NMAC include a non-substantive change to comply with the Legislative Style Manual and the addition of listed activities that trigger a post-secondary institution to have a physical presence under the Post-Secondary Educational Institution Act. The proposed amendment also provides a list of activities that do not trigger a physical presence in New Mexico. The amendments include stylistic changes and insertion of additional language to further specify the types of institutions required to obtain licensure.

Amendments to Section 5.100.7.7 NMAC update various definitions including the definition of “Physical Presence” in relation to the proposed new language regarding physical presence in Section 5.100.7.6 NMAC. Definition of “Registration” or “Registered” is modified for grammatical clarity. Language in the definition of “State Authorization” is updated to further clarify State

Authorization is not an endorsement by NMHED and to include stylistic changes. The definition of “Post-secondary educational institution” adds the alternate term “post-secondary institution”, which has the same meaning. Additional stylistic and grammatical changes have been made within the section to add specificity and clarity. Non-substantive changes have been made to comply with the Legislative Style Manual.

Amendment to Section 5.100.7.8 NMAC inserts language for separate annual reporting submissions for each branch or location of an institution authorized under a single license.

Amendment to Section 5.100.7.10 NMAC modifies the institutional records maintenance and retention policy requirements to include compliance with the laws of other oversight entities.

Amendment to Section 5.100.7.13 NMAC includes stylistic changes.

Amendment to Section 5.100.7.15 NMAC updates the site visits and records inspection language in relation to the proposed amendment in Section 5.100.7.10 NMAC regarding the records management plan.

**Details for Obtaining a Copy, Public Hearing and Comments:**

The proposed rule is available at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505-2100. The proposed rule is also posted on the NMHED website and may be accessed at <http://www.hed.state.nm.us/> under the “Events” section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us) or (505) 476-8411.

A public hearing will be held from 11:00 a.m. until 11:30 a.m. at NMHED on November 16, 2018. Any person who is or may be affected by this proposed rule may appear and testify. **Interested persons may submit written comments to**

**NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us). Written comments must be received no later than 4:00 p.m. on November 15, 2018.** Please note that any written comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978, Section 21-1-26 NMSA 1978 and Section 21-23-1 et seq. NMSA 1978.

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

**HIGHER EDUCATION DEPARTMENT**

**NOTICE OF PROPOSED RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the New Mexico Higher Education Department (NMHED or department) will hold a public rulemaking hearing on November 16, 2018. The hearing will begin at 11:30 a.m. and will be held at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505. The purpose of the rulemaking hearing is to take public comment regarding proposed amendments to **5.100.8 NMAC, CLOSURE OR SUBSTANTIAL CHANGE TO LOCATION UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT.**

**Amendments:**

- 5.100.8.2 NMAC, SCOPE
- 5.100.8.3 NMAC, STATUTORY AUTHORITY
- 5.100.8.6 NMAC, OBJECTIVES AND GENERAL PRINCIPLES
- 5.100.8.7 NMAC, DEFINITIONS
- 5.100.8.9 NMAC, PLAN FOR CLOSURE OR SUBSTANTIAL CHANGE TO LOCATION
- 5.100.8.10 NMAC, TEACH-OUT AGREEMENTS
- 5.100.8.11 NMAC, RECORDS MAINTENANCE

**Purpose:**

The purpose of the proposed rule change is to clarify regulations through additional specificity. The proposed amendment updates the definition of physical presence to provide consistency with the proposed amendments to the definition in 5.100.5 NMAC, 5.100.6 NMAC, and 5.100.7 NMAC. The amendment seeks to delineate the types of records that must be provided to the custodian of records, based upon whether the institution has State Authorization pursuant to 5.100.6 NMAC or 5.100.7 NMAC, been granted express exemption pursuant to Section 21-23-4 NMSA 1978 and 5.100.5 NMAC, or has not operated lawfully pursuant to the Post-Secondary Educational Institution Act. The amendment adds a provision related to records maintenance that grants the department the discretion to request any additional records or information, to help students gain access to transcripts in perpetuity. The amendment makes additional grammatical and stylistic changes throughout the rule.

**Summary of proposed changes:**

Amendment to Section 5.100.8.2 adds the word private to the scope, which was excluded in error.

Amendment to Section 5.100.8.3 NMAC adds additional statutory authority for the rule.

Amendments to Section 5.100.8.6 NMAC include a non-substantive change to comply with the Legislative

Style Manual and the insertion of the word private.

Amendments to Section 5.100.8.7 NMAC updates the definition of “physical presence” in relation to the proposed new language regarding physical presence in Section 5.100.5.6 NMAC, Section 5.100.6.6 NMAC and Section 5.100.7.6 NMAC. The definition of “custodian of records” is updated to increase grammatical clarity. The definition of “Post-secondary educational institution” adds the alternate terms “institution” or “post-secondary institution”, all of which have the same meaning.

Amendments to Section 5.100.8.9 NMAC replace the undefined word “school” with “institution” and eliminates unnecessary words for better clarity.

Amendments to Section 5.100.8.10 NMAC are stylistic changes to increase specificity.

Amendments to Section 5.100.8.11 NMAC seeks to delineate the types of records that must be provided to the custodian of records, based upon whether the institution has State Authorization pursuant to 5.100.6 NMAC or 5.100.7 NMAC, the institution has been granted express exemption pursuant to Section 21-23-4 NMSA 1978 and 5.100.5 NMAC, or if the institution has not operated lawfully pursuant to the Post-Secondary Educational Institution Act. The amendment adds a provision related to records maintenance that grants the department the discretion to request any additional records or information, to help students gain access to transcripts in perpetuity.

**Details for Obtaining a Copy, Public Hearing and Comments:**

The proposed rule is available at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505-2100. The proposed rule is also posted on the NMHED website and may be accessed at <http://www.hed.state.nm.us/> under the “Events” section. To request that a copy of the

proposed rule be sent to you by mail or e-mail, please contact [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us) or (505) 476-8411.

A public hearing will be held from 11:30 a.m. until 12:00 p.m. at NMHED on November 16, 2018. Any person who is or may be affected by this proposed rule may appear and testify. **Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us). Written comments must be received no later than 4:00 p.m. on November 15, 2018.** Please note that any written comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978, Section 21-1-26 NMSA 1978 and Section 21-23-1 et seq. NMSA 1978.

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

**HIGHER EDUCATION  
DEPARTMENT**

**NOTICE OF PROPOSED  
RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the New Mexico Higher Education Department (NMHED or department) will hold a public rulemaking hearing on November 16, 2018. The hearing will begin at 3:00 p.m. and

will be held at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505. The purpose of the rulemaking hearing is to take public comment regarding proposed rulemaking adopting a new rule 5.3.11 NMAC, FISCAL OVERSIGHT.

**Purpose:**

The department proposes adoption of new rule 5.3.11 NMAC. The new proposed rule establishes regulations and procedures for the fiscal oversight of institutions designated in Article 12, Section 11 of the Constitution of New Mexico and any other public higher education institutions operating within and receiving financial support from the state of New Mexico. The proposed rule establishes standard financial reporting requirements and the Enhanced Fiscal Oversight Program to provide additional oversight by the department for institutions found to exhibit risk factors indicating potential problems of finance.

**Summary of proposed rule:**

The department proposes a new rule for the regulation of fiscal oversight for public higher education institutions receiving financial support from the state of New Mexico. The proposed rule addresses the following topics related to fiscal oversight: standard financial reporting requirements by institutions; detection of poor fiscal health or potential problems of finance at the institution through assessment of risk factors; an overview of the Enhanced Fiscal Oversight Program (EFOP); EFOP procedures including notice to the institution, meeting requirements and corrective action plan criteria; procedures for EFOP reporting, compliance, campus visits, meetings, and verification; requirements for removal of EFOP designation and procedures for addressing institutional non-compliance with the EFOP.

**Details for Obtaining a Copy, Public Hearing and Comments:**

The proposed rules are available at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505-

2100. The proposed rules are also posted on the NMHED website and may be accessed at <http://www.hed.state.nm.us/> under the "Events" section. To request that a copy of the proposed rules be sent to you by mail or e-mail, please contact [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us) OR (505) 476-8411.

A public hearing will be held from 3:00 p.m. until 4:00 p.m. at NMHED on November 16, 2018. Any person who is or may be affected by these proposed rules may appear and testify. **Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us). Written comments must be received no later than 4:00 p.m. on November 15, 2018.** Please note that any written comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-8 NMSA 1978, Section 21-1-26 NMSA 1978, Section 21-1-26.3 NMSA 1978, Section 21-1-26.12 NMSA 1978, and Section 21-1-33 NMSA 1978.

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

**HIGHER EDUCATION DEPARTMENT**

**NOTICE OF PROPOSED RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the New Mexico Higher Education Department (NMHED or department) will hold a public rulemaking hearing on November 16, 2018. The hearing will begin at 2:00 p.m. and will be held at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505. The purpose of the rulemaking hearing is to take public comment regarding proposed rulemaking adopting a new rule 5.99.2 NMAC, CLOSURE OF A DISTANCE EDUCATION INSTITUTION.

**Purpose:** Whereas by statute the department is charged with oversight of public and private post-secondary institutions operating under the Interstate Distance Education Act, the department proposes a new rule 5.99.2 NMAC to establish regulations for the closure of any postsecondary distance education institution operating pursuant to the Interstate Distance Education Act.

**Summary of proposed rule:** The department proposes adoption of new rule 5.99.2 NMAC. The new proposed rule provides oversight, standards, regulations, and the administrative process for institutions that seek to cease operations or offerings or permanently close, and are providing distance education pursuant to the Interstate Distance Education Act. The new rule establishes requirements for notices, plans, reports, procedures and standards related to teach-out agreements, and student records.

**Details for Obtaining a Copy, Public Hearing and Comments:** The proposed rules are available at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505-2100. The proposed rules are also posted on the NMHED website and may be accessed at <http://www.hed.state.nm.us/> under the "Events" section. To request that a copy of the proposed rules be sent to you by mail or e-mail, please contact [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us) OR (505) 476-8411.

A public hearing will be held from 2:00 p.m. until 2:30 p.m. at NMHED on November 16, 2018. Any person who is or may be affected by these proposed rules may appear and testify. **Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us). Written comments must be received no later than 4:00 p.m. on November 15, 2018.** Please note that any written comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978, Section 21-1-26 NMSA 1978 and Section 21-23B-1 et seq. NMSA 1978.

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

**HIGHER EDUCATION DEPARTMENT**

**NOTICE OF PROPOSED RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the New Mexico Higher Education Department (NMHED or department) will hold a public rulemaking hearing on November 16, 2018. The hearing will begin at 4:00 p.m. and will be held at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505. The purpose of the rulemaking hearing is to take public comment regarding proposed repeal of **5.5.5 NMAC CLOSURE**

**OF PUBLIC INSTITUTIONS**  
and replace with **5.5.5 NMAC,**  
**CLOSURE AND STUDENT**  
**COMPLAINT PROCEDURES**  
**FOR PUBLIC INSTITUTIONS.**

**Purpose:**

The Department proposes to repeal and replace 5.5.5 NMAC. The Department proposed to rename the part as Closure and Student Complaint Procedures for Public Institutions. The new title accommodates for the inclusion of procedures to help facilitate resolution to student complaints. The proposed rule replacement modifies regulations for institutional closure by developing more specific criteria. Regulations and procedures in the proposed rule replacement are applicable to public higher education institutions established under Article 12, Section 11 of the Constitution of New Mexico and any other public branch community colleges, community colleges, or technical vocational institutions operating within and receiving financial support from the state of New Mexico.

**Summary of proposed rule:**

The Department proposes adoption of a replacement rule 5.5.5 NMAC. The proposed rule replacement provides oversight, standards, regulations, and the administrative process for institutions that seek to substantially relocate or permanently close, and are public institutions operating within and receiving financial support from the state of New Mexico. The new rule establishes requirements for notices, plans, reports, procedures and standards related to teach-out agreements, and student records. Additional provisions related to student complaint procedures have been included. The proposed rule replacement retains some provisions of 5.5.5 NMAC, however seeks to provide clarification through changes to definitions, section reorganization, and the addition of new provisions.

**Details for Obtaining a Copy,**

**Public Hearing and Comments:**

The proposed rule is available at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505-2100. The proposed rule is also posted on the NMHED website and may be accessed at <http://www.hed.state.nm.us/> under the "Events" section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us) or (505) 476-8411.

A public hearing will be held from 4:00 p.m. until 4:30 p.m. at NMHED on November 16, 2018. Any person who is or may be affected by this proposed rule may appear and testify. **Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us). Written comments must be received no later than 4:00 p.m. on November 15, 2018.** Please note that any written comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Legal authority for this rulemaking can be found in Section 9-25-8 NMSA 1978, Section 21-1-26 NMSA 1978, Section 21-2-5 NMSA 1978, and Section 21-1B-5.1 NMSA 1978.

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

**HIGHER EDUCATION  
DEPARTMENT**

**NOTICE OF PROPOSED  
RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the New Mexico Higher Education Department (NMHED or department) will hold a public rulemaking hearing on November 16, 2018. The hearing will begin at 1:00 p.m. and will be held at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505. The purpose of the rulemaking hearing is to take public comment regarding proposed repeal and replace of **5.99.1 NMAC, PUBLIC AND PRIVATE POST-SECONDARY INSTITUTIONS OPERATING UNDER THE INTERSTATE DISTANCE EDUCATION ACT.**

**Purpose:**

Whereas by statute the department is charged with oversight of public and private post-secondary institutions operating under the Interstate Distance Education Act, the department proposes to repeal and replace 5.99.1 NMAC. The department, having initially enacted 5.99.1 NMAC in 2017, has reorganized sections and titles, modified and updated sections, and added new provisions to increase clarity and specificity. The proposed replacement further addresses regulation of public and private post-secondary institutions offering distance education to any student within New Mexico and the provision of distance education by participating New Mexico post-secondary educational institutions to students in other states. New provisions are proposed to address supervised field experience and physical presence activities.

**Summary of proposed rule:**

The proposed rule replacement applies to public and private post-secondary institutions offering distance education to any student within New Mexico and the provision of distance education by participating New Mexico post-secondary educational institutions to students in other states, unless the

institution is expressly exempted by the department. The rule provides oversight, general standards and application requirements for distance education authorization. Every post-secondary educational institution offering distance education from New Mexico or to student in New Mexico shall be subject to the oversight, standards and applications requirements set out in the proposed rule.

The proposed rule replacement provides a list which clarifies activities that trigger a post-secondary institution to have a physical presence under the Post-Secondary Educational Institution Act, which may require the institution to obtain additional or alternate authorization, beyond distance education authorization. The proposed rule replacement also provides a list of activities that do not trigger a physical presence in New Mexico. Provisions regarding supervised field experience under distance education authorization have been included to address regulation of students participating in learning activity through practica, student teaching, clinical placements, research, internships, or other similar placements. Additional provisions related to complaint procedures have been included. The proposed rule replacement retains many provisions from the proposed repeal version of 5.99.1 NMAC, however seeks to provide clarification through changes in definitions, section reorganization, and addition of new provisions.

**Details for Obtaining a Copy, Public Hearing and Comments:**

The proposed rule is available at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505-2100. The proposed rule is also posted on the NMHED website and may be accessed at <http://www.hed.state.nm.us/> under the "Events" section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us) or (505) 476-8411.

A public hearing will be held from

1:00 p.m. until 2:00 p.m. at NMHED on November 16, 2018. Any person who is or may be affected by this proposed rule may appear and testify. **Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us). Written comments must be received no later than 4:00 p.m. on November 15, 2018.** Please note that any written comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978, Section 21-1-26 NMSA 1978 and Section 21-23B-1 et seq. NMSA 1978.

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

**HUMAN SERVICES  
DEPARTMENT  
MEDICAL ASSISTANCE  
DIVISION**

**NOTICE OF RULEMAKING**

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rule *8.201.400 NMAC - Medicaid Eligibility-Medicaid Extension Categories*, *8.215.400 NMAC - SSI Methodology-Recipient Policies*, and *8.281.400 NMAC - Institutional Care-Recipient Policies*.

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

Notice Date: October 16, 2018  
Hearing Date: November 14, 2018  
Adoption Date: Proposed as January 1, 2019  
Technical Citations: SMD Letter, POMS, 42 CFR 435.1010

**Summary of Revisions:**

As part of the rule promulgation 8.201.400, 8.215.400, and 8.281.400 NMAC are being repealed and replaced to comply with formatting requirements.

**8.201.400 NMAC – Medicaid Eligibility – Medicaid Extension**

The Department proposes to amend Section 9 to clarify that the Supplemental Security Income (SSI) extension categories are 001, 003, and 004.

The Department proposes to amend Section 10 to delete redundant language and to replace the outdated reference to the "disability determination services (DDS)" with the "disability determination unit (DDU)" throughout these rules. The outdated term "Income Support Specialist (ISS)" was replaced with "Income Support Division worker" throughout these rules.

The Department proposes to amend Paragraph (1) of Subsection G of Section 8.201.400.10 NMAC to allow certain recipients of SSI who become ineligible for SSI cash benefits to be automatically extended Medicaid benefits for an additional two months following the month in which SSI closes, as opposed to the current one-month policy.

Current language at Paragraph (2) of Subsection G of Section 8.201.400.10 NMAC allows for extended Medicaid for five SSI closure codes. The Department proposes to amend this language to allow for two months of

extended Medicaid for 31 SSI closure codes.

The Department proposes to delete language at Subparagraph (a) and (b) of Paragraph (1) of Subsection G of Section 8.201.400.10 NMAC regarding requiring an application for a second one-month extension of Medicaid, since these individuals will automatically receive two months of extended Medicaid under the new rule. Additionally, the Department proposes to add new language implementing an ex-parte process to systematically evaluate two-month extended SSI clients for other Medicaid categories during their extension period.

The Department proposes to delete language at Subsection H of Section 8.201.400.10 NMAC regarding children terminated from SSI solely due to disability criteria implemented by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) because all of these individuals have aged out of the category. This regulatory language is no longer relevant.

The Department proposes to amend Section 12 enumeration language to refer to 8.200.410.10 NMAC, which is the correct citation.

**8.215.400 NMAC – Medicaid Eligibility – Supplemental Security Income**

The Department proposes to add a new section at 8.215.400.10 NMAC regarding coverage of Section 1619(b) recipients. The new proposed language clarifies that the Department has a 1634 Agreement with the Social Security Administration (SSA) under which the SSA makes Medicaid eligibility determinations for both SSI and 1619(b) recipients. These individuals automatically have Medicaid eligibility unless they fail to meet the assignment of rights or third party liability requirements; or unless the Department has determined ineligibility under the Medicaid trust provision.

**8.281.400 NMAC – Medicaid Eligibility – Institutional Care**

Current language at Section 10 requires that an applicant/recipient be in a “Medicaid qualifying” bed in a New Mexico Medicaid approved institution for Institutional Care (IC) Medicaid. A proposed revision was added to include hospitals administered by the US Department of Veteran’s Affairs (VA) as Medicaid approved institutions. This proposed change will allow VA hospital patients who are preparing to transition out of the acute care hospital into an IC setting of care to have their IC Medicaid applications evaluated for eligibility sooner. This will reduce delays in application processing for VA hospital patients transitioning to IC settings.

The Department proposes to amend language at Section 11 to replace “ISD caseworker” with “Income Support Division worker” throughout these rules.

The Department proposes to amend Section 12 enumeration language to refer to the general recipient provisions found at 8.200.410.10 NMAC.

The Department proposes to amend Section 17 to replace the outdated reference to the “disability determination services (DDS)” with the “disability determination unit (DDU)” throughout these rules.

The register for these proposed amendments to the rule will be available September 11, 2018 on the HSD website at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> or at <http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>. If you do not have Internet access, a copy of the proposed rule may be requested by contacting MAD in Santa Fe at 505-827-6252.

The Department proposes to implement these rules effective

January 1, 2019. A public hearing to receive testimony on these rules will be held in Hearing Room 2, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico, 87505 on November 14, 2018 from 10 a.m. to 11 a.m., Mountain Standard Time (MST).

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

Recorded comments may be left by calling (505) 827-1337. Electronic comments may be submitted to [madrules@state.nm.us](mailto:madrules@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. MDT, November 15, 2018. All written comments received will be posted as they are received on the HSD website at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-6252. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

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

**SUPERINTENDENT OF INSURANCE**

**NOTICE OF PROPOSED RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the Superintendent of Insurance (“Superintendent”) upon the Superintendent’s own motion, and proceeding pursuant to the New Mexico Insurance Code, Section 59A-1-1 et seq. NMSA 1978 (“Insurance Code”), proposes to repeal and replace the rule pertaining to the Medicare Supplement Insurance codified at Title 13, Chapter 10, Part 25 of the New Mexico Administrative Code (“NMAC”).

The purpose of the proposed replacement rule is to implement changes required by a new federal law that was passed on April 16, 2015. The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) makes changes to Medigap policies that cover the Part B deductibles for “newly eligible” Medicare Beneficiaries on or after January 1, 2020. If adopted as proposed, the new regulation will repeal the current version of the regulation, titled “2010 Medicare Supplement Insurance Standards” (which was effective August 31, 2009) and replace it with a new rule titled “Medicare Supplement Insurance Minimum Standards.”

Statutory authority for promulgation of the proposed new rule is found at Sections 59A-2-8, 59A-2-9, and 59A-24A-1 et seq. NMSA 1978. Furthermore, OSI has been informed that states wishing to retain regulatory authority over Medicare Supplement products in their state must implement changes impacting Medicare Supplement policies pursuant to the new federal law. The proposed new rule implements the necessary changes by adoption of sections from the *Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*.

The proposed rule may be found on the OSI website at <http://www.osi.state.nm.us> under the “Statutes & Rulemaking” tab and is incorporated by reference into this Notice of Proposed Rulemaking. A copy

of the proposed rule is available by electronic download from the OSI website or the New Mexico Sunshine portal, or by requesting a copy in person at the NM Office of Superintendent of Insurance, 1120 Paseo de Peralta, Santa Fe, NM 87501.

The Superintendent of the OSI (“Superintendent”) will hold a public comment hearing on the proposed rule beginning at **1:00 p.m. Monday, November 19, 2018** at the NM Office of Superintendent of Insurance, 4th Floor Hearing Room, Old PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico. The Superintendent or his designee shall act as the hearing officer for this rulemaking.

OSI staff, health insurance carriers offering or wishing to offer Medicare Supplement products in this state, and members of the public are encouraged to provide oral comments or file any written proposals or comments according to the criteria and schedule set forth as follows:

Oral comments will be accepted at the public hearing from any interested person. Written comments may be submitted for the record prior to the hearing and are due no later than **4:00 p.m. on Friday, October 31, 2018**. Written responses may be submitted no later than **Thursday, November 15, 2018**.

Written comments, proposals, or responsive comments may be submitted via email to [mariano.romero@state.nm.us](mailto:mariano.romero@state.nm.us) or may be filed by sending original copies to:

OSI Records and Docketing, NM Office of Superintendent of Insurance Attention: Mariano Romero, Room 331  
1120 Paseo de Peralta, P.O. Box 1689, Santa Fe, NM 87504-1689 **Docket No.: 18-00058-RULE-LH**

Only signed statements, proposals or comments will be accepted. Scanned or facsimile signatures or electronic

signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, OSI reserves the right to require that original signatures be provided to verify the electronic or facsimile signature. All filings must be received between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except on state holidays. Any filings received after 4:00 p.m. will be filed to the docket the next business day.

Any person with a disability requiring special assistance in order to participate in the hearing should contact Melissa Martinez, Law Clerk, Office of General Counsel, at 505-476-0333 at least 48 hours prior to the commencement of the hearing.

The Superintendent will consider all oral comments, and will review all timely submitted written comments and responses. The record shall be closed at **4:00 p.m. on Wednesday, November 28, 2018**.

DONE AND ORDERED this 16th day of October 2018.

/S/JOHN G. FRANCHINI

**SUPERINTENDENT OF INSURANCE**

**NOTICE OF PROPOSED RULEMAKING**

The New Mexico Office of Superintendent of Insurance (OSI) gives notice of proposed revisions to Part 9, Section 18 of Title 13, Chapter 14 of the New Mexico Administrative Code (13.14.9.18 NMAC), administered by OSI pursuant to the laws pertaining to the regulation of insurance and as provided by the New Mexico Title Insurance Law, Chapter 59A, Article 30 NMSA 1978.

General rulemaking authority: New Mexico Constitution, Article XI, Sec. 20, and Section 59A-2-9

NMSA 1978 of the Insurance Code. Subject matter regulation authority: Sections 59A-30-4, 59A-30-6, 59A-30-6.1, and 59A-30-8 NMSA 1978 of the New Mexico Title Insurance Law. Emergency and permanent rulemaking authority: Section 14-4-5.6 NMSA 1978 of the State Records Act.

The purpose of the proposed rule amendments is to make permanent certain emergency rule amendments that went into effect on July 1, 2018. Those emergency rule amendments corrected errors in a previously adopted final rule.

Written Comments may be submitted for the record prior to the hearing and are due no later than 4:00 p.m. on **November 12, 2018**. Written Response Comments may be submitted for the record following the hearing and are due no later than 4:00 p.m. on **November 21, 2018**. Written Comments and Written Response Comments may be submitted via email to mariano.romero@state.nm.us or they may be filed by mail to the OSI Records Management Bureau at P.O. Box 1689, Santa Fe, NM 87504-1689 or by hand delivery, UPS or FED EX delivery to the OSI Records Management Bureau at 1120 Paseo de Peralta, Room 331, Santa Fe, NM 87501. Written Comments and Written Response Comments shall refer to Docket No. 18-00057-RULE-PC. All Written Comments and Written Response Comments will be posted on the OSI website at <http://www.osi.state.nm.us> under the "Legal" tab and also in the "Communications" section, under "Statutes and Rulemaking," Docket No. 18-00057-RULE-PC and also will be available for public inspection at 1120 Paseo de Peralta, Room 331, Santa Fe, NM 87501.

The rulemaking public hearing will be held on **November 19, 2018** beginning at **10:00 a.m.** at the offices of OSI located in the old PERA Building, at 1120 Paseo de Peralta, in Santa Fe. The purpose of the rulemaking public

hearing is to receive oral comments about the proposed rule revisions. Because commenters are afforded the opportunity to submit written comments, any individual delivering oral comments shall be limited to five minutes to express their comments, subject to the hearing officer's discretion.

The hearing officer may also determine that a spokesperson be designated to speak on behalf of an organization, a group, or a group of individuals that share the same message or seek the same goals, in order to maximize the efficiency of the rulemaking public comment hearing. Because this case is a rulemaking proceeding, no testimony or other evidence will be taken at the hearing.

If you are an individual with a disability that requires assistance or an auxiliary aid (such as a sign language interpreter) to participate in any aspect of this process, please contact Melissa Martinez at (505) 476-0333 at least 48 hours prior to the commencement of the hearing.

The record of this case will close at **4:00 p.m. on November 21, 2018**.

DONE AND ORDERED this 16th day of October 2018.  
/S/JOHN G. FRANCHINI

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## End of Notices of Rulemaking and Proposed Rules

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## Adopted Rules

### Effective Date and Validity of Rule Filings

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

<p><b>MINING SAFETY BOARD</b></p> <p><b>This is an amendment to 19.6.4 NMAC, Sections 7, 9, 11 and 12, effective 10/16/2018.</b></p> <p><b>19.6.4.7 DEFINITIONS:</b></p> <p><b>A. “Board”</b> means the state mining safety board.</p> <p><b>B. “Certificate”</b> means a document issued by the state mine inspector, or certifying agency from another state, allowing the holder to be employed as a coal mine official in the state of origin.</p> <p><b>C. “CFR”</b> means Code of Federal Regulations.</p> <p><b>D. “Days”</b> means calendar days.</p> <p><b>E. “Inspector”</b> means the state mine inspector.</p> <p><b>F. “Mining engineering graduate”</b> means a person having a B.S. degree in mining or mineral engineering from an accredited college or university.</p> <p><b>G. “Official”</b> means coal mine official, including underground <u>coal</u> mine foreman, <u>underground coal</u> mine examiner, <u>general underground coal mine foreman</u>, or surface <u>coal</u> mine foreman Table Subsection G of <u>19.6.4.9 NMAC</u>.</p> <p><b>H. “Revoke”</b> means to permanently invalidate a certification.</p> <p><b>I. “Service”</b> means providing any document, paper or pleading to a person either personally or by certified mail, return receipt requested.</p> <p><b>J. “Suspend”</b> means to invalidate a certification for a specified period of time. [19.6.4.7 NMAC - N, 09/30/2008; A, 10/16/2018]</p> <p><b>19.6.4.9 METHODS AND REQUIREMENTS OF</b></p>	<p><b>CERTIFICATION:</b></p> <p><b>A.</b> The state mine inspector may recognize the foreman’s or mine examiner’s certificate issued by another state and issue certificates accordingly when:</p> <p style="padding-left: 40px;"><b>(1)</b> the state mine inspector reviews the certification requirements of another state and determines that the requirements are equivalent or more stringent than New Mexico’s, and are pertinent to the mining conditions found in New Mexico’s coal mines; or</p> <p style="padding-left: 40px;"><b>(2)</b> an agreement of reciprocity is signed between the state mine inspector and the director of the certification agency from another state.</p> <p><b>B.</b> Persons with four or more years of experience in or about underground coal mines, and providing underground foreman certification from another state program or persons with four or more years of experience in or about surface coal mines, and providing surface foreman certification from another state program, meet the requirements for testing.</p> <p><b>C.</b> The state mine inspector shall hold written examinations, at times, dates and places to be given out at least sixty days in advance, to all persons desiring to secure mine foreman certificates or mine examiner certificates. <u>Alternatively, at the discretion of the state mine inspector, such examinations may be administered by appointment.</u></p> <p><b>D.</b> The state mine inspector shall require that any applicant for examination to the position of mine foreman or mine examiner submit a completed application at least [<del>thirty</del>] <u>30</u> days prior to the examination date and shall meet the experience requirements of this section <u>as summarized in Table Subsection G of 19.6.4.9 NMAC.</u></p>	<p><u>The state mine inspector may require documentation from an applicant supporting his/her qualification and competency.</u> Every person desiring to secure an underground <u>coal</u> mine foreman’s certificate and not already in such position or not holding such certificate from another state shall first [<del>serve as a mine examiner for six months</del>] <u>have regularly performed the duties of an underground coal mine examiner for six months</u> and shall have at least four years of underground coal mine experience to participate in the underground <u>coal</u> mine foreman’s examination. Every person desiring to secure a surface <u>coal</u> mine foreman’s certificate, and not already holding such certificate from another state, shall have at least four years of surface coal mine experience to participate in the surface <u>coal</u> mine foreman’s examination. A person who holds a certificate for surface <u>coal</u> mine foreman who wishes to take the underground <u>coal</u> mine foreman test must have a minimum of four years of experience in underground <u>coal</u> mine workings. A person who holds an underground <u>coal</u> mine foreman certificate and who wishes to participate in the surface <u>coal</u> mine foreman examination must have at least two years of surface <u>coal</u> mine experience. <u>A person who holds an underground coal mine foreman certificate and who wishes to participate in the general underground coal mine foreman examination must have at least two years of surface mine experience or two years of surface experience at an underground mine.</u> Every person desiring to secure an <u>underground coal</u> mine examiner’s certificate and not already in such position or not holding such certificate from another state recognized by the state mine inspector, shall have at least two years of <u>underground</u> coal mine experience to participate in the underground coal mine examiner’s</p>
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examination.

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

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

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

Certification Title	Qualification	Authorization
Underground Coal Mine Examiner	2-years underground mining experience, or 1-year underground mining experience and advanced competency, or Equivalent experience and certification from another state	Underground areas at underground coal mines.
Underground Coal Mine Foreman	4-years underground mining experience with six months examiner experience, or 2-years underground mining experience with six months examiner experience and advanced competency, or Equivalent experience and certification from another state.	Underground areas at underground coal mines.
General Underground Coal Mine Foreman	Current NM certification as underground coal mine foreman and 2-years of experience at surface areas of underground coal mines.	Underground areas at underground coal mines. Surface areas at underground coal mines.
Surface Coal Mine Foreman	4-years surface mining experience, or 2-years surface mining experience and advanced competency, or Equivalent experience and certification from another state, or Current NM certification as underground coal mine foreman and 2-years of experience at surface coal mines or surface areas of underground coal mines	Surface coal mines Surface areas at underground coal mines

[19.6.4.9 NMAC - N, 09/30/2008; A, 10/16/2018]

**19.6.4.11  
CERTIFICATION PERIOD AND  
RECERTIFICATION PROCESS:**

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

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

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

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

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

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

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

**E.** [Mine] Underground coalmine examiners may fulfill the recertification requirements for underground coal mine examiner by successfully completing the examination for underground coal mine foreman certification or recertification. [19.6.4.11 NMAC - N, 10/01/10; A, 10/16/2018]

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

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

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

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

(3) has failed to maintain certification;

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

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

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

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

[19.6.4.12 NMAC - N, 10/01/2010; A, 10/16/2018]

**PUBLIC EMPLOYEE  
LABOR RELATIONS  
BOARD**

**This is an amendment to 11.21.1 NMAC, Sections 7, 10 and 24, effective 10/16/2018. Statute citations throughout the rule were corrected to conform to correct legislative styles.**

**11.21.1.7 DEFINITIONS:**

**A. Statutory**

**definition:** The terms defined in Section 10-7E-4 NMSA 1978, shall have the meanings set forth therein.

**B. Additional**

**definitions:** The following terms shall have the meanings set forth below.

**(1) "Act"**

means the New Mexico Public Employee Bargaining Act, Sections 10-7E-1 through 10-7E-26 NMSA 1978 including any amendments to that statute.

**(2)**

**"Amendment of certification"**

means a procedure whereby an incumbent labor organization certified by the board to represent a unit of public employees or a public employer may petition the board to amend the certification to reflect a change such as a change in the name or the affiliation of the labor organization or a change in the name of the employer.

**(3)**

**"Certification of incumbent bargaining status"**

shall mean a procedure whereby a labor organization recognized by a public employer as the exclusive representative of an appropriate bargaining unit on June 30, 1999 petitions the board for a declaration of bargaining status under Subsection B of Section 10-7E-24 NMSA 1978.

**(4)**

**"Challenged ballot"** means the ballot of a voter in a representation election whose eligibility to vote is questioned either by a party to the representation case or by the director.

**(5)**

**"Complainant"** means an individual, labor organization, or public employer that has filed a prohibited practices complaint.

**(6)**

**"Confidential employee"** means a person who devotes a majority of his time to assisting and acting in a confidential capacity with respect to a person who formulates, determines and effectuates management policies.

**(7)**

**"Delivering a copy"** as it pertains to service or filing of pleadings or other

documents means: (1) handing it to the board, to its agent(s), to opposing counsel or unrepresented parties;

(2) sending a copy by facsimile or electronic submission in accordance with 11.21.1.10 NMAC or 11.21.1.24 NMAC; (3) leaving it at the board's, opposing attorney's or party's office with a clerk or other person in charge thereof; or (4) if the attorney's or party's office is closed or the person to be served has no office, leaving it at the unrepresented person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

**~~(7)~~ (8) "Director"**

means the director of the public employee labor relations board.

**~~(8)~~ (9)**

**"Document"** means any writing, photograph, film, blueprint, microfiche, audio or video tape, [date] data stored in electronic memory, or data stored and reproducible in visible or audible form by any other means.

**(10)**

**"Electronic submission"** means the filing of a pleading or other document with the board using the electronic system established by the PELRB, service by the parties, or email communications.

**(11) "On a form prescribed by the director"**

as used in these rules pertaining to the filing of documents with the board, shall include the electronic data submitted by use of any interactive form posted for that purpose on the board's website.

**~~(9)~~ (12)**

**"Probationary employee"** for state employees shall have the meaning set forth in the State Personnel Act and accompanying regulations; for other public employees, other than public school employees, it shall have the meaning set forth in any applicable ordinance, charter or resolution, or, in the absence of such a definition, in a collective bargaining agreement; provided, however, that for determining rights under the PEBA non-state employees a public employee may not be considered to be a probationary employee for more than one year after the date he or

she is hired by a public employer. If otherwise undefined, the term shall refer to an employee who has held his or her position, or a related position, for less than six months.

**~~(10)~~ (13)**

**"Prohibited practice"** means a violation of Section 10-7E-19, 10-7E-20 or Subsection A of Section 10-7E-21 NMSA 1978.

**~~(11)~~ (14)**

**"Public employer"** means the state or a political sub-division thereof, including a municipality that has adopted a home rule charter, and does not include a government of an Indian nation, tribe or pueblo, provided that state educational institutions as provided in Article 12, Section 11 of the constitution of New Mexico shall be considered public employers other than state for collective bargaining purposes only.

**~~(12)~~ (15)**

**"Public employee"** means a regular non-probationary employee of a public employer; provided that, in the public schools, "public employee" shall also include a regular probationary employee.

**~~(13)~~ (16)**

**"Representation case"** or **"representation proceeding"** means any matter in which a petition has been filed with the director requesting a certification or decertification election, or an amendment of certification, or unit clarification.

**~~(14)~~ (17)**

**"Respondent"** means a party against whom a prohibited practices complaint has been filed.

**~~(15)~~ (18)**

**"Rules"** means the rules and regulations of the board (these rules), including any amendments to them.

**~~(16)~~ (19)**

**"Unit accretion"** means the inclusion in an existing bargaining unit of employees who do not belong to any existing bargaining unit, [and] who share a community of interest with the employees in the existing unit, and whose inclusion will not render the existing unit inappropriate.

**~~(17)~~ (20)**

**"Unit clarification"** means a proceeding in which a party to an

existing lawful collective bargaining relationship petitions the board to change the scope ~~[and]~~ or description of an existing bargaining unit; a change in union affiliation; to consolidate existing bargaining units represented by the same labor organization; or to realign existing bargaining units of ~~[state]~~ employees represented by the same exclusive representative into horizontal units, where the board finds the unit as clarified to be an appropriate bargaining unit and no question concerning, representation arises.

~~[(18)]~~ (21)

**“Unit inclusions or exclusions”** means the status of an individual, occupational group, or group of public employees in clear and identifiable communities of interest in employment terms and conditions and related personnel matters, as being within or outside of an appropriate bargaining unit based on factors such as supervisory, confidential or managerial status, the absence thereof, job context, principles of efficient administration of government, the history of collective bargaining, and the assurance to public employees of the fullest freedom in exercising the rights guaranteed by the Public Employee Bargaining Act. [11.21.1.7 NMAC - N, 3/15/2004; A, 2/28/2005; A, 10/16/2018]

**11.21.1.10 FILING WITH THE DIRECTOR OR THE BOARD:** To file a document with the director or the board, the document may be either hand-delivered to the board’s office in Albuquerque during its regular business hours, or sent to that office by United States mail, postage prepaid, or by the New Mexico state government interagency mail or by sending a copy by facsimile or electronic submission. The director will be responsible for recording the filing of documents to be filed with the board, as well as documents to be filed with the director.

~~[Documents sent to the board via facsimile (“fax”) transmission will be accepted for filing as of the date of transmission only if an original is-~~

~~filed by personal delivery or deposited in the mail no later than the first work day after the facsimile is sent.]~~

**A. Time of filing:** A document will be deemed filed when it is received by the director. For hand-delivered or mailed documents the date and time stamp affixed by the receiving board agent will be determinative. For faxed or electronically transmitted documents the time and date affixed on the cover page or the document itself by the board’s facsimile machine or receiving computer will be determinative.

**B. Additional time after service by mail:** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three days shall be added to the prescribed period. Intermediate Saturdays, Sundays, and legal holidays are included in counting these added three days. If the third day is a Saturday, Sunday, or legal holiday, the last day to act is the next day that is not a Saturday, Sunday, or legal holiday.

**C. Signatures:** Party’s or their representatives filing electronically thereby certify that required signatures or approvals have been obtained before filing the document. The full, printed name of each person signing a paper document shall appear in the electronic version of the document. All electronically filed documents shall be deemed to contain the filer’s signature. The signature in the electronic document may represent the original signature in the following ways:

**(1)** by scanning or other electronic reproduction of the signature; or  
**(2)** by typing in the signature line the notation “/s/” followed by the name of the person who signed the original document.

**D. Demand for original:** A party shall have the right to inspect and copy any pleading or paper that has been filed or served by facsimile or electronic submission if

the pleading or paper has a statement signed under oath or affirmation or penalty of perjury. [11.21.1.10 NMAC - N, 3/15/2004; A, 10/16/2018]

**11.21.1.24 SERVICE:** Service of papers upon parties may be made by personal delivery ~~[or]~~ by depositing in United States mail, first class postage prepaid, ~~[or]~~ by ~~[both]~~ facsimile (“fax”) ~~[transmission]~~ submission or by electronic submission and, by the next scheduled work day after sending a “fax” or electronic submission, either personally delivering the document or depositing it in first class mail, in which case the date of “fax” ~~[transmission]~~ or electronic submission shall be the date of service. Each document served shall be accompanied by a signed certification stating the name and address of each person served and the date and method of service. The certification may be placed on the document served. The board may serve any document by electronic transmission to an attorney or party or its representative under this rule. [11.21.1.24 NMAC - N, 3/15/2004; A, 10/16/2018]

## END OF ADOPTED RULES

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**OTHER MATERIAL RELATED TO ADMINISTRATIVE LAW**

**ENVIRONMENT  
DEPARTMENT**

**NOTICE OF MINOR,  
NONSUBSTANTIVE  
CORRECTION**

The New Mexico Environment Improvement Board gives Notice of Minor, Nonsubstantive Correction.

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

Re-numbered the incorrect subparagraphs (i)(ii) and (iii) of paragraph (3) of subsection D of 20.3.20.100 NMAC and replaced with subparagraphs (a)(b) and (c).

A copy of this Notification was filed with the official version of the above rule.

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**END OF OTHER  
MATERIAL RELATED  
TO ADMINISTRATIVE  
LAW**

# 2018 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXIV, Issues 1-24

<b>Issue</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
<b>Issue 1</b>	<b>January 4</b>	<b>January 16</b>
<b>Issue 2</b>	<b>January 18</b>	<b>January 30</b>
<b>Issue 3</b>	<b>February 1</b>	<b>February 13</b>
<b>Issue 4</b>	<b>February 15</b>	<b>February 27</b>
<b>Issue 5</b>	<b>March 1</b>	<b>March 13</b>
<b>Issue 6</b>	<b>March 15</b>	<b>March 27</b>
<b>Issue 7</b>	<b>March 29</b>	<b>April 10</b>
<b>Issue 8</b>	<b>April 12</b>	<b>April 24</b>
<b>Issue 9</b>	<b>April 26</b>	<b>May 15</b>
<b>Issue 10</b>	<b>May 17</b>	<b>May 29</b>
<b>Issue 11</b>	<b>May 31</b>	<b>June 12</b>
<b>Issue 12</b>	<b>June 14</b>	<b>June 26</b>
<b>Issue 13</b>	<b>June 28</b>	<b>July 10</b>
<b>Issue 14</b>	<b>July 12</b>	<b>July 24</b>
<b>Issue 15</b>	<b>July 26</b>	<b>August 14</b>
<b>Issue 16</b>	<b>August 16</b>	<b>August 28</b>
<b>Issue 17</b>	<b>August 30</b>	<b>September 11</b>
<b>Issue 18</b>	<b>September 13</b>	<b>September 25</b>
<b>Issue 19</b>	<b>September 27</b>	<b>October 16</b>
<b>Issue 20</b>	<b>October 18</b>	<b>October 30</b>
<b>Issue 21</b>	<b>November 1</b>	<b>November 13</b>
<b>Issue 22</b>	<b>November 15</b>	<b>November 27</b>
<b>Issue 23</b>	<b>November 29</b>	<b>December 11</b>
<b>Issue 24</b>	<b>December 13</b>	<b>December 27</b>

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# 2019 New Mexico Register

## Submittal Deadlines and Publication Dates

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Issue 10	May 16	May 28
Issue 11	May 30	June 11
Issue 12	June 13	June 25
Issue 13	July 5	July 16
Issue 14	July 18	July 30
Issue 15	August 1	August 13
Issue 16	August 15	August 27
Issue 17	August 29	September 10
Issue 18	September 12	September 24
Issue 19	September 26	October 15
Issue 20	October 17	October 29
Issue 21	October 31	November 12
Issue 22	November 14	November 26
Issue 23	December 5	December 17
Issue 24	December 19	December 31

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