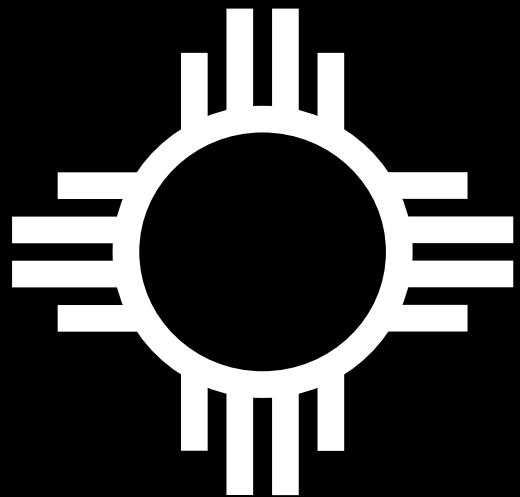


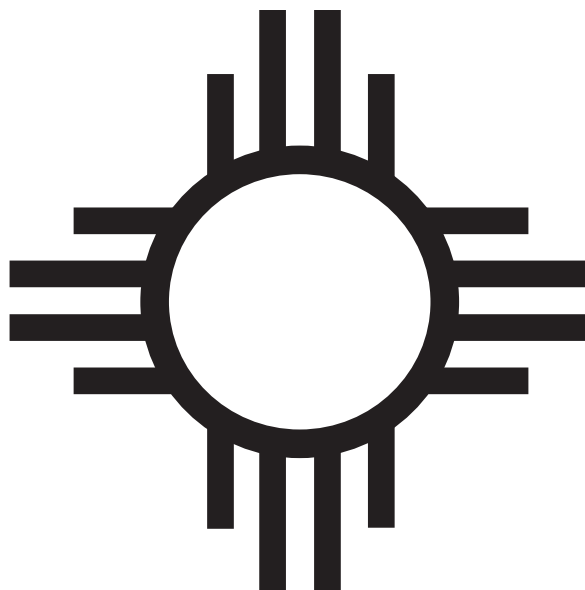
**NEW
MEXICO
REGISTER**



Volume XXVI
Issue Number 14
July 30, 2015

New Mexico Register

**Volume XXVI, Issue 14
July 30 2015**



The official publication for all notices of rulemaking
and filing of proposed, adopted and emergency rules in
New Mexico

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2015

COPYRIGHT © 2015
BY
THE STATE OF NEW MEXICO
ALL RIGHTS RESERVED

New Mexico Register

Volume XXVI, Issue 14

July 30, 2015

Table of Contents

Notices of Rulemaking and Proposed Rules

Children, Youth and Families Department	
Notice of Public Hearing 8.15.2 NMAC English/Spanish.....	602
Higher Education Department	
Notice of Public Hearing.....	602
Human Services Department	
Medical Assistance Division	
Notice of Public Hearing to Consider Amendments to 8.200.410 NMAC.....	602
Notice of Public Hearing to Consider Amendments to 8.200.510 NMAC.....	603
Insurance, Superintendent of	
Notice of Proposed Rulemaking.....	603
Notice of Proposed Rulemaking.....	604
Notice of Proposed Rulemaking.....	606
Public Records, Commission of	
Notice of Regular Meeting.....	608
Regulation and Licensing Department	
Barbers and Cosmetology Board	
Public Rule Hearing and Regular Board Meeting.....	610
Pharmacy, Board of	
Regular Board Meeting; Notice to the Public.....	610
Physical Therapy Board	
Legal Notice; Public Rule Hearing and Regular Board Meeting.....	611
Secretary of State	
Notice of Proposed Repeal and Replace of Rule.....	611
Notice of Proposed Rulemaking.....	611
Workers' Compensation Administration	
Notice of Public Hearing.....	612

Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

Children, Youth and Families Department			
8.17.2 NMAC	R	Requirements Governing Registration of Non-Licensed Family Child Care Homes.....	614
8.17.2 NMAC	N	Requirements Governing Registration of Non-Licensed Family Child Care Homes.....	614
8.8.3 NMAC	A	Governing Background Checks and Employment History Verification.....	621

General Services Department

1.5.3 NMAC	R	Administration and Use of State Vehicle.....	624
1.5.3 NMAC	N	Administration and Use of State Vehicle.....	624

Public Education Department

6.35.2 NMAC	N	Implementing the Indian Education Act.....	635
-------------	---	--	-----

The New Mexico Register

Published by
The Commission of Public Records
Administrative Law Division
1205 Camino Carlos Rey
Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division.
The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00.

Subscription inquiries should be directed to: The Commission of Public Records,
Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507.
Telephone: (505) 476-7942; Fax: (505) 476-7910;
e-mail: staterules@state.nm.us.

The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

Notices of Rulemaking and Proposed Rules

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

Notice of Public Hearing 8.15.2 NMAC English/Spanish

The Children, Youth and Families Department (CYFD), Early Childhood Services (ECS), will hold a formal public hearing on August 31, 2015, at 11:00 a.m. in Apodaca Hall located at 1120 Paseo de Peralta, Santa Fe, New Mexico, to receive public comments regarding changes to regulation 8.15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers.

The proposed regulation changes may be obtained at www.newmexicokids.org or by calling 505-827-7499 or 1-800-832-1321. Interested persons may testify at the hearing or submit written comments no later than 12:00 p.m. on August 31, 2015. Written comments will be provided the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Jeffrey Miles, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax Number: 505-827-9978. For questions regarding the proposed regulation changes, please call 505-827-7499 or 1-800-832-1321.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please call 505-827-7499 or 1-800-832-1321. ECS requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NOTICIA DE AUDICION PÚBLICA 8.15.2 NMAC

El Departamento de Niños, Juventud y Familias (CYFD), Servicios de Niñez Prematura (ECS), tendrá una audición formal para el público el lunes, 31 de Agosto de 2015, a las 11:00 de la mañana en el salón Apodaca, localizado en 1120 Paseo de Peralta, Santa Fe, New Mexico, para recibir comentarios públicos con respecto a cambios propuestos a las regulaciones NMAC 8.15.2, Los Requisitos para los Programas de Ayuda de Guardería para Clientes y Proveedores.

Los cambios propuestos de la regulación pueden ser obtenidos en www.newmexicokids.org o por llamar 505-827-7499 o 1-800-832-1321. Las personas interesadas pueden testificar en la audición o someter comentarios por escritos hasta las 12:00 de la tarde el día 31 de Agosto del 2015. Los comentarios escritos serán proporcionados con la misma consideración como los testimonios orales obtenidos en la audiencia. Los comentarios escritos deben ser dirigidos a: Jeffrey Miles, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax #: 505-827-9978. Preguntas con respecto a los cambios propuestos de regulación, por favor llamar al 505-827-7499 o 1-800-832-1321.

Si usted es una persona con incapacidades y usted requiere esta información en un formato alternativo o requiere alojamientos especiales para tomar parte en la audición pública, por favor llame al 505-827-7499 o 1-800-832-1321. CYFD requiere aviso de las peticiones por lo menos 10 días de preaviso para proporcionar formatos solicitados alternativos y alojamientos especiales.

HIGHER EDUCATION DEPARTMENT

Notice of Public Hearing

The Higher Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at 2044 Galisteo Street, Suite 4, Santa Fe, New Mexico 87505-2100, on September 1, 2015, from 9:00 a.m. to 4:00 p.m. The purpose of the public hearing will be to obtain input on the following rules:

5.3.6 NMAC	Higher Education Endowment Fund (New Rule)
5.7.18 NMAC	Residency for Tuition Purposes (Rule Amendment)

Interested individuals may testify either at the public hearing or submit written comments regarding the proposed rulemaking to Mr. David Mathews, Office of General Counsel, Higher Education Department, 2044 Galisteo Street, Suite 4, Santa Fe, New Mexico 87505-2100 (david.mathews@state.nm.us) (505) 476-

8402 (telefax (505) 476-8454).

Written comments must be received no later than 5:00 pm on August 21, 2015 (10 days prior to hearing). However, the submission of written comments as soon as possible is encouraged. Any rule may be removed from the agenda prior to the scheduled hearing.

The proposed rulemaking action may be accessed on the Department's website (<http://hed.state.nm.us/>) or obtained from David Mathews, Office of General Counsel, Higher Education Department, 2044 Galisteo Street, Suite 4, Santa Fe, New Mexico 87505-2100 (david.mathews@state.nm.us) (505) 476-8402 (telefax (505) 476-8454). The proposed rule will be made available at least thirty (30) days prior to the hearings.

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

HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

Notice of Public Hearing to Consider Amendments to 8.200.410 NMAC

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing amendments to 8.200.410 Medicaid Eligibility-General Recipient Policies of the New Mexico Administrative Code (NMAC). The register and the proposed amendments will be available July 30, 2015, on the HSD website:

<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 at (505) 827-7743.

The Department is taking this opportunity to amend 8.200.410 NMAC as follows:

* Section 15 – new language to allow an inmate who has an established MAP category of eligibility to be approved for a MAP category of inmate eligibility throughout his or her incarceration; and to allow an inmate who does not have an established MAP category of eligibility upon his or her arrival at a public institution to apply for MAP category of inmate eligibility. This would allow an inmate to have access to MAD services at his or her discharge or release from a public institution.

The Department proposes to have 8.200.410 NMAC effective October 1, 2015. A public hearing to receive testimony on these proposed rules will be held in Hearing Room One, Toney Anaya Building, 2550 Cerrillos Road Santa Fe, NM on August 31, 2015, 10 a.m. Mountain Daylight Time (MDT).

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATTN: 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. 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 September 17, 2015, 5:00 p.m. MDT.

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 toll-free at 1-888-997-2583 and ask for extension 7-7743. In Santa Fe call (505) 827-7743. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling (505) 827-3184. The Department requests at least 10 working days advance notice to provide requested alternative formats and special accommodations.

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

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

Notice of Public Hearing to Consider Amendments to 8.200.510 NMAC

The Human Services Department (the Department), Medical Assistance Division (MAD) previously published in the July 15, 2015 New Mexico Register Volume XXVI, Issue 13 the Notice of Rulemaking for amending 8.200.510 New Mexico Administrative Code (NMAC) Medicaid Eligibility – General Recipient Policies Resource Standards. The Department will be withdrawing this Notice of Rulemaking. The Department is now filing a new Notice of Rulemaking for 8.200.510 NMAC and will begin the public comment period on August 17, 2015 to end September 17, 2015. HSD is proposing a new effective date for these NMAC rules of October 15, 2015. The register and the proposed amendments will be available August 17, 2015, on the HSD website: <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 at (505) 827-7743. A public hearing to receive testimony on these proposed rules will be held in Hearing Room One, Toney Anaya Building, 2550 Cerrillos Road Santa Fe, NM on September 17, 2015, 10 a.m. Mountain Daylight Time (MDT). Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATTN: 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. 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 September 17, 2015, 5:00 p.m. MDT. 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 toll-free at 1-888-997-2583 and ask for extension 7-7743. In Santa Fe call (505) 827-7743. The Department's

TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling (505) 827-3184. The Department requests at least 10 working 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

Docket 15-00028-RULE-LH

The Office of Superintendent of Insurance (OSI) is proposing the adoption of a new rule under 13.10.28 NMAC with respect to the Vaccine Purchase Act. The proposed rule intends to: **(1)** require health insurers and group health plans to annually report the number of insured children under the age of 19; **(2)** transfer that information to the New Mexico DOH; **(3)** impose late fees for late filings or civil penalties for discrepancies in filing in the absence of good faith; and **(4)** set right of appeal provisions. Copies of the Order establishing rulemaking containing additional information and filing instructions may be downloaded from the Notices of Proposed Rulemaking section of OSI's www.osi.state.nm.us, Docket No. 15-00028-RULE-LH, or by contacting the Records and Docketing Department via email at Mariano.Romero@state.nm.us.

Written Comments shall be filed by 4:30 p.m. on August 17, 2015. Written Reply Comments shall be filed by 4:30 p.m. on August 24, 2015. All comments and pleadings shall contain the caption and Docket No. 15-00028-RULE-LH and shall be hand-delivered or mailed for filing to:

By hand-delivery or overnight mail:
Mariano Romero
Records and Docketing Department
Office of Superintendent of Insurance
1120 Paseo de Peralta, PERA Bldg. Room 331
Santa Fe, NM 87504

By regular mail
Mariano Romero
Records and Docketing Department
Office of Superintendent of Insurance

P.O. Box 1689
 Santa Fe, NM 87504-1689

A Public Comment Hearing will be held on Thursday, September 10, 2015, at 1:00 p.m. at the PERA Building 4th Floor PRC Hearing Room, at 1120 Paseo de Peralta in Santa Fe. The Hearing Examiner will not accept comments after the conclusion of the Public Comment Hearing. The record of this case will close on August 31, 2015 or on the date a Final Order is issued.

Persons with disabilities requiring special assistance in order to participate in the hearings should contact Ana Kippenbrock at (505) 476-0333 at least 48 hours prior to the hearing.

Statutory authority: NMSA 1978 Section 59A-1-1 et seq., and NMSA 1978 Section 59A-2-9.

SUPERINTENDENT OF INSURANCE

Notice of Proposed Rulemaking

BEFORE THE NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE

IN THE MATTER OF ADOPTION OF)	
PROPOSED AMENDMENTS TO THE)	
OFFICE OF SUPERINTENDENT OF INSURANCE,)	
MANAGED HEALTH CARE BUREAU)	Docket No. 15-00026-RULE-LH
GRIEVANCE PROCEDURES RULE)	
REGARDING THE EXTERNAL REVIEW)	
PROCESS)	

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance (Superintendent), New Mexico Office of Superintendent of Insurance (OSI), upon Superintendent’s own motion, proposes to amend its existing grievance procedures regarding the external review process, currently codified in the New Mexico Administrative Code (NMAC) at Section 13.10.17 (the Grievance Procedures). Being duly advised,

THE SUPERINTENDENT FINDS AND CONCLUDES:

1. The Superintendent has jurisdiction over the subject matter and the parties in this proceeding pursuant to the New Mexico Insurance Code, 1978 NMSA §59A-1-1 *et seq.* (Insurance Code).
2. The Affordable Care Act, reorganized, amended and added to the provisions of part A of Title XXVII of the Public Health Service Act relating to group health plans and health insurance issuers in the group and individual markets pertaining to external review processes. On July 23, 2010, the U.S. Departments of Health and Human Services, Labor and the Treasury issued interim final regulations implementing these requirements (IFR). The Patient Protection and Affordable Care Act (Pub. L. 111-148, enacted on March 23, 2010), as amended by the Health Care and Education Reconciliation Act (Pub. L. 111-152, enacted on March 30, 2010), collectively referred to as the Affordable Care Act (ACA). See also, the implementing regulation for state standards for external review at 45 C. F. R. Section 147.136(c) effective December 13, 2013.
3. New Mexico was granted an extension of the date to bring its Grievance Procedures into alignment with the IFR and subsequent federal publications and pursuant to the ACA, to December 31, 2015.
4. The Grievance Procedures should be amended to incorporate the new, federal standards set forth in the IFR and related, subsequent federal publications. In order to comply with the standards and requirements of the IFR and subsequent, related federal publications, the Superintendent has prepared a proposed amended rule (Proposed Amended Rule) reflecting the requirements of the IFR and related, subsequent federal publications.
5. The text of the Proposed Amended Rule is located on the OSI website at <http://www.osi.state.nm.us/>, under the “Rulemaking” tab.
6. The text of the Proposed Amended Rule under the Rulemaking tab on the OSI website, is incorporated by reference into this NOPR.
7. Copies of the current Grievance Procedures may be accessed on the New Mexico Administrative Code official website at: <http://164.64.110.239/nmac/parts/title13/13.010.0017.htm>
8. OSI staff and all health care insurers, health care providers and insurance agents conducting business in New Mexico and any interested health care entities including any Independent Review Organizations, **are required**, and the public is encouraged, to file any written proposals or comments they wish according to the criteria and schedule set forth as follows:
 - a. Oral comments will only be accepted at the public hearing in this case by interested members of the public, the New Mexico Attorney General and any consumer advocacy groups who have intervened in the case;
 - b. Written proposals or comments are due no later than **4:00 p.m. on Friday, September 4, 2015**. Any responsive proposal or comments should be filed **no later than 4:00 p.m. on Friday, September 11, 2015**;
 - c. Proposals suggesting changes to the Proposed Amended Rule and/or the current rule found at Section 13.10.17 NMAC, must:

i. state and discuss the particular reasons for the suggested changes and must cite to any applicable state or federal law, or any conflicts with existing state or federal law, or other materials referred to in the proposal or comment; and

ii. must include all specific language necessary or appropriate to effectuate the changes being suggested; and

d. Specific proposed language changes **must** be in legislative format.

e. **Any proposals that do not comply with these mandatory requirements will not be considered by the Superintendent or his designated hearing examiner at the public comment hearing.** All pleadings, including comments and suggested changes to the Proposed Amended Rule or current rule, should bear the caption and docket number contained at the top of this Notice of Proposed Rulemaking (NOPR).

9. Written comments or written response comments shall be filed by sending original copies to:

Mr. Mariano Romero
OSI Records Management Bureau
1120 Paseo de Peralta, Room 331
P. O. Box 1689
Santa Fe, NM 87504-1689

ATTN: Docket No. 15-00026-RULE-LH

10. The Superintendent will review all timely submitted written comments and will hold a public comment hearing beginning at **9:00 a.m. on Monday, September 21, 2015**, at the Office of Superintendent of Insurance, Fourth Floor Hearing Room, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.

11. Any person with a disability requiring special assistance in order to participate in a hearing should contact **Ms. Lois Pedro, at 505-476-0305** at least 48 hours prior to the commencement of the hearing.

12. In order to assure that the Superintendent does not initiate, permit or consider a communication directly or indirectly with a party or a party's representative outside the presence of other parties concerning a pending rulemaking until after the record in this case has been closed, the Superintendent should set a date on which the Superintendent will consider the record to be closed. The Superintendent finds that date shall be the earlier of thirty (30) days following the Public Hearing; that is, **Wednesday, October 21, 2015, or the date a Final Order is issued in this case.** The setting of that record closure date will permit the Superintendent to conduct follow-up discussions with parties who have submitted initial or response comments to the Superintendent's proposed rules or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

13. Copies of this NOPR should be sent to all persons on the attached Certificate of Service via electronic mail only.

14. Service of all pleadings and attachments in a portable document format (PDF) shall be made by electronic mail to each party on the Certificate of Service, so that all parties have access to all pleadings and attachments in electronic form.

15. Deputy Superintendent Robert Doucette is available to be the designated hearing examiner in this case.

IT IS THEREFORE ORDERED:

A. A rulemaking proceeding should be, and hereby is, instituted in this docket concerning amendments to its existing grievance procedures, regarding the external review process, currently codified in the New Mexico Administrative Code (NMAC) at Section 13.10.17 (the Grievance Procedures).

B. The Proposed Amended Rule located on the OSI website at <http://www.osi.state.nm.us/>, under the "Rulemaking" tab, is proposed for adoption as a permanent rule as provided by this NOPR. The text of the Proposed Amended Rule under the Rulemaking tab on the OSI website is incorporated by reference into this NOPR.

C. This NOPR shall constitute due and lawful notice to all potentially interested parties.

D. Initial, written comments on the proposed rule must be filed **no later than 4:00 p.m. on Friday, September 4, 2015.** Any written responsive proposal or comments must be filed **no later than 4:00 p.m. on Friday, September 11, 2015.**

E. A public hearing on the proposed rule amendments shall be held beginning at **9:00 a.m. on Monday, September 21, 2015** at the offices of the Superintendent, at the following location:

PERA Building
Fourth Floor Hearing Room
1120 Paseo de Peralta
Santa Fe, New Mexico 87501

F. The record in this case will be closed on the earlier of thirty (30) days following the public hearing; that is, **Wednesday, October 21, 2015, or the date a Final Order is issued in this case.**

G. Proposals suggesting changes to the Grievance Procedures **shall** state and discuss the particular reasons for the suggested changes; cite to any state or federal law, or other materials, referred to in the proposal or comment; and **shall** include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes **shall** be in legislative format. **Any proposals or responses or replies to proposals that do not meet these mandatory requirements will not be considered by the Superintendent or his designated hearing examiner.** All pleadings, including comments and suggested changes to the Grievance Procedures, shall bear the caption and docket number contained at the top of this NOPR. Service of all pleadings and attachments in a portable document format (PDF) shall be made by electronic mail to each party on the Certificate of Service, so that all parties have access to all pleadings and attachments in electronic form.

H. Interested persons should contact the Superintendent to confirm the date, time and place of any public hearing, because hearings are occasionally rescheduled.

I. Any person with a disability requiring special assistance in order to participate in the Hearing should contact **Ms. Lois Pedro, at 505-476-0305** at least 48 hours prior to the commencement of the public hearing in this case.

J. In accordance with NMSA 1978 Section 12-8-4(A), this NOPR shall be electronically mailed at least thirty days prior to the first hearing date to all persons who have made a written request for advanced notice.

K. A copy of this NOPR shall only be electronically mailed to all parties on the attached Certificate of Service when electronic mail addresses are available. If electronic mail addresses are not available, and the party is able to show no electronic mail address is available, only then, will the same materials be mailed to such party via regular U. S. mail.

L. This NOPR shall be published in at least two newspapers of regular circulation in the State of New Mexico, and in the New Mexico Register. Affidavits attesting to the publication of this NOPR as described above shall be filed in this docket.

M. In addition, this NOPR shall be posted on the Superintendent’s official website.

N. The designated hearing examiner in this case will be Deputy Superintendent Robert Doucette.

O. This NOPR is effective immediately.

DONE AND ORDERED this ____ day of July, 2015

 JOHN G. FRANCHINI Superintendent of Insurance

SUPERINTENDENT OF INSURANCE

Notice of Proposed Rulemaking

BEFORE THE NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE

IN THE MATTER OF THE ADOPTION OF)
 AMENDMENTS TO THE TITLE INSURANCE)
 REGULATION CODIFIED AT TITLE 13,) **Docket No.: 15-00007-RULE-PC**
 CHAPTER 14 NMAC)
 _____)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance (Superintendent), New Mexico Office of Superintendent of Insurance (OSI), upon the Superintendent’s own motion, proposes to adopt any amendments deemed necessary following public comment and hearing conducted pursuant to the statutory mandate of NMSA 1978, Section 59A-30-8(A) (2009). Being duly advised,

THE SUPERINTENDENT FINDS AND CONCLUDES:

1. The Superintendent has jurisdiction over the subject matter and the parties in this proceeding pursuant to the New Mexico Insurance Code, 1978 NMSA, Section 59A-1-1 *et seq.* (Insurance Code).
2. NMSA 1978, Section 59A-30-8(A) (2009) requires the Superintendent to hold a biennial hearing during November to consider promulgation of premium rates and any other matters related to the regulation of the business of title insurance deemed necessary by the Superintendent.
3. Accordingly, OSI’s title insurance staff (Staff) and all other interested persons are directed to propose amendments to Title 13, Chapter 14 of the New Mexico Administrative Code (Title Regulations) and/or provide written or oral comments regarding proposed changes to the Title Regulations as set forth below.
4. Copies of the Title Regulations may be downloaded from the OSI’s website, <http://www.osi.state.nm.us/>.
5. Staff and all title insurers and title insurance agents conducting business in New Mexico **are required**, and the public is encouraged, to file any written proposals or comments they wish according to the schedule set forth below. Oral comments will only be accepted at the public hearing in this case by interested members of the public, the New Mexico Attorney General and any consumer advocacy groups who have intervened in the case. Written rule amendment proposals are due on **September 11, 2015**. Comments on the proposals are due no later than **October 1, 2015**. Any responsive proposals or comments should be filed no later than **October 16, 2015**. Proposals suggesting changes to the Title Regulations **must** state and discuss the particular reasons for the suggested changes; cite to any state or federal law, or other materials referred to in the proposal or comment; cite to all other sections of the Title Regulations that may be affected in any way by the proposed amendments, whether specific language changes to those other sections of the Title Regulations are necessary or not; and **must** include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the Title Regulations **must** be in legislative format. **Any proposals that do not comply with these mandatory requirements will not be considered by the Superintendent or his designated hearing examiner.** All pleadings, including comments and suggested changes to the Title Regulations, should bear the caption and docket number contained at the top of this NOPR.
6. Written proposals or comments and written responses to proposals or comments shall be filed by hand-delivering an original by 4:00 p.m. on the filing date, or by sending originals to be received on the due date, to:
 Mr. Mariano Romero
 OSI Records Management Bureau
 1120 Paseo de Peralta, Room 331
 P.O. Box 1689
 Santa Fe, NM 87504-1689 **ATTN: CASE NO.: 15-00007-RULE-PC**

7. A telephonic pre-hearing conference should be held on **October 21, 2015; at 10:00 a.m. MDT** for the purpose of narrowing the issues to be addressed at the public comment hearing and hearing any pending motions that have been filed in the case. The Superintendent or his designated hearing examiner shall preside at the pre-hearing conference which will be held by teleconference. The Superintendent or his designated hearing examiner shall file a notice in the docket giving the call-in information required to attend the pre-hearing.

8. The Superintendent will review all timely submitted written proposals or comments and will hold a public comment hearing beginning at **9:00 a.m. on November 2, 2015**, and continue thereafter until completed, in Apodaca Hall, 2nd Floor, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.

9. Any person with a disability requiring special assistance in order to participate in a hearing should contact Ana Kippenbrock at 505-476-0333 at least 48 hours prior to the commencement of the hearing.

10. In order to assure that the Superintendent does not initiate, permit, or consider a communication directly or indirectly with a party or his or her representative outside the presence of other parties concerning a pending rulemaking after the record in this case has been closed, the Superintendent should set a date on which it will consider the record to be closed. The Superintendent finds that date shall be the earlier of thirty (30) days following the Public Hearing; that is, **December 2, 2015**, or the date a Final Order is issued in this case. The setting of that record closure date will permit the Superintendent to conduct follow-up discussions with parties who have submitted initial or responsive proposals or comments to the Title Regulations. However, this action should not be interpreted as extending the time during which parties may file proposals or comments or responsive comments, or as allowing the filing of other types of documents in this case.

11. A copy of all documents filed in this docket must be served on all other parties, the Hearing Examiner, by electronic mail only to the lead counsel of each party on the day of filing. No hard copies need to be served on other parties or the Hearing Examiner.

12. Any motions shall be accompanied with a proposed order in Word version and PDF.

13. Offers of settlement and statements (by the parties and their representatives, and their witnesses) made in the mandatory settlement conferences or in informal settlement talks are privileged and, except by agreement among all parties, shall not be admissible as evidence in any hearing.

IT IS THEREFORE ORDERED:

A. This NOPR shall constitute due and lawful notice to all potentially interested parties.

B. Written rule amendment proposals are due on **September 11, 2015**. Comments on the proposals are due no later than **October 1, 2015**. Any responsive comments should be filed no later than **October 16, 2015**.

C. A telephonic pre-hearing conference shall be held on **October 21, 2015; at 10:00 a.m.** for the purpose of narrowing the issues to be addressed at the public comment hearing and hearing any pending motions that have been filed in the case. The Superintendent or his designated hearing examiner shall preside at the pre-hearing conference which will be held by teleconference. The Superintendent or his designated hearing examiner shall file a notice in the docket giving the call-in information required to attend the pre-hearing.

D. A public hearing on the Proposed Rule shall be held beginning at **9:00 a.m. on November 2, 2015** and continue thereafter until completed, at Apodaca Hall, 2nd Floor, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.

E. The record in this case will be closed on the earlier of thirty (30) days following the public hearing; that is, **December 2, 2015**, or the date a Final Order is issued in this case.

F. Proposals suggesting changes to the Title Regulations **shall** state and discuss the particular reasons for the suggested changes; cite to any state or federal law, or other materials, referred to in the proposal or comment; cite to all other sections of the Title Regulations that may be affected in any way by the proposed amendments whether specific language changes to those other sections of the Title Regulations are necessary or not; and **shall** include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the Title Regulations **shall** be in legislative format. **Any proposals or responses or replies to proposals that do not meet these mandatory requirements will not be considered by the Superintendent or his designated hearing examiner.** All pleadings, including comments and suggested changes to the Title Regulations, shall bear the caption and docket number contained at the top of this NOPR.

G. Interested persons should contact the Superintendent to confirm the date, time and place of any public hearing, because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the hearing should contact Ana Kippenbrock at 505-476-0333 at least 48 hours prior to the commencement of the public hearing in this case.

H. The Superintendent has designated Amy Johnson (Hearing Examiner), to preside over this matter and to take all action necessary and convenient thereto within the limit of the hearing examiner's authority and consistent with applicable procedural rules, all as set forth in the *Order Docketing 2015 Biennial Rulemaking and Appointing Hearing Officer* (Order), issued on June 30, 2015 in this docket.

I. A copy of all documents filed in this docket must be served on all other parties, the Hearing Examiner, by electronic mail only to the lead counsel of each party on the day of filing. No hard copies need to be served on other parties or the Hearing Examiner.

J. Any motions shall be accompanied with a proposed order in Word version and PDF.

K. Offers of settlement and statements (by the parties and their representatives, and their witnesses) made in the mandatory settlement conferences or in informal settlement talks are privileged and, except by agreement among all parties, shall not be admissible as evidence in any hearing.

L. This NOPR shall be published in two newspapers of regular circulation in the State of New Mexico, and in the *New Mexico Register*. Affidavits attesting to the publication of this NOPR as described above shall be filed in this docket.

M. This NOPR shall be posted on the Superintendent's official website at <http://www.osi.state.nm.us/> under the "Rulemaking" tab.

N. This NOPR is effective immediately.
ISSUED under the Seal of the Office of Superintendent of Insurance at Santa Fe, New Mexico, this 16th day of July, 2015.

OFFICE OF SUPERINTENDENT OF INSURANCE

JOHN G. FRANCHINI, NM Superintendent of Insurance

COMMISSION OF PUBLIC RECORDS

Notice of Regular Meeting

The New Mexico Commission of Public Records (“Commission”) has scheduled a regular meeting for Tuesday, August 25, 2015, at 9:00 A.M. at the New Mexico State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM.

At the meeting the Commission will consider repealing certain rules relating to records retention schedules and adopting, in their place, a new rule as listed below. The Commission tabled consideration of the repeal of said rules and the adoption of the proposed new rule at its regular meeting on June 30, 2015. Copies of the proposed rule are available on the Commission website at: www.nmcpr.state.nm.us and at the office of the State Records Administrator located in the Santa Fe State Records Center and Archives at 1205 Camino Carlos Rey, Santa Fe, NM.

Interested individuals may submit written comments regarding the proposed rulemaking actions via email at rmd.cpr@state.nm.us. Written comments must be received no later than 5:00 p.m. on August 17, 2015 for inclusion in the Commission packet. The submission of written comments as soon as possible is encouraged.

Oral and written comments will also be taken at the meeting. Persons offering written comments at the meeting must have seven (7) copies for the Commission to review.

A copy of the agenda and proposed rules are available on the Commission webpage at www.nmcpr.state.nm.us and at the office of the State Records Administrator located in the Santa Fe State Records Center and Archives at 1205 Camino Carlos Rey, Santa Fe, NM.

The agenda is subject to change up to 72 hours prior to the meeting.

Repeal

1.15.1 NMAC	GRRDS, General Provisions
1.15.2 NMAC	GRRDS, General Administrative Records
1.15.3 NMAC	GRRDS, General Administrative Records (for Use by Local Government and Educational Institutions)
1.15.4 NMAC	GRRDS, General Financial
1.15.5 NMAC	GRRDS, General Financial Schedule (Interpretive)
1.15.6 NMAC	GRRDS, General Personnel Records
1.15.7 NMAC	GRRDS, General Personnel (Interpretive)
1.15.8 NMAC	GRRDS, General Medical Records
1.15.9 NMAC	GRRDS, General Hospital and Medical Center Records
1.16.111 NMAC	LRRDS, Legislative Council Service
1.16.112 NMAC	LRRDS, Legislative Finance Committee
1.16.117 NMAC	LRRDS, Legislative School Study Committee
1.16.119 NMAC	LRRDS, Legislative Maintenance
1.17.205 NMAC	JRRDS, Supreme Court Law Library
1.17.210 NMAC	JRRDS, Judicial Standards Commission
1.17.215 NMAC	JRRDS, Court of Appeals
1.17.216 NMAC	JRRDS, Supreme Court
1.17.218 NMAC	JRRDS, New Mexico Magistrate Courts
1.17.219 NMAC	JRRDS, Board Governing the Recording of Judicial Proceedings
1.17.220 NMAC	JRRDS, Administrative Office of the Courts
1.17.230 NMAC	JRRDS, New Mexico District Courts
1.17.244 NMAC	JRRDS, Bernalillo County Metropolitan Court
1.17.264 NMAC	JRRDS, Administrative Office of the District Attorneys and the District Offices
1.18.305 NMAC	ERRDS, Office of the Attorney General
1.18.308 NMAC	ERRDS, Office of the State Auditor
1.18.333 NMAC	ERRDS, Taxation and Revenue Department
1.18.337 NMAC	ERRDS, State Investment Council
1.18.341 NMAC	ERRDS, Department of Finance and Administration
1.18.342 NMAC	ERRDS, Public School Insurance Authority

1.18.343 NMAC	ERRDS, Retiree Health Care Authority
1.18.350 NMAC	ERRDS, General Services Department
1.18.352 NMAC	ERRDS, Educational Retirement Board
1.18.355 NMAC	ERRDS, Public Defender Department
1.18.356 NMAC	ERRDS, NM Office of the Governor
1.18.360 NMAC	ERRDS, Lieutenant Governor's Office
1.18.361 NMAC	ERRDS, Office of the Chief Information Officer
1.18.366 NMAC	ERRDS, Public Employees Retirement Association
1.18.369 NMAC	ERRDS, Commission of Public Records
1.18.370 NMAC	ERRDS, Secretary of State
1.18.378 NMAC	ERRDS, State Personnel Office
1.18.379 NMAC	ERRDS, Public Employee Labor Relations Board
1.18.394 NMAC	ERRDS, Office of the State Treasurer
1.18.404 NMAC	ERRDS, Board of Examiners for Architects
1.18.418 NMAC	ERRDS, Tourism Department
1.18.419 NMAC	ERRDS, Economic Development Department
1.18.420 NMAC	ERRDS, Regulation and Licensing Department
1.18.430 NMAC	ERRDS, Public Regulation Commission
1.18.440 NMAC	ERRDS, Office of Superintendent of Insurance
1.18.446 NMAC	ERRDS, Board of Medical Examiners
1.18.449 NMAC	ERRDS, Board of Nursing
1.18.460 NMAC	ERRDS, State Fair Commission
1.18.464 NMAC	ERRDS, State Board of Licensure for Professional Engineers and Surveyors
1.18.465 NMAC	ERRDS, Gaming Control Board
1.18.469 NMAC	ERRDS, State Racing Commission
1.18.479 NMAC	ERRDS, Board of Veterinary Medicine
1.18.505 NMAC	ERRDS, Cultural Affairs Department
1.18.508 NMAC	ERRDS, New Mexico Livestock Board
1.18.516 NMAC	ERRDS, Department of Game and Fish
1.18.521 NMAC	ERRDS, Energy, Minerals and Natural Resources Department
1.18.539 NMAC	ERRDS, State Land Office
1.18.550 NMAC	ERRDS, Office of the State Engineer
1.18.601 NMAC	ERRDS, Commission on the Status of Women
1.18.605 NMAC	ERRDS, Martin Luther King Jr Commission
1.18.606 NMAC	ERRDS, Commission For the Blind
1.18.609 NMAC	ERRDS, Indian Affairs Department
1.18.624 NMAC	ERRDS, Aging and Long Term Services Department
1.18.630 NMAC	ERRDS, Human Services Department
1.18.631 NMAC	ERRDS, Department of Workforce Solutions
1.18.632 NMAC	ERRDS, Worker's Compensation Administration
1.18.644 NMAC	ERRDS, Division of Vocational Rehabilitation
1.18.647 NMAC	ERRDS, Developmental Disabilities Planning Council
1.18.665 NMAC	ERRDS, Department of Health
1.18.667 NMAC	ERRDS, New Mexico Department of Environment
1.18.669 NMAC	ERRDS, Health Policy Commission
1.18.670 NMAC	ERRDS, Veterans' Services Department
1.18.690 NMAC	ERRDS, Children, Youth and Families Department
1.18.705 NMAC	ERRDS, Department of Military Affairs
1.18.760 NMAC	ERRDS, Adult Parole Board
1.18.765 NMAC	ERRDS, Juvenile Public Safety Advisory Board
1.18.770 NMAC	ERRDS, Corrections Department
1.18.780 NMAC	ERRDS, Crime Victims Reparation Commission
1.18.790 NMAC	ERRDS, Department of Public Safety
1.18.794 NMAC	ERRDS, Mounted Patrol
1.18.795 NMAC	ERRDS, Homeland Security and Emergency Management Department
1.18.805 NMAC	ERRDS, Department of Transportation
1.18.924 NMAC	ERRDS, Public Education Department
1.18.926 NMAC	ERRDS, School For the Blind and Visually Impaired
1.18.927 NMAC	ERRDS, New Mexico School For the Deaf
1.18.940 NMAC	ERRDS, Public Schools Facilities Authority
1.18.950 NMAC	ERRDS, Higher Education Department
1.18.954 NMAC	ERRDS, New Mexico Department of Agriculture
1.18.980 NMAC	ERRDS, NM Office of the Medical Investigator
1.19.2 NMAC	LGRRDS, Office of the County Assessor
1.19.3 NMAC	LGRRDS, Office of the County Clerk

1.19.4 NMAC	LGRRDS, Board of County Commissioners County Managers
1.19.5 NMAC	LGRRDS, Office of the County Sheriff
1.19.6 NMAC	LGRRDS, Office of the County Treasurer
1.19.7 NMAC	LGRRDS, Southern Sandoval County Arroyo Flood Control Authority (SSCAFCA)
1.19.8 NMAC	LGRRDS, New Mexico Municipalities
1.19.9 NMAC	LGRRDS, New Mexico Municipal Courts
1.19.10 NMAC	LGRRDS, Middle Rio Grande Conservancy District
1.19.11 NMAC	LGRRDS, Soil and Water Conservation Districts and Watershed Districts
1.20.2 NMAC	EDRRDS, New Mexico Public Schools
1.20.3 NMAC	EDRRDS, New Mexico Colleges and Universities

New

1.21.2 NMAC	Retention and Disposition of Public Records
-------------	---

**REGULATION AND LICENSING DEPARTMENT
BARBERS AND COSMETOLOGY BOARD**

Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Barbers and Cosmetologists will hold a Rule Hearing on August 31st, 2015. Public comment is welcome. Following the Rule Hearing, the Board will convene a Regular Board Meeting to adopt the rules and take care of regular business. The New Mexico Board of Barbers and Cosmetologists Rule Hearing will begin at 9:00 a.m., the Regular Board Meeting will convene following the Rule Hearing and will be held at the Regulation and Licensing Department, 5500 San Antonio Drive NE, Albuquerque, NM 87109.

The purpose of the Rule Hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.34.1 NMAC, General Provisions; 16.34.2 NMAC, Licensing; 16.34.4 NMAC, Special Licenses; 16.34.5 NMAC, Regular Licenses; 16.34.6 NMAC, Licensing by Reciprocity: Credit for Out-Of-State Training; 16.34.7 NMAC, Establishments and Enterprises; 16.34.8 NMAC, Schools; 16.34.9 NMAC, Continuing Education; 16.34.11 NMAC, Violations; 16.34.13 NMAC, Administrative Procedures; 16.34.14 NMAC, Fees; and 16.34.15 NMAC, Administrative Penalties and Fines.

The Board's proposed rules are available on the Board's website at: [www.rld.state.nm.us/boards/Barbers and Cosmetologists Members and Meetings](http://www.rld.state.nm.us/boards/Barbers_and_Cosmetologists_Members_and_Meetings). Individuals requesting copies of proposed rules may also contact the New Mexico Board of Barbers and Cosmetologists, P.O. Box 25101, Santa Fe, New Mexico 87504,

or by calling (505) 476-4622. A copy of the Agenda for the Regular Board Meeting will be available at least seventy-two (72) hours prior to the meeting and will be posted on the Board's website. The Agenda may also be obtained by contacting the Board Office.

In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board Office in writing no later than August 15, 2015. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

During the Regular Meeting, the Board may enter into Executive Session pursuant to NMSA 1978, §10-15-1 (H) (1) of the Open Meetings Act, to discuss matters related to the issuance, suspension, renewal or revocation of licenses.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified signed language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4622 at least two weeks prior to the meeting or as soon as possible.

Pauline M. Varela, Executive Director
P.O. Box 25101, Santa Fe, NM 87504

**REGULATION AND LICENSING DEPARTMENT
BOARD OF PHARMACY**

Regular Board Meeting; Notice to the Public

The New Mexico Board of Pharmacy

will convene on August 20th & 21st, 2015 at 9:00 a.m. and continue until finished in the ****Board of Pharmacy Conference Room located at 5200 Oakland Ave., NE, Albuquerque, NM** for the purpose of conducting a regular board meeting. Anyone who needs special accommodations for the meeting should contact the board office at (505) 222-9830 or contact Debra Wilhite, Administrative Secretary, at (505) 222-9835 or fax (505) 222-9845, e-mail debra.wilhite@state.nm.us as soon as possible.

You may view and obtain copies of the agenda (tentative) starting August 10, 2015 through the board's website: www.rld.state.nm.us/boards/pharmacy.aspx.

Individuals petitioning the board regarding requests/waivers and/or interested persons wishing to comment on proposed language regarding rule hearings must submit documentation for presentation; via fax (505) 222-9845, mail or email to the Executive Director, Ben Kesner, Ben.Kesner@state.nm.us or Debra Wilhite, debra.wilhite@state.nm.us no later than Monday, August 10, 2015, if in attendance must provide 12 copies of the documentation for distribution to board members. *(Board staff is not required to make copies.)*

The Board will address:

Rule Hearings:

- 16.19.4 NMAC Pharmacist; Consultant Pharmacist
- 16.19.6 NMAC Pharmacies; New Section 29 - Offsite Technicians
- 16.19.10 NMAC Limited Drug Clinics; Class D Clinic
- 16.19.12 NMAC Fees; Clinic & Custodial
- 16.19.20 NMAC Controlled Substances; Additions into Sections 65, 66, 68 and 69

16.19.36.30 NMAC

Compounded Sterile Preparations; Non-Sterile Compounding

*Executive Director's Report:

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

**The NM Board of Pharmacy has a tentative scheduled office move from its current location in August, to 5500 San Antonio NE, Albuquerque, NM 87109 (Behind the Cracker Barrel, exit 231, north on I-25).

PLEASE CONTACT THE BOARD TO CONFIRM THE MEETING PLACE PRIOR TO ATTENDANCE!!

Published in the Albuquerque Journal July 16, 2015

REGULATION AND LICENSING DEPARTMENT PHYSICAL THERAPY BOARD

Legal Notice; Public Rule Hearing and Regular Board Meeting

The New Mexico Physical Therapy Board will hold a public rule hearing on Thursday, September 3, 2015, at the Regulation and Licensing Department, 5500 San Antonio Dr. NE, Albuquerque, NM 87109. The Rule Hearing will begin at 9:00 a.m. followed by a Regular Board Meeting in which the Board will adopt the rules and discuss items on the agenda.

The purpose of the Rule Hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.20.10 NMAC - Direct Care Requirements.

The Board may enter into Executive Session, pursuant to NMSA 1978, § 10-15-1.H (1) of the Open Meetings Act, to discuss matters related to the issuance, suspension, renewal or revocation of licenses.

The Board's proposed rules will be available on the Board's website at: www.rld.state.nm.us. Individuals requesting copies of proposed rules may also contact

the Physical Therapy Board, Toney Anaya Building, 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico 87504, or by calling (505) 476-4622. A copy of the agenda for the Regular Board Meeting will be available at least seventy-two (72) hours prior to the meeting and will be posted on the board's website. The agenda may also be obtained by contacting the Board Office.

In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board Office in writing no later than August 17, 2015. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

Persons with a disability who require 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, may contact the board office at (505) 476-4622 at least one week prior to the meeting or as soon as possible.

SECRETARY OF STATE

Notice of Proposed Repeal and Replace of Rule

The NM Secretary of State's Office ("Office") hereby gives notice that the Office will conduct a public hearing at the State Capitol Room 311, 491 Old Santa Fe Trail, Santa Fe, New Mexico 87501, on Thursday, September 3, 2015, from 10:00 am to 12:00 pm. The purpose of the public hearing will be to obtain input on the proposed intent of the Office to repeal and replace the rule prescribing the order of the offices on the ballot 1.10.11 NMAC.

Interested individuals may provide comments at the public hearing and/or submit written comments to Kari Fresquez, Interim Election Director via email at sos.rules@state.nm.us, fax (505)827-8081, or mail at Attn: Kari Fresquez – proposed rule, Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501.

Written comments must be received no later than 5:00 pm on the date prior to the hearing. However, the submission of written comments as soon as possible is

encouraged. Copies of the proposed rules may be accessed on the Office's website at www.sos.state.nm.us or obtained from Ms. Fresquez by calling (505) 827-3600.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Ms. Fresquez as soon as possible to provide requested special accommodations.

SECRETARY OF STATE

Notice of Proposed Rulemaking

The NM Secretary of State's Office ("Office") hereby gives notice that the Office will conduct a public hearing at the State Capitol Room 311, 491 Old Santa Fe Trail, Santa Fe, New Mexico 87501, on Friday, September 4, 2015, from 10:00 am to 12:00 pm. The purpose of the public hearing will be to obtain input on the proposed campaign finance rule 1.10.13 NMAC.

Interested individuals may provide comments at the public hearing and/or submit written comments to Kari Fresquez, Interim Election Director via email at sos.rules@state.nm.us, fax (505)827-8081, or mail at Attn: Kari Fresquez – proposed rule, Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501.

Written comments must be received no later than 5:00 pm on the date prior to the hearing. However, the submission of written comments as soon as possible is encouraged. Copies of the proposed rules may be accessed on the Office's website at www.sos.state.nm.us or obtained from Ms. Fresquez by calling (505) 827-3600.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Ms. Fresquez as soon as possible to provide requested special accommodations.

**WORKERS'
COMPENSATION
ADMINISTRATION**

Notice of Public Hearing

The New Mexico Workers' Compensation Administration will conduct a public hearing on the changes to the WCA Rules on:

Thursday, August 6, 2015
1:30 p.m.

Workers' Compensation Administration
2410 Centre Avenue S.E., Albuquerque,
NM 87106

Copies of the proposed rule amendments will be available on July 15, 2015. Written comments on the rule changes will be accepted until the close of business on August 14, 2015.

The WCA is proposing changes to Part 3, Payment of Claims and Conduct of Parties, Part 4, Claims Resolution, Part 7, Payments for Health Care Services, Part 9, Group Self-Insurance, the repeal and reissuance of Part 8, Individual Self-Insurance. The WCA is also proposing amendments to the Workers' Compensation Complaint, Worker's Authorization for Disclosure of Protected Health Information for Workers' Compensation Purposes (HIPAA Compliant), Form Letter to Health Care Provider, Out of State Health Provider forms, and the promulgation of a new form Application to the Director.

Copy of the proposed changes may be found at the WCA website at: <http://www.workerscomp.state.nm.us/>. For a copy by e-mail, contact the WCA General Counsel Office at 841-6083. For a copy by mail, please submit a self-addressed, stamped envelope with your request.

Comments made in writing and at the public hearing will be taken into consideration. Oral comments may be limited to five (5) minutes per speaker.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aide or service to attend or participate in the hearing or meetings, please contact the General Counsel Office at (505) 841-6083. Or you may inquire about assistance through the New Mexico relay network at 1-800-659-8331.

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

This Page Intentionally Left Blank

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.

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

The Children, Youth and Families Department repeals 8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes and replaces it with 8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes, effective 07-30-2015.

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 17 NON-LICENSED
CHILD CARE
PART 2 REQUIREMENTS
GOVERNING REGISTRATION OF
NON-LICENSED FAMILY
CHILD CARE HOMES

8.17.2.1 ISSUING AGENCY:
 Children, Youth and Families Department.
 [8.17.2.1 NMAC - Rp, 8.17.2.1 NMAC,
 07/30/15]

8.17.2.2 SCOPE: All non-licensed family child care homes within the state of New Mexico who are intending to participate in the child and adult care food program or the child care services programs.
 [8.17.2.2 NMAC - Rp, 8.17.2.2 NMAC,
 07/30/15]

8.17.2.3 STATUTORY AUTHORITY: The requirements (regulations) set forth herein, are established pursuant to the federal regulations at 7 CFR Part 226 CACFP, 45 CFR Part 98 CCDBG, the New Mexico Public Health Act, Sections 24-1-2 and 24-1-5 NMSA 1978, and the New Mexico Children's Codes, Section 32A-15-2-3 NMSA 1978. These regulations are promulgated by authority 9-2A-7 NMSA 1978. Child care homes registered pursuant to these regulations for participation in the child and adult care food program (CACFP) and child care assistance programs (CCAP) with

children, youth and families department (CYFD), are health facilities within the scope of Sections 24-1-2, 24-1-5 NMSA 1978, and Section 32A-15-3 NMSA 1978.
 [8.17.2.3 NMAC - Rp, 8.17.2.3 NMAC,
 07/30/15]

8.17.2.4 DURATION:
 Permanent.
 [8.17.2.4 NMAC - Rp, 8.17.2.4 NMAC,
 07/30/15]

8.17.2.5 EFFECTIVE DATE:
 July 30, 2015, unless a later date is cited at the end of a section.
 [8.17.2.5 NMAC - Rp, 8.17.2.5 NMAC,
 07/30/15]

8.17.2.6 OBJECTIVE:
 The objective of 8.17.2 NMAC is to establish standards and procedures to permit independent caregivers who are not required to be licensed as family child care homes under state regulation 8.16.2 NMAC to participate in the federal child and adult care food program and the state and federal child care assistance programs through the registration process.
 [8.17.2.6 NMAC - Rp, 8.17.2.6 NMAC,
 07/30/15]

8.17.2.7 DEFINITIONS:

A. "Abuse" means any act or failure to act, performed intentionally, knowingly or recklessly, which causes or is likely to cause harm to a child, including:

- (1) physical contact that harms or is likely to harm a child;
- (2) inappropriate use of a physical restraint, isolation, medication or other means that harms or is likely to harm a child;
- (3) punishment that is hazardous to the physical, emotional or mental state of the child; and
- (4) an unlawful act, a threat or menacing conduct directed toward a child that results or might be expected to result in fear or emotional or mental distress to a child.

B. "Adult" means a person who has a chronological age of 18 years or older.

C. "Child" means any person who is under the chronological age of 18 years.

D. "Child care assistance program (CCAP)" means the state of New Mexico's child care services bureau (CCSB) which administers the federal child care and development fund (CCDF).

E. "Child and adult care food program (CACFP)" means the state of New Mexico's family nutrition bureau which administers the federal child and adult care food program.

F. "Drop-in" means a child who attends a child care home on an occasional or unscheduled basis.

G. "Emergency caregiver" means someone 18 years of age or older who is authorized by the primary caregiver to provide care on an emergency basis, 8 hours or less, on behalf of the primary caregiver.

H. "Exempt caregiver" means a child care home primary caregiver who is exempt from participating in the CACFP because he or she is caring only for resident children or does not provide child care during the hours when a meal (breakfast, lunch or dinner) is served.

I. "Guidance" means fostering a child's ability to become self-disciplined. Guidance shall be consistent and developmentally appropriate.

J. "Infant" means a child from birth to one-year-old.

K. "Neglect" means the failure to provide the common necessities including but not limited to: food, shelter, a safe environment, education, emotional well-being and healthcare that may result in harm to the child.

L. "Non-resident child" means any child who does not reside in the primary caregiver's home.

M. "Notifiable diseases" means confirmed or suspected diseases/conditions as identified by the New Mexico department of health which require immediate reporting to the office of epidemiology which include but are not limited to: measles, pertussis, food borne illness, hepatitis and acquired immune deficiency syndrome.

N. "Primary caregiver"

means a registered child care home caregiver 18 years of age or older who is personally providing care to children, less than 24 hours a day, in his/her own residence and has completed the registration process, paid the required fee and has no other employment during hours of care. The primary caregiver must reside in the home.

O. "Registered authority" means the child care services bureau - registration section of the early childhood services division of the New Mexico children, youth and families department.

P. "Registered family child care home" means the residence of an independent primary caregiver who registers the home under these regulations to participate in the child and adult care food program or in the state and federal child care assistance programs.

Q. "Registered family child care food-only home" means the residence of an independent primary caregiver who registers the home under these regulation to participate in the child and adult care food program only and does not participate in the state and federal child care assistance program.

R. "Resident child" means any child who resides in the home, such as the primary caregiver's own children by birth or adoption, foster children, grandchildren, or cohabitant's children who are part of the residential unit.

S. "Substitute caregiver" means someone 18 years of age or older who is authorized by the primary caregiver and the registered authority to provide care in the absence of the primary caregiver and is required to complete all the items required of primary caregivers, including background check clearance in accordance with the most current provisions of 8.8.3 NMAC governing background checks and employment history verification provisions.

T. "Substantiated" means an incident or complaint determined to be factual, based on an investigation of events.

U. "Supervision" means the direct observation and guidance of children at all times and requires being physically present with them.

V. "Unattended" means a caregiver is not physically present with a child or children under care.

W. "Unsubstantiated" means an incident or complaint not determined to be factual based on an investigation of events.
[8.17.2.7 NMAC - Rp, 8.17.2.7 NMAC, 07/30/15]

8.17.2.8 APPLICATION:

An independent caregiver who wants to participate in the federal child and adult care food program and state and federal child care assistance programs must apply as a registered family child care home by submitting an application, receiving an on-site health and safety inspection by CYFD, completing the registration process and paying the processing charge. One primary caregiver per household can be registered or licensed with CCSB. All registered homes receiving child care assistance subsidies must be enrolled and participate in the CACFP, unless they are exempt.

[8.17.2.8 NMAC - Rp, 8.17.2.8 NMAC, 07/30/15]

8.17.2.9 REGISTERED AUTHORITY (ADMINISTRATION AND ENFORCEMENT RESPONSIBILITY):

The child care services bureau, registration section, of the early childhood services division of the New Mexico children, youth and families department, hereafter called the registered authority, has been granted the responsibility by CYFD for the administration and enforcement of these regulations pursuant to the Children, Youth and Families Department Act, Section 9-2A-1 to 9-2A-16, NMSA 1978, as amended.

[8.17.2.9 NMAC - N, 07/30/15]

8.17.2.10 CAREGIVER REQUIREMENTS:

A. All child care primary caregivers who receive child care assistance reimbursements are required to be licensed or registered by the department and meet and maintain compliance with the appropriate licensing and registration regulations in order to receive payment for child care services. All registered homes receiving child care assistance subsidies must be enrolled and participate in a CACFP, unless they are exempt.

B. All caregivers, including primary, substitute and emergency caregivers must be at least 18 years of age, and must demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.

C. Primary and substitute caregivers must comply with background check requirements in accordance with the most current provisions of 8.8.3 NMAC governing background checks and employment history verification provisions.

D. Emergency caregivers

may provide care on unforeseen, unforeseeable and rare occasions for up to eight (8) hours per month on behalf of the primary caregiver. Anyone who provides care repeatedly and/or in reasonably foreseeable circumstances is a substitute caregiver and must have the required background checks and training.

E. In the event care is provided by a substitute or emergency caregiver, all parents/guardians must be notified as promptly as possible.

F. All caregivers are responsible for immediately reporting to the appropriate authorities any signs or symptoms of child abuse or neglect.

G. Primary and substitute caregivers are required to attend six (6) hours of training annually. Training documentation must be maintained for three (3) years and include the caregiver's name, the date of training, instructor's name and signature, topic of training and number of hours completed.

H. Primary and substitute caregivers caring for infants shall receive two hours of infant or toddler specific training within six-months of registration.

I. If a registered home caregiver completes the 18-hour course, it will count toward the six-hour annual training requirement during the year in which the course was completed and the following year, exclusive of training required by CACFP.

J. Primary and substitute caregivers are required to maintain current first aid and CPR certification at all times. On-line first aid and CPR classes are not valid. A caregiver cannot count more than four hours in first aid and CPR trainings toward their total hours of annual training requirements.

K. Training shall be within the seven competency areas. The competency areas are: 1) child growth, development and learning; 2) health, safety, nutrition and infection control; 3) family and community collaboration; 4) developmentally appropriate content; 5) learning environment and curriculum implementation; 6) assessment of children and programs; and 7) professionalism.

[8.17.2.10 NMAC - Rp, 8.17.2.9 NMAC, 07/30/15]

8.17.2.11 BACKGROUND CHECKS:

A. All background checks shall be conducted in accordance with the most current provisions of 8.8.3 NMAC governing background checks and employment history verification provisions as promulgated by the children, youth and families department. All non-

licensed child care caregivers must adhere to these provisions to maintain their registration status.

B. The primary caregiver will be responsible for obtaining background checks on all adults residing in the home using the requirements outlined in the department's most current version of the background checks and employment history verification provisions (8.8.3 NMAC). A household member over the age of 18, who is currently approved but does not have an individual background check clearance, shall comply with the background check requirements no later than one year after these regulations are in effect. However, in the case of a registered family child care food-only home, all household members are only required to undergo a criminal history and child abuse and neglect screening.

C. Any adult who is present in the registered primary caregiver's home for significant periods while children are in care, or who commences being present in the registered primary caregiver's home for significant periods, may be required by the department to obtain either a background check or criminal history and child abuse and neglect screen.

D. All requirements of the current background checks and employment history verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial registration.

E. The registered primary caregiver must maintain documentation of all applications, correspondence and clearances relating to the background checks required in this section and make them available to the registered authority upon request.
[8.17.2.11 NMAC - Rp, 8.17.2.10 NMAC, 07/30/15]

8.17.2.12 RENEWAL: Primary caregivers must renew registration annually, and only after receiving an onsite inspection by CYFD, by submitting a registration application and paying the processing charge with cashier's check or a money order. Primary caregiver's who fail to renew registration by the expiration date will not be eligible to receive program benefits from either the child and adult care food program or the child care assistance program.
[8.17.2.12 NMAC - Rp, 8.17.2.11 NMAC, 07/30/15]

8.17.2.13 ANNUAL CERTIFICATION: Primary caregivers

shall ensure that all adults residing in the home are listed on all documentation required by CYFD and sponsoring agencies. The primary caregiver shall certify upon renewal that they, or any other adult living in the home, have not been convicted of a disqualifying offense during the last 12 months.
[8.17.2.13 NMAC - Rp, 8.17.2.12 NMAC, 07/30/15]

8.17.2.14 VISITS BY THE SPONSORING AGENCY AND REGISTERED AUTHORITY:

Caregivers must consent to visits, to include unannounced visits, by the children, youth and families department and the child and adult care food program sponsoring agency when child care children are present and/or during the caregiver's stated normal hours of operation.
[8.17.2.14 NMAC - Rp, 8.17.2.13 NMAC, 07/30/15]

8.17.2.15 NON-TRANSFERABILITY OF REGISTRATION:

A. The primary caregiver's registration agreement is personal, and not transferable to any other person or location.
B. A registration will expire automatically at midnight of the expiration date unless earlier suspended or revoked, or:
(1) if the primary caregiver moves; or
(2) changes their name.

C. If the primary caregiver moves to a new location or has a change of name, the primary caregiver must register again by submitting a new application and pay the processing charge. The caregiver must report a new location or change of name prior to the occurrence and receive a new on-site health and safety inspection by CYFD.
[8.17.2.15 NMAC - Rp, 8.17.2.14 NMAC, 07/30/15]

8.17.2.16 INCIDENT REPORTS: Registered caregiver shall notify the appropriate authorities immediately by phone of any incident which results in significant harm to a child or which places the child in immediate danger. After making a report to the appropriate authorities, the caregiver shall notify CYFD of the incident giving rise to its report as soon as possible but no later than 24 hours after the incident occurred. A report shall first be made by telephone and followed with written

notification. The caregiver shall report to the appropriate authorities the following incidents, including but not limited to:

A. Any incident that has threatened or could threaten the health and safety of children, including but not limited to:
(1) a lost or missing child;
(2) the death of a child;
(3) the suspected abuse or neglect of a child;
(4) accidents, illness, and injuries, that require medical care beyond on-site first aid;
(5) fire, flood, or other natural disaster that creates structural damages to a home or poses a health hazard;
(6) any of the illnesses on the current list of notifiable diseases and communicable published by the office of epidemiology of the New Mexico department of health;
(7) any legal action against a caregiver or household member;
(8) the use of physical or mechanical restraints, unless due to documented emergencies or medically documented necessity; or
(9) any known change in a caregiver's health condition or use of medication that impairs his or her ability to provide for the health, safety or welfare of children in care.

B. A home will notify parents or guardians in writing of any incident, including notifiable illnesses that have threatened the health or safety of children in the home. Incidents include, but are not limited to, those listed in Subsection A. of 8.17.2.16 NMAC.

C. Incident reports involving suspected child abuse and neglect must be reported immediately to children's protective services and local law enforcement. The registered authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures.
[8.17.2.16 NMAC - Rp, 8.17.2.15 NMAC, 07/30/15]

8.17.2.17 COMPLIANCE: By completing the CYFD registration process and annual renewals, the primary caregiver is agreeing to comply with these regulations to include the following:

A. The primary caregiver agrees to continue to meet these requirements, to correct deficiencies

promptly and to take prompt action to resolve problems cited in complaints filed with state agencies and referred to the caregiver.

B. The caregiver must grant the registered authority the right to enter the premises and survey the caregiver's home and the inspection and copying of records. This includes any investigations which are announced or unannounced.

[8.17.2.17 NMAC - Rp, 8.17.2.16 NMAC, 07/30/15]

8.17.2.18 NON-COMPLIANCE:

A. The children, youth and families department may deny, suspend, revoke or decline to renew registration at any time it is reasonably determined that the caregiver is not in compliance with these regulations, or is unable to maintain compliance with registration standards.

B. Violation of any provisions of these regulations, especially when the registered authority has reason to believe that the health, safety or welfare of a child is at risk, or has reason to believe that the caregiver cannot reasonably safeguard the health and safety of children may be grounds to suspend, revoke or decline to renew registration include but are not limited to:

(1) failure to comply with the group composition requirement;

(2) any health and safety violations which place the children in immediate danger, including but not limited to:

(a) a dwelling infested with vermin, including rodents, with no effort to correct the problem;

(b) lack of basic sanitary facilities, such as an open cesspool or open sewer line draining onto the ground surface; and

(c) unlocked or unsecured firearms and weapons in the home;

(3) background check denial or suspension;

(4) failure to timely obtain required background checks;

(5) misrepresentation or falsification of any information given to CYFD or CACFP;

(6) failure to allow access to the registered home by authorized representatives of the department or sponsor, at any time that children are present in the registered home;

(7) failure to properly protect the health, safety and welfare of children due to impaired health or conduct or hiring or continuing to allow any person whose health or conduct impairs the person's ability to properly protect the health, safety, and welfare of the children;

(8) discovery of repeat violations of these regulations or failure to correct deficiencies of survey findings in current or past contiguous or noncontiguous certification periods;

(9) possessing or knowingly permitting non-prescription controlled substances or illegal drugs to be present on the premises at any time, regardless of whether children are present;

(10) substantiated non-compliance with caregiver requirements to care for children in the registered home as defined in these regulations;

(11) substantiated abuse and/or neglect of children by the caregiver or household member as determined by CYFD or a law enforcement agency;

(12) situations where the children in care are placed in unreasonable and/or unnecessary danger, including but not limited to: evidence of illegal drug use in the home, evidence of domestic violence in the home, a convicted sex offender maintaining residence in the home, a convicted sex offender in the home when children are present, accusations of sexual child abuse against a caregiver or household member, or pending the outcome of a child protective services referral; and

(13) any serious violation or other circumstance which reasonably leads the department to determine that the caregiver cannot reliably safeguard the health and/or safety of children.

C. Commencement of a children, youth and families department or law enforcement investigation may be grounds for immediate suspension of registration pending the outcome of the investigation. Upon receipt of the final results of the investigation, the department may take such further action as is supported by the investigation results.

D. The children, youth and families department notifies the primary caregiver in writing when registration is denied, suspended or revoked, or if renewal is declined. The notification shall include the reasons for the department's action. The primary caregiver may obtain an administrative appeal of the department's action.

E. The child care services bureau notifies the family nutrition bureau of any revocation or suspension of registration for a primary caregiver participating in the child care assistance programs.

F. Primary caregivers whose registration has previously been suspended or revoked may re-apply for registration through the regular registration process. The child care services bureau may consider the reasons for the previous action, as well as changed and current circumstances, in determining whether to allow the new application. The children, youth and families department may require the registered caregiver to implement specific actions, or to agree to specific conditions, in order to obtain re-registration.

G. The children, youth and families department may require the registered caregiver to implement specific actions, or to agree to specific conditions, in order to maintain registered status. Such specific actions or conditions may be required if the department has reasonable grounds to determine they are needed to assure the continued safe operation of the primary caregiver's home. Examples:

(1) The department may require caregiver(s) to complete additional training if it appears that the caregiver has used inappropriate discipline, and revocation is not necessary under the circumstances.

(2) The department may require that certain person(s) not be permitted to enter the premises while care is being provided, if it reasonably appears that that person(s) may pose a threat to health and/or safety, or otherwise create a risk of harm to children.

H. Caregivers who are required to implement actions or to agree to conditions pursuant to Subsections F or G, are notified in writing, and shall have the opportunity for administrative appeal. [8.17.2.18 NMAC - Rp, 8.17.2.17 NMAC, 07/30/15]

8.17.2.19 COMPLAINTS:

A. Complaints received by CYFD shall be investigated promptly.

B. An authorized CYFD representative receiving complaints will ask complainants to identify themselves and provide all information necessary to document the complaint.

C. The authorized CYFD representative will investigate any complaint in which the health, safety or welfare of a child could be in danger. The complaint will be reviewed and prioritized

immediately according to the nature and severity of the complaint. The registered authority will follow established protocols and procedures for prioritizing, tracking, initiating and reporting of complaints and complaint investigations. Complaints will be investigated in a timely manner as follows:

(1) Priority 1 complaints: investigation will be initiated within 24 hours.

(2) Priority 2 complaints: investigation will be initiated within three working days.

(3) Priority 3 complaints: investigation will be initiated within five working days.

(4) Initiation timeframes for investigations may be shortened based on the severity and nature of the complaint, but timeframes may not be extended.

D. The caregiver shall cooperate in good faith with any investigation by the authorized CYFD authority. Obstruction of an investigation may subject the primary caregiver to sanctions, up to and including revocation.

E. Action by the authorized CYFD representative:

(1) The registered authority will provide a written letter on the results of the investigation to the registered home primary caregiver that is the subject of the complaint and the complainant if an action is taken.

(2) If the authorized CYFD representative finds the complaint is unsubstantiated, it will be so designated and the authorized CYFD representative will take no further action.

(3) If the authorized CYFD representative finds that a complaint is substantiated, it will make the complaint part of the authorized CYFD file on the child care registered home. The following additional actions will, at the discretion of the authorized CYFD representative, be taken:

(a) the CYFD authority will require the registered home caregiver to submit and comply with a written corrective action plan; or

(b) the CYFD authority will sanction the registered home administratively including, without limitation, suspension, revocation, or restriction of a registration; or

(c) the CYFD authority will file criminal charges or pursue civil remedies.

F. The authorized CYFD representative will report all cases of

suspected child abuse and neglect to both children's protective services and the local law enforcement agency.

[8.17.2.19 NMAC - N, 07/30/15]

8.17.2.20 ADMINISTRATIVE APPEAL RIGHTS:

A. Any primary caregivers who receives notice that registration is denied, revoked, suspended or that renewal is denied, has a right to an administrative appeal of the decision. Any primary caregiver who is required by the department to implement specific actions, or to agree to specific conditions, in order to maintain registered status, has a right to administrative appeal.

B. Administrative appeals shall be conducted by a hearing officer appointed by the department's secretary pursuant to hearing regulations (8.8.4 NMAC).

C. If the suspension or revocation is to take effect immediately, or if required conditions of continued operation are to take effect immediately, the department affords the primary caregiver the opportunity for an administrative appeal within 5 working days. If registration is suspended pending the results of an investigation, the primary caregiver may elect to postpone the hearing until the investigation has been completed.

D. If the contemplated action does not take immediate effect, and the primary caregiver is given advance notice of the contemplated action, the primary caregiver is allowed 10 working days from date of notice to request an administrative appeal in writing.

E. For any action taken by the department pursuant to section 8.17.2.21 of this regulation, the applicable hearing procedure shall be that contained in section 8.17.2.21 NMAC.

[8.17.2.20 NMAC - Rp, 8.17.2.18 NMAC, 07/30/15]

8.17.2.21 PROBABLE CAUSE OF IMMINENT DANGER:

A. In circumstances in which Public Health Act Section 24-1-5(N) (2005) NMSA 1978 may apply, and in which other provisions of this regulation are not adequate to protect children from imminent danger of abuse or neglect while in the care of a provider, the provisions of section 24-1-5(N) NMSA 1978 shall apply as follows:

(1) The department shall consult with the owner or operator of the child care facility.

(2) Upon a finding of probable cause, the department

shall give the owner or operator notice of its intent to suspend operation of the child care facility and provide an opportunity for a hearing to be held within three working days, unless waived by the owner or operator.

(3) Within seven working days from the day of notice, the secretary shall make a decision, and, if it is determined that any child is in imminent danger of abuse or neglect in the child care facility, the secretary may suspend operation of the child care facility for a period not in excess of fifteen days.

(4) Prior to the date of the hearing, the department shall make a reasonable effort to notify the parents of children in the child care facility of the notice and opportunity for hearing given to the owner or operator.

(5) No later than the conclusion of the fifteen day period, the department shall determine whether other action is warranted under this regulation.

B. Nothing in this section of the regulation shall be construed to require registration that is not otherwise required in this regulation.

[8.17.2.21 NMAC - Rp, 8.17.2.19 NMAC, 07/30/15]

8.17.2.22 GROUP COMPOSITION REQUIREMENTS:

A. A caregiver will care for no more than four (4) non-resident children at any one time.

B. A caregiver will care for no more than two (2) children under two (2) years old at any one time, including the caregiver's own children.

C. A caregiver will care for no more than six (6) children under six (6) years old at any one time, including the caregiver's own children.

D. Drop-in children will be counted in the group composition requirements listed above.

E. Shifts are allowed provided there are never more than four (4) non-resident children present at any one time, including change of shifts.

F. All caregivers will be physically present and actively involved in the care of all children during the designated hours of child care as noted in the child enrollment forms, except for short absences when another approved caregiver is present, or emergencies. Outside employment is not considered a short absence.

[8.17.2.22 NMAC - Rp, 8.17.2.20 NMAC, 07/30/15]

8.17.2.23 HEALTH AND SAFETY REQUIREMENTS:

A. A caregiver will maintain the home, grounds and equipment in safe condition. The home and grounds must be clean and free of debris or other potentially dangerous hazards. All equipment must be in good repair.

B. All electrical outlets within reach of children will have safety outlets or have protective covers.

C. A caregiver will not use multiple plugs or gang plugs unless surge protection devices are used.

D. A caregiver will keep the temperature of inside areas used by children at no less than 68 degrees Fahrenheit and no more than 82 degrees Fahrenheit. A home may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazard.

E. The home must be adequately ventilated at all times.

F. A home will not use un-vented heaters or open flame heaters. Portable heaters will be used in accordance with manufacture instructions. A home will install barriers or take other steps to ensure heating units are inaccessible to children. Heating units include hot water pipes, hot water baseboard heaters hotter than 110 degrees Fahrenheit, fireplaces, fireplace inserts and wood stoves.

G. All homes will have hot and cold running water. Water coming from a faucet will be below 110 degrees Fahrenheit in all areas accessible to children. A home may install a water tempering control valve ahead of all domestic water-heater piping.

H. A caregiver must provide safe playing areas inside and outside the home. Outside play areas must be approved by the registered authority.

I. A caregiver's outside play area must be safe, clean and free of any debris. The caregiver will fence the outside play area when it is next to a highway, busy street, ditch or arroyo, hazardous area or when determined to be necessary for safety by the registered authority. The fence will have one latched gate for emergency exits.

J. The use of a trampoline is prohibited at any time during the hours of operation or by any children receiving care at the registered home.

K. A caregiver will keep all poisons, toxic materials, cleaning substances, alcohol, sharp and pointed

objects or any other dangerous materials in a storage area inaccessible to children.

L. The primary caregiver must have a working telephone in the home and a valid working phone number on file with CYFD at all times.

M. A caregiver will post emergency numbers for the police, fire department, ambulance, and poison control center in a visible location.

N. A caregiver will install at least one working smoke detector and a carbon monoxide detector in an appropriate area in the home.

O. A caregiver will unload all guns, such as pellet or BB guns, rifles and handguns, and keep them in a locked area inaccessible to children.

P. A caregiver will keep all weapons in a locked area inaccessible to children.

Q. A caregiver will prohibit smoking and the drinking of alcoholic beverages in all areas, including vehicles, when children are present.

R. Possessing or knowingly permitting illegal drugs or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

S. A home will have a 2A-10B:C fire extinguisher in an easily accessible place. A fire extinguisher must be certified once a year and will have official tags noting the date of inspection.

T. A caregiver will store combustible and flammable materials in a safe area away from water heater rooms, furnace rooms, heaters, fireplaces or laundry rooms.

U. In case of a fire, the caregiver's first responsibility is to evacuate the children to safety. An up to date emergency evacuation and disaster preparedness plan must be available.

V. A home will have two (2) major exits readily accessible to children with no obstructions in the pathways of these exits.

W. Toys and objects (including high chairs, playpens and cribs) are safe, durable, easy to clean and nontoxic. Cribs will meet federal standards and be kept in good repair. A home will not use plastic bags or lightweight plastic sheeting to cover a mattress and will not use pillows in cribs.

X. Children will not use a common towel or wash cloth. All toilet rooms used by children will have toilet paper, soap and disposable towels.

Y. The home will have a first aid kit stored in a convenient place inaccessible to children, but easily accessible by caregiver. The kit will

contain at least Band-Aids, gauze pads, adhesive tape, scissors, soap, non-porous latex gloves, and a thermometer.

Z. A caregiver with pets will comply with the following requirements:

(1) A home will inform parents or guardians in writing before pets are allowed at the residence.

(2) A home will inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence at the residence.

(3) A home will not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious in nature.

(4) Areas of confinement, such as cages and pens, and outdoor areas are cleaned of excrement daily.

(5) A caregiver must be physically present during the handling of all pets or other animals.

AA. A caregiver will change wet and soiled diapers and clothing promptly. A caregiver will not change a diaper in a food preparation area. Caregivers will wash their hands and the child's hands after every diaper change. A caregiver will change a child's diaper on a clean, safe, waterproof surface and discard any disposable covers and disinfect the surface after each diaper change.

BB. Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. A child shall only be transported if the child is properly secured in an age appropriate restraining device.

[8.17.2.23 NMAC - Rp, 8.17.2.21 NMAC, 07/30/15]

8.17.2.24 MEAL REQUIREMENTS:

A. Children will not use common eating or drinking utensils.

B. A caregiver will provide readily accessible drinking water in sanitary cups or glasses.

C. Meals must meet age-appropriate USDA requirements.

D. A caregiver must keep a daily menu.

E. Caregivers will serve meals family style and allow children to assist in the preparation and serving of food and snacks.

F. Caregivers will feed children a meal or snack every three (3)

hours.

G. Caregivers and children will wash their hands regularly and before each meal time.

H. Caregivers will keep food requiring refrigeration, including formula, at 41 degrees Fahrenheit or below.

I. Refrigerators shall have working refrigerator thermometers. [8.17.2.24 NMAC - Rp, 8.17.2.22 NMAC, 07/30/15]

8.17.2.25 RECORD KEEPING REQUIREMENTS:

Caregivers must keep an information card for each child (including drop-in children) with:

A. the child's full name;
 B. the child's birth date;
 C. any known food or drug allergies or unusual physical condition;

D. the name, telephone number, and location of a parent or other responsible adult to be contacted in any emergency;

E. the name and telephone number of the child's physician;

F. authorization from a parent or guardian for the caregiver to seek professional medical care in an emergency;

G. written permission from a parent or guardian for the caregiver to administer medication prescribed by a physician or requested by the parent;

H. an immunization record showing current, age-appropriate immunizations for each child or a written waiver for immunizations granted by the department of health; and

I. written permission from parent to transport children outside of the registered home. [8.17.2.25 NMAC - Rp, 8.17.2.23 NMAC, 07/30/15]

8.17.2.26 CAREGIVER'S RESPONSIBILITIES:

A. A caregiver will directly supervise and actively care for children at all times during hours of operation including outdoor playtime and naptime. Caregivers will interact with children and provide a safe and positive learning environment.

B. Children will never be left unattended. A caregiver will be with the children at all times whether activities are inside or outside of the home. Caregivers will be onsite, available and responsive to children during all hours of operation.

C. A caregiver will use

guidance that is positive, consistent and age-appropriate. The caregiver will not use:

(1) physical punishment of any type, including shaking, biting, hitting, pinching or putting anything on or in a child's mouth;

(2) withdrawal of food, rest, bathroom access, or outdoor activities;

(3) abusive or profane language, including yelling;

(4) any form of public or private humiliation, including threats of physical punishment; or

(5) unsupervised separation.

D. Each home must offer children activities and experiences that are developmentally appropriate, allow children choices, and promote positive social, emotional, physical and intellectual growth and well-being. Caregivers will schedule activities in these areas. A caregiver will schedule routine activities such as meals, snacks, rest periods, and outdoor play to provide structure to the children's daily routine. Other activities should be flexible based on changes in the children's interests. A caregiver will also provide a variety of indoor and outdoor equipment to meet the children's developmental interests and needs. Equipment will encourage large and fine muscle activity, solitary and group play and active and quiet play. Television, videotapes and video games should be limited to two hours a day and should be age-appropriate.

E. Caregivers of infants will allow them to crawl or toddle. Infants shall either be held or be fed sitting up for bottle-feeding. Infants unable to sit shall always be held for bottle-feeding. Infants and toddlers shall not be placed in a laying position while drinking bottles or sippy cups. The carrying of bottles and sippy cups by young children throughout the day or night shall not be permitted. Caregivers will allow infants to eat and sleep on their own schedules.

F. Caregivers will ensure age appropriate naps or rest periods as follows:

(1) A home shall allow children who do not sleep to get up and participate in quiet activities that do not disturb the other children.

(2) Caregivers shall ensure that nothing covers the face or head of a child age 12 months or younger when the child is laid down to sleep and while the child is sleeping.

(3) Caregivers shall not place anything over the head

or face of a child over 12 months of age when the child is laid down to sleep and while the child is sleeping.

(4) No child(ren) shall be allowed to sleep behind closed doors.

G. Swimming, wading and water:

(1) A caregiver must obtain written permission from a parent or guardian before a child enters a pool;

(2) If a home has a portable wading pool:

(a) a home will drain and fill the wading pool with fresh water daily and disinfect the pool regularly;

(b) a home will empty a wading pool when it is not in use and remove it from areas accessible to children; and

(c) a home will not use a portable wading pool placed on concrete or asphalt.

(3) If a home has a built in or above ground swimming pool, ditch, fish pond or other water hazard:

(a) the fixture will be constructed, maintained and used in accordance with applicable state and local regulations;

(b) the fixture will be constructed and protected so that, when not in use, it is inaccessible to children; and

(c) when in use, children will be constantly supervised and ensure adequate safety for the ages, abilities and type of water hazard in use.

[8.17.2.26 NMAC - Rp, 8.17.2.24 NMAC, 07/30/15]

HISTORY OF 8.17.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives: ISD CCAP 400, Provider Registration, 11/4/91
 ISD CCAP 500, Provider Selection and Payment, 11/4/91

History of Repealed Material:

8 NMAC 17.2, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 8/1/00.
 8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 11/30/01.
 8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 11/1/02.

8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 02/14/05.

8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 8/31/06.

8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 7/30/15.

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

This is an amendment to 8.8.3 NMAC, Sections 6, 7, 10, 11, 12, 13, 14, 15 and 16, effective July 30, 2015.

8.8.3.6 OBJECTIVE:

A. The purpose of these regulations is to set out general provisions regarding background checks and employment history verification required in settings to which these regulations apply.

B. Background checks are conducted in order to identify information in applicants' backgrounds bearing on whether they are eligible to provide services in settings to which these regulations apply.

C. Abuse and neglect screens are conducted by [~~licensing authority~~] BCU staff in order to identify those persons who pose a continuing threat of abuse or neglect to care recipients in settings to which these regulations apply.

[8.8.3.6 NMAC - Rp, 8.8.3.6 NMAC, 03/31/06; A 07/31/09; A, 05/31/11; A, 07/30/15]

8.8.3.7 DEFINITIONS:

A. AOC means administrative office of the courts.

B. ADMINISTRATIVE REVIEW means an informal process of reviewing a decision that may include an informal conference or hearing or a review of written records.

C. ADMINISTRATOR means the adult in charge of the day-to-day operation of a facility. The administrator may be the licensee or an authorized representative of the licensee.

D. ADULT means a person who has a chronological age of 18 years or older, except for persons under medicaid certification as set forth in Subsection [F] K below.

E. APPEAL means a review of a determination made by the [~~children, youth and families department,~~] BCU, which may include an

administrative review.

F. APPLICANT means any person who is required to obtain a background check under these rules and NMSA 1978, Section 32A-15-3.

G. ARREST means notice from a law enforcement agency about an alleged violation of law.

H. BCU means the CYFD background check unit.

[H] I. BACKGROUND CHECK means a screen of [~~the department's~~] CYFD's information databases, state and federal criminal records and any other reasonably reliable information about an applicant.

[F] J. CARE RECIPIENT means any person under the care of a licensee.

[F] K. CHILD means a person who has a chronological age of less than 18 years, and persons under applicable medicaid certification up to the age of 21 years.

[K] L. CONDITIONAL EMPLOYMENT means a period of employment status for a new applicant prior to the [~~licensing authority's~~] BCU's final disposition of the applicant's background check.

[E] M. CRIMINAL HISTORY means information possessed by law enforcement agencies of arrests, indictments, or other formal charges, as well as dispositions arising from these charges.

[M] N. DIRECT, PHYSICAL SUPERVISION means continuous visual contact or live video observation by a direct provider of care who has been found eligible by a background check of an applicant during periods when the applicant is in immediate physical proximity to care recipients.

[N] O. DIRECT PROVIDER OF CARE means any individual who, as a result of employment or, contractual service or volunteer service has direct care responsibilities or potential unsupervised physical access to any care recipient in the settings to which these regulations apply.

[O] P. ELIGIBILITY means the determination that an applicant does not pose an unreasonable risk to care recipients after a background check is conducted.

[P] Q. EMPLOYMENT HISTORY means a written summary of the most recent three-year period of employment with names, addresses and telephone numbers of employers, including dates of employment, stated reasons for leaving employment, and dates of all periods of unemployment with stated reasons for periods of

unemployment, and verifying references.

[Q] R. LICENSED means authorized to operate by the [~~children, youth and families department~~] licensing authority by issuance of an operator's license or certification certificate.

[R] S. LICENSEE means the holder of, or applicant for, a license, certification, or registration pursuant to 7.20.11 NMAC, 7.20.12 NMAC, 8.16.2 NMAC, 7.8.3 NMAC; 8.17.2 NMAC or other program or entity within the scope of these regulations, including AOC supervised visitation and safe exchange program providers. CYFD LICENSEE means program or entity within the scope of these regulations except the AOC supervised visitation and safe exchange program providers.

[S] T. LICENSING AUTHORITY means the [~~children, youth and families department,~~] CYFD division having authority over the licensee.

[T] U. MORAL TURPITUDE means an intentional crime that is wanton, base, vile or depraved and contrary to the accepted rules of morality and duties of a person within society. In addition, because of the high risk of injury or death created by, and the universal condemnation of the act of driving while intoxicated, a crime of moral turpitude includes a second or subsequent conviction for driving while intoxicated or any crime involving the use of a motor vehicle, the elements of which are substantially the same as driving while intoxicated. The record name of the second conviction shall not be controlling; any conviction subsequent to an initial one may be considered a second conviction.

[U] V. RELEVANT CONVICTION means a plea, judgment or verdict of guilty, no contest, nolo contendere, conditional plea of guilty, or any other plea that would result in a conviction for a crime in a court of law in New Mexico or any other state. The term RELEVANT CONVICTION also includes decrees adjudicating juveniles as serious youthful offenders or youthful offenders, or convictions of children who are tried as adults for their offenses. Successful or pending completion of a conditional discharge under NMSA 1978, Section 31-20-13 (1994), or NMSA 1978, Section 30-31-28 (1972), or a comparable provision of another state's law, is not a relevant conviction for purposes of these regulations, unless or until such time as the conditional discharge is revoked or rescinded by the issuing court. The term RELEVANT CONVICTION does not include any of the foregoing if a court of competent jurisdiction has overturned

the conviction or adjudicated decree and no further proceedings are pending in the case or if the applicant has received a legally effective pardon for the conviction. The burden is on the applicant to show that the applicant has a pending or successful completion of any conditional discharge or consent decree, or that the relevant conviction has been overturned on appeal, or has received a legally effective pardon.

[V] W. UNREASONABLE RISK means the quantum of risk that a reasonable person would be unwilling to take with the safety or welfare of care recipients.

[8.8.3.7 NMAC - Rp, 8.8.3.7 NMAC, 03/31/06; A, 07/31/09; A, 05/31/11; A, 07/30/15]

8.8.3.10 COMPLIANCE:

A. Compliance with these regulations is a condition of licensure, registration, certification or renewal, or continuation of same or participation in any other program or contract within the scope of these regulations.

B. The licensee is required to:

(1) [submit two completed FBI-approved fingerprint cards for all direct providers of care, by the end of the next day following of commencement of service, whether employment or, contractual, or volunteer; [EXCEPTION:] In the case of licensed child care homes, the licensee must submit fingerprint cards, within five working days, for any adult who resides in the home or any persons residing in the home who reaches 18 years of age;] submit an electronic fingerprint submission receipt and the required forms for all direct providers of care, including household members in licensed and registered child care homes, by the end of the next day following of commencement of service, whether employment or, contractual, or volunteer. In the case of a licensed child care home and a registered home, the licensee must submit an electronic fingerprint submission receipt and the required forms for new household members, within five working days, for any adult who is required to obtain a background check pursuant to 8.16.2 NMAC or 8.17.2 NMAC as applicable. However, in the case of a registered family child care food-only home, all household members are only required to undergo a criminal history and child abuse and neglect screening.

(2) [submit the FBI-approved fingerprint cards to CYFD along with the specified fee;

~~(3) submit the name, address, date of birth and any aliases of the direct care provider for a child abuse and neglect screen;~~

(4) verify the employment history of any prospective direct provider of care by contacting references and prior employers/agencies to elicit information regarding the reason for leaving prior employment or service; the verification shall be documented and available for review by the licensing authority; EXCEPTION: verification of employment history is not required for registered home providers~~;~~ or child care homes licensed for six (6) or fewer children [;or relative care providers;].

(5) (3) submit an adult household member written statement form for each adult household member in a registered family child care food-only home setting in order to conduct criminal history and child abuse and neglect screens on such household members; an adult household member is an adult living in the household or an adult that spends a significant amount of time in the home;

(6) (4) provide such other information [department] BCU staff determines to be necessary; and

(7) (5) maintain documentation of all applications, correspondence and eligibility relating to the background checks required; in the event that the licensee does not have a copy of an applicant's eligibility documentation and upon receipt of a written request for a copy, the [department] BCU may issue duplicate eligibility documentation to the original licensee provided that the request for duplicate eligibility documentation is made within one year of the applicant's eligibility date.

C. If there is a need for any further information from an applicant at any stage of the process, the [department] BCU shall request the information in writing from the applicant. If the [department] BCU does not receive the requested information within fifteen calendar days of the date of the request, the [department] BCU shall deny the application and send a notice of background check denial.

D. Any person who knowingly makes a materially false statement in connection with these requirements will be denied eligibility. [8.8.3.10 NMAC - Rp, 8.8.3.10 NMAC, 03/31/06; A, 07/31/09; A, 05/31/11; A, 07/30/15]

8.8.3.11 COMPLIANCE EXCEPTIONS:

A. An applicant may not begin providing services prior to obtaining background check eligibility unless all of the following requirements are met:

(1) the CYFD licensee may not be operating under a corrective action plan (childcare), sanctions, or other form of disciplinary action;

(2) until receiving background eligibility the applicant shall at all times be under direct physical supervision; this provision does not apply to registered child care home applicants;

(3) by the end of the next day after the applicant begins providing supervised services, the licensee or applicant shall send the [licensing authority] BCU a completed application form and [fingerprint cards] an electronic fingerprint submission receipt; and

(4) no more than 45 days shall have passed since the date of the initial application unless the [department] BCU documents good cause shown for an extension.

B. If a direct provider of care has a break in employment or transfers employment more than 180 days after the date of an eligibility letter from the [licensing authority] BCU, the direct provider of care must re-comply with 8.8.3.10 NMAC. A direct provider of care may transfer employment for a period of 180 days after the date of an eligibility letter from the [licensing authority] BCU without complying with 8.8.3.10 NMAC only if the direct provider of care submits a preliminary application that meets the following conditions:

(1) the direct provider of care submits a statement swearing under penalty of perjury that he or she has not been arrested or charged with any crimes, has not been an alleged perpetrator of abuse or neglect and has not been a respondent in a domestic violence petition;

(2) the direct provider of care submits an application that describes the prior and subsequent places of employment, registration or certification with sufficient detail to allow the [licensing authority] BCU to determine if further background checks or a new application is necessary; and

(3) the [licensing authority] BCU determines within 15 days that the direct provider of care's prior background check is sufficient for the employment or position the direct provider of care is going to take.

[8.8.3.11 NMAC - Rp, 8.8.3.11 NMAC,

03/31/06; A, 04/15/08; A, 07/31/09; A, 05/31/11; A, 07/30/15]

8.8.3.12 PROHIBITIONS:

A. Any CYFD licensee who violates these regulations is subject to revocation, suspension, sanctions, denial of licensure, certification, or registration or termination of participation in any other program within the scope of these regulations. AOC supervised visitation and safe exchange program providers will be monitored and sanctioned by the AOC.

B. Licensure, certification, registration or participation in any other program within the scope of these regulations is subject to receipt by the licensing authority of a satisfactory background check for the licensee or the licensee's administrator.

C. Except as provided in 8.8.3.13 NMAC below, licensure, certification, registration or participation in any other program within the scope of these regulations may not be granted by the licensing authority if a background check of the licensee or the licensee's administrator reveals an unreasonable risk.

D. A licensee may not retain employment, volunteer service or contract with any direct provider of care for whom a background check reveals an unreasonable risk. The [department] BCU shall deliver one copy of the notice of unreasonable risk to the facility or program by U.S. mail and to the [appropriate staff at the department] licensing authority or the AOC by facsimile transmission or hand delivery.

E. A licensee shall be in violation of these regulations if it retains a direct provider of care for more than ten working days following the mailing of a notice of background check denial for failure to respond by the [licensing authority] BCU.

F. A licensee shall be in violation of these regulations if it retains any direct provider of care inconsistent with Subsection A of 8.8.3.11 NMAC.

G. A licensee shall be in violation of these regulations if it hires, contracts with, uses in volunteer service, or retains any direct provider of care for whom information received from any source including the direct provider of care, indicates the provider of care poses an unreasonable risk to care recipients.

H. Any firm, person, corporation, individual or other entity that violates this section shall be subject to appropriate sanctions up to and including immediate emergency revocation of license or registration pursuant to the

regulations applicable to that entity or termination of participation in any other program within the scope of these regulations.

[8.8.3.12 NMAC - Rp, 8.8.3.12 NMAC, 03/31/06; A, 07/31/09; A, 05/31/11; A, 07/30/15]

8.8.3.13 ARRESTS, CONVICTIONS AND REFERRALS:

A. For the purpose of these regulations, the following information shall result in a conclusion that the applicant is an unreasonable risk:

(1) a conviction for a felony or a misdemeanor involving moral turpitude and the criminal conviction directly relates to whether the applicant can provide a safe, responsible and morally positive setting for care recipients;

(2) a conviction for a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to whether the applicant can provide a safe, responsible and morally positive setting for care recipients if the department determines that the applicant so convicted has not been sufficiently rehabilitated;

(3) a conviction, regardless of the degree of the crime or the date of the conviction, of trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse; [or]

(4) a substantiated referral, regardless of the date, for sexual abuse or for neglect characterized by a failure to protect against sexual abuse[-]; or

(5) a registration, or a requirement to be registered, on a state sex offender registry or repository or the national sex offender registry established under the Adam Walsh Child Protection and Safety Act of 2006.

B. A disqualifying conviction may be proven by:

(1) a copy of the judgment of conviction from the court;

(2) a copy of a plea agreement filed in court in which a defendant admits guilt;

(3) a copy of a report from the federal bureau of investigation, criminal information services division, or the national criminal information center, indicating a conviction;

(4) a copy of a report from the state of New Mexico, department of public safety, or any other agency of any state or the federal government indicating a conviction;

(5) any writing by the applicant indicating that such person has been convicted of the disqualifying offense, provided, however, that if this is the sole basis for denial, the applicant shall be given an opportunity to show that the applicant has successfully completed or is pending completion of a conditional discharge for the disqualifying conviction.

C. If a background check shows pending charges for a felony offense, any misdemeanor offense involving domestic violence or child abuse, an arrest but no disposition for any such crime, or a pending referral with [the department] CYFD, there shall be a determination of unreasonable risk. An arrest or criminal charge for any felony offense or for any misdemeanor offense involving domestic violence or child abuse or a pending referral with CYFD shall result in the immediate suspension of the applicant's background check [status] eligibility until such time as the charge[s] or CYFD referral [are] is disposed of. It is the duty of the administrator of a facility or the licensee, upon learning of any such arrest or criminal charge or any pending referral with CYFD, to notify the licensing authority immediately. A suspension of background check [status] eligibility shall have the same effect as a determination of unreasonable risk until the charge[s] or CYFD referral [are] is disposed of. If an arrest or criminal charge results in a conviction, the applicant may reapply for background check eligibility and shall be subject to all applicable criminal records check provisions and may be determined to be an unreasonable risk. If an arrest or criminal charge results in an acquittal, conditional discharge, suspension of proceedings based on participation in a pre-prosecution diversion program or dismissal of the charges, or any other disposition that is not a criminal conviction, the applicant may thereafter reapply and be considered for a determination that the applicant is eligible.

D. If a background check shows that an applicant is wanted for any offense by any law enforcement agency due to a warrant having been issued, or if the applicant is shown to have failed to appear for any pending criminal court proceeding, there shall be a determination of unreasonable risk. If such information shall be reported to the licensing authority after an initial determination that the applicant is eligible, the applicant's background check [status] eligibility shall be suspended until such time as the matter is disposed of. After the matter has been disposed of, the applicant shall be subject

to all of the background check provisions set forth in Subsections A, B, and C above.

[8.8.3.13 NMAC - Rp, 8.8.3.13 NMAC, 03/31/06; A, 07/31/09; A, 07/30/15]

8.8.3.14 UNREASONABLE RISK:

A. The [department] BCU may, in its discretion, weigh the evidence about an applicant to determine whether the applicant poses an unreasonable risk to care recipients. The [department] BCU may also consult with legal staff, treatment, assessment or other professionals in the process of determining whether the cumulative weight of credible evidence establishes unreasonable risk.

B. In determining whether an applicant poses an unreasonable risk, the [department] BCU need not limit its reliance on formal convictions or substantiated referrals, but nonetheless must only rely on evidence with indicia of reliability such as:

- (1) reliable disclosures by the applicant or a victim of abuse or neglect;
- (2) domestic violence orders that allowed an applicant notice and opportunity to be heard and that prohibits or prohibited them from injuring, harassing or contacting another;
- (3) circumstances indicating the applicant is or has been a victim of domestic violence;
- (4) child or adult protection investigative evidence that indicates a likelihood that an applicant engaged in inappropriate conduct but there were reasons other than the credibility of the evidence to not substantiate; or
- (5) any other evidence with similar indicia of reliability.

[8.8.3.14 NMAC - N, 03/31/06; A, 07/31/09; A, 05/31/11; A, 07/30/15]

8.8.3.15 REHABILITATION PETITION:

Any applicant whom the [department] BCU concludes is an unreasonable risk on any basis other than those described in Paragraphs (1), (3), [or] (4) or (5) of Subsection A of 8.8.3.13 NMAC, may submit to the [department] BCU a rehabilitation petition describing with specificity all information that tends to demonstrate that the applicant is not an unreasonable risk. The petition may include, but need not be limited to, a description of what actions the applicant has taken subsequent to any events revealed by the background check to reduce the risk that the same or a similar circumstance will recur.

[8.8.3.15 NMAC - N, 03/31/06; A, 07/30/15]

8.8.3.16 APPEAL RIGHTS:

A. Any CYFD licensee who is denied licensure, certification, registration or is sanctioned or terminated from participation in any program pursuant to these regulations may appeal that decision to the children, youth and families department. A previously cleared direct provider of care whose eligibility has been suspended may appeal that decision to [the children, youth and families department] CYFD. If a CYFD licensee or a previously cleared direct provider of care alleges facts in good faith that demonstrate a conclusion of unreasonable risk will substantially affect a present vested right such as current employment or other similar currently vested rights the CYFD licensee or a previously cleared direct provider of care shall be entitled to a hearing. The request for appeal shall be in writing and the party requesting the appeal shall cause the [department] BCU to receive it within fifteen days of the date of the [department] BCU's written notice of a determination of unreasonable risk.

B. Any direct provider of care who is found ineligible after completion of background check may request an administrative review from [the children, youth and families department] CYFD. The request for an administrative review shall be in writing and the party requesting the appeal shall cause the [department] BCU to receive it within fifteen days of the date of the [department] BCU's written notice of a determination of unreasonable risk.

C. The administrative review shall be completed by a review of the record by a hearing officer designated by the cabinet secretary. The hearing officer's review is limited to: (1) whether the [licensing authority's] BCU's conclusion of unreasonable risk is supported by any section of these regulations; and (2) whether the applicant has been erroneously identified as a person with a relevant conviction or substantiated referral. The review will be completed on the record presented to the hearing officer and includes the applicant's written request for an administrative review and other relevant evidence provided by the applicant. The hearing officer conducts the administrative review and submits a recommendation to the cabinet secretary no later than 60 days after the date the request for administrative review is received unless [the department] CYFD and the applicant agree otherwise. The

appeal that is a hearing under this section shall be pursuant to [the department] CYFD's administrative hearing regulations at 8.8.4 NMAC.

[8.8.3.16 NMAC - Rp, 8.8.3.15 NMAC 03/31/06; A, 07/31/09; A, 05/31/11; A, 07/30/15]

GENERAL SERVICES DEPARTMENT

1.5.3 NMAC, Administration and Use of State Vehicles, (filed 12-20-2012) repealed and replaced by 1.5.3 NMAC Administration and Use of State Vehicles, effective 7-30-2015.

GENERAL SERVICES DEPARTMENT

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 5 PUBLIC PROPERTY MANAGEMENT
PART 3 ADMINISTRATION AND USE OF STATE VEHICLES**

1.5.3.1 ISSUING AGENCY: General Services Department. [1.5.3.1 NMAC - Rp, 1.5.3.1 NMAC, 7-30-2015]

1.5.3.2 SCOPE:
A. This rule applies to all public agencies that use state vehicles.
B. This rule also applies to the legislative and judicial branches, public schools, institutions of higher education, and all other public related institutions, to the extent that they lease motor pool vehicles from the state central fleet authority (SCFA). [1.5.3.2 NMAC - Rp, 1.5.3.2 NMAC, 7-30-2015]

1.5.3.3 STATUTORY AUTHORITY: Sections 15-8-6 and 15-8-10 NMSA 1978. [1.5.3.3 NMAC - Rp, 1.5.3.3 NMAC, 07-30-2015]

1.5.3.4 DURATION: Permanent. [1.5.3.4 NMAC - Rp, 1.5.3.4 NMAC, 7-30-2015]

1.5.3.5 EFFECTIVE DATE: July 30, 2015, unless a later date is cited at the end of a section. [1.5.3.5 NMAC - Rp, 1.5.3.5 NMAC, 7-30-2015]

1.5.3.6 OBJECTIVE: The purpose of this rule is to implement the Transportation Services Act, Chapter 15, Article 8 NMSA 1978, by establishing standards and procedures for the administration and use of state vehicles by state agencies or any entity that leases vehicles from state central fleet authority SCFA.

[1.5.3.6 NMAC - Rp, 1.5.3.6 NMAC, 7-30-2015]

1.5.3.7 DEFINITIONS: In addition to the definitions in Section 15-8-3 NMSA 1978, as used in this rule:

A. account manager means a TSD employee designated to prepare, manage and enforce short-term and long-term transportation services division/state central fleet authority TSD/SCFA vehicle leases; serve as liaison for designated state agency authorized drivers and TSD/SCFA maintenance personnel; prepare monthly billings and utilization reports, using data gathered from various systems including a global positioning system GPS;

B. agency approved authority means the cabinet secretary of a state department or the agency director who is responsible for the agency;

C. agency fleet coordinator means the individual assigned by an agency head or designee who is responsible for providing fleet management information and reports to TSD;

D. alert means a notice given when specific parameters/barriers that are defined by either the agency or TSD are compromised thereby informing the using agency, or TSD, of the occurrence;

E. alternative fuel means a fuel other than an unleaded gasoline such as E-85, a blend of ethanol and unleaded gasoline; bio-diesel; electricity; compressed natural gas; propane; hydrogen; or other fuels.;

F. authorized driver means:

(1) a state employee holding a valid New Mexico driver's license or an approved out-of-state driver's license and a TSD approved defensive driving certificate who is permitted to use a state vehicle in furtherance of official state business; a valid New Mexico driver's license or an approved out-of-state driver's license but *does not* include provisional, limited, restricted or administrative permits;

(2) for those candidates for full-time, term or temporary employment with the state of

New Mexico that live out-of-state, the following process is required and;

(3) once gainfully employed by the state, the out-of-state employee must provide a copy of his driving record to TSD on a semi-annual basis to assure the drivers' license is in good standing;

G. authorized passenger means an individual who is permitted to occupy a state vehicle in furtherance of official state business or a person who has received prior authorization from the director or designee to occupy a state vehicle, or where the transport is a part of the daily operations of the department;

H. authorized use means travel in a state vehicle for official state business only as delegated by appropriate agency representative(s);

I. CAFE standards mean the national highway traffic safety administration corporate average fuel economy standards for passenger vehicles and light trucks;

J. commute means domicile-to-duty privilege authorized by the leasing agency's cabinet secretary or agency head to state authorized drivers where it is in the state's best interest to allow these employees to use a state vehicle to and from work and residence; (refer to 1.5.3.20 NMAC);

K. custody (of a state vehicle) means the director's or designee's right to exercise final decision-making authority with respect to the purchase, title and registration, use, administration, operation, maintenance, replacement, and disposal of a state vehicle in accordance with state law and regulations;

L. declared gross vehicle weight or DGVV means the maximum weight of a vehicle; the DGVV is used to differentiate between light, medium or heavy duty vehicle utilization;

M. department means the general services department;

N. director means the director of the transportation services division of the general services department;

O. DGF means the department of game and fish;

P. division means the transportation services division of the general services department;

Q. DHSEM means the department of homeland security and emergency management;

R. DOT means the department of transportation;

S. DPS means the department of public safety;

T. EMNRD means the

energy minerals and natural resources department;

U. flex fuel vehicle means a vehicle that has the capacity of burning a regular unleaded gasoline and an alternative fuel;

V. Global Positioning System or GPS means a system that is installed on vehicles that is used to track specific data on the vehicle;

W. GSD means the general services department;

X. G-series license plate means a distinctive government license plate issued by the taxation and revenue department for vehicles of institutions of higher learning, public schools and all other subdivisions of government (cities, counties, villages, conservancy, wastewater, landfill districts, etc.), does not include any state level agency state vehicles of the executive, legislative or judicial branches that will display G-series license plates until replaced by SG license plates through attrition; Subsection NN of 1.5.3 NMAC.

Y. inclement weather means road conditions are unsafe for travel; inclement weather includes but is not limited to: icy or snow packed road conditions, dust storms, or flooding;

(1) TSD will follow state personnel rulings on inclement weather for state business closures and delays;

(2) TSD reserves the right to prohibit the use of state vehicles during inclement weather.

Z. NSC means the national safety council;

AA. National safety council/defensive driving class (NSC/DDC) instructor is someone who has completed the NSC/DDC through NSC and has a current DDC instructor certification;

BB. New Mexico driver's license means a valid driver's license issued by the motor vehicle division of the NM taxation and revenue department; this does not include provisional, limited, restricted, or any court-ordered restricted or administrative license or permit; while an "H" restriction may allow an individual to operate their privately owned vehicle (POV) to and from employment; TSD will not authorize an individual to operate a state vehicle with anything other than a valid drivers' license with no limitations or restrictions;

CC. new state employee means a person employed by a New Mexico state government agency for the first time or who is returning to state government after having had a break in

service.

DD. protective license plate means a regular passenger license plate issued to a state vehicle that is in the custody of a state agency, can be traced to that state agency and is being used for sensitive activities;

EE. public agency means an agency other than a state agency as defined in Subsection JJ of 1.5.3 NMAC authorized to use SCFA vehicles; this does include institutions of higher learning and public schools;

FF. RMD means the risk management division of the general services department;

GG. SCFA means the state central fleet authority of the transportation services division of the general services department;

HH. secretary means the cabinet secretary of the New Mexico general services department;

II. sensitive activity means an activity performed by an employee of the state that;

(1) is authorized by the state to be performed for a legitimate and appropriate purpose for the state, other than a legitimate undercover law enforcement purpose; and

(2) would place the employee at a higher risk of personal injury if knowledge of the activity were made public, as determined in writing by an appropriate authority of the employee;

JJ. special-use vehicles means state vehicles designated as such by the director or designee, including but not limited to emergency and law enforcement vehicles, buses, tractors, boats, trailers, snow cats, vehicles of a special design or construction that effectively limits their use for a particular purpose, and all other vehicles that are not passenger vehicles;

KK. state agency means a state department, agency, board or commission, including the legislative and judicial branches, this definition includes any public agency authorizing an officer or employee use of a state vehicle;

LL. state employee means any person who has been elected to, appointed to, or hired for any state office and who receives compensation in the form of salary or is eligible for per diem and mileage reimbursement;

MM. state vehicle means an automobile, van, sport-utility truck, pickup truck or other vehicle with a declared gross vehicle weight of less than ten thousand (10,000) pounds used by a state agency to transport passengers or property;

NN. SG-series license

plate means an SG license plate designed for the specific use of agencies of the executive, legislative and judicial branches of state government for vehicles marked as required by Section 15-8-6 NMSA 1978: this **does not include** institutions of higher learning, public schools or any other political subdivision of government;

OO. transportation services division or TSD means the transportation services division of the general services department;

PP. TSD approved NSD/DDC instructor means an NSC/DDC instructor with a current instructor certification who has been audited and approved by TSD to conduct training for employees who have had their driving privileges suspended;

QQ. TSD online NSC/DDC means an online course offered by TSD. This class is presented in two (2) distinct parts, part one (1) covers the administrative use of state vehicle policy, and part two (2) is the direct presentation from the national safety council; and

RR. undercover license plate means a regular passenger license plate issued to a state vehicle which is registered in a fictitious name and address that cannot be traced to the state agency having custody of the vehicle and that is being used for legitimate law enforcement purposes only.

[1.5.3.7 NMAC - Rp, 1.5.3.7 NMAC, 7-30-2015]

1.5.3.8 STATE VEHICLE PROCUREMENT PROCESSES AND VEHICLE STANDARDS:

In accordance with the governor's executive orders 05-049, "requiring the increased use of renewable fuels in New Mexico state government", and 06-069 "New Mexico climate change action", this section establishes the standards by which all state and public agencies shall procure state vehicles with a declared weight up to ten thousand (10,000) pounds.

A. State agency vehicle requests, application form required requests for exemption to executive orders. By the 15th of April of each calendar year, state agencies shall prepare a SCFA application for purchase, lease and disposal of state vehicles. The state agency in conjunction with GSD shall assure that all requests meet the governor's executive order directives including assuring the highest fuel economy for the intended use, meeting or exceeding the most current CAFE standards and compliance with the Alternative Fuels Acquisition Act.

Any requests for exemption from the governor's executive orders shall be submitted along with clear justification for the requested exemption and the aforementioned form for the director's or designee's review. If the exemption is timely and approved, the agency shall be notified with time to submit the request to the specification developers. The specification development time-line shall not be expanded due to the state agency's failure to comply with this rule.

B. State procurement cycles - time lines. State agency vehicles shall be procured based on specifications consistent with executive order 05-049 and prepared by the department in conjunction with DOT, DPS, DGF, DHSEM and EMNRD during the months of June, July and August of each year. The development of the specifications is to prepare for the bid advertisement, pre-bid conference, bid opening and award for the purchase of vehicles for each fiscal year. The order of model year vehicles shall be consistent with the directions established in each bid, with expectations that new model year vehicles will be delivered prior to manufacturer's build-out dates for each subsequent calendar year.

C. Vehicle standards. The standards establish the minimum requirements for the procurement of passenger vehicles for the executive, legislative and judicial branches of the state of New Mexico. DOT, DPS, DGF, DHSEM, and EMNRD, vehicle standards are developed and maintained by the respective agency. These standards are to be reviewed annually and subject to change based on increased fuel efficiencies and reduction of greenhouse gases. The standards are an administrative attachment to this rule and must be reviewed, amended, published and distributed by July 1 of each year. [1.5.3.8 NMAC - Rp, 1.5.3.8 NMAC, 7-30-2015]

1.5.3.9 LEASE OF MOTOR POOL VEHICLES:

A. A state agency or public agency may lease a motor pool vehicle from the SCFA:

(1) through a "quik ride" or short-term lease by the hour or day not exceeding six (6) consecutive months; or,

(2) through a long-term lease for a period exceeding six (6) consecutive months; or,

(3) through a third-party commercial lease;

B. Rates. Rates for the

lease of motor pool vehicles are based on costs for the type of vehicle leased. The SCFA will provide current rates and policies for the lease of motor pool vehicles upon request. There are three (3) types of SCFA long-term leases:

(1) standard lease is a long-term lease of a TSD owned vehicle which includes overhead, maintenance and depreciation costs, less residual; divided by the life-cycle term;

(2) operational lease is a long-term lease of a TSD owned vehicle which includes overhead and maintenance costs; or,

(3) third-party commercial lease is a long-term lease of a TSD leased vehicle which includes overhead, maintenance and third-party financing costs; third party leased vehicles may be subject to excessive mileage costs.

C. Terms.

(1) Standard leases depend on the leasing agency's operational requirements and budget availability. Life-cycles for standard leases are to be five (5) years.

(2) Operational leases shall consist of leases for vehicles that have exceeded the standard lease life-cycles or have been procured by the user agency that has chosen not to pay the depreciation cost.

(3) Third party commercial leases are determined by a state price agreement, typically three (3) years and sixty thousand (60,000) miles. These leases are subject to mileage overruns and excessive wear and tear costs that are passed on to the customer.

D. Accounts receivable.

The SCFA requires the leasing state agency to maintain its accounts receivable current - thirty (30) days or less. The SCFA shall assess a one and one-half percent (1.5%) per month late payment penalty fee on accounts over thirty (30) days past due. The SCFA may take action to cancel any lease agreement(s) and recover the vehicle(s) if the lessee is delinquent over one hundred twenty (120) days in making payment. For short-term leasing, SCFA will charge for one (1) day use for reservations that are not canceled.

E. Encumbrance. The SCFA requires the leasing state agency to encumber the entire fiscal year cost of the lease at the time the lease is signed at the beginning of each fiscal year. The leasing agency may disencumber funds only after a written request to the director or designee is approved. The director or designee will act on requests to disencumber funds within ten (10) working days of the date of the receipt of

the leasing agency's request.

F. Operating transfer.

To expedite the payment of lease costs to the SCFA, the user agency may choose to pay the annual cost of vehicles leased through an operating transfer within the first forty-five (45)-days of each fiscal year.

G. Termination. Either the division or a state agency may terminate the lease of a state vehicle as per the terms and conditions included in the standing lease agreement.

[1.5.3.9 NMAC - Rp, 1.5.3.9 NMAC, 7-30-2015]

1.5.3.10 STATE MOTOR VEHICLE LICENSE PLATES: At the beginning of each fiscal year, the director or designee shall determine which type of license plate shall be issued for each state vehicle. This relates to the state of New Mexico government plate, protective license plate or undercover plate.

A. A state agency may submit a written request for an undercover license plate for any SCFA state vehicle it uses for legitimate undercover law enforcement purposes. The state agency must annually justify the need for an undercover license and must provide statutory authority to that effect.

B. A state agency may submit a written request for a protective license plate for any state vehicle it uses for a sensitive activity. The request must be signed off by the cabinet secretary or agency head attesting that this position is authorized to perform a legitimate and appropriate activity which is sensitive in nature and this activity would place the employee at a higher risk of personal injury if knowledge of the activity was made public. At the beginning of each fiscal year, the state agency must justify the need for a protective license plate and must provide statutory authority regarding the type of work requiring something other than a state government license plate. Based on the justification, the director or designee may authorize the protective license plate.

C. The director or designee shall issue a state of New Mexico government license plate with permanent decals for all other state agency vehicles.

(1) All vehicles must display the state seal and an identifying decal describing the user agency, i.e. state of New Mexico motor pool, or the appropriate acronym identifying the user agency.

(2) All state vehicles must display the 1-800-627-6639

vehicle abuse program bumper sticker.

(3) All state vehicles must display the #DWI bumper sticker.

(4) User agencies will be billed the cost of replacement of authorized official decals or stickers.

(5) User agencies may use their own non-permanent decals upon acquiring director's or designee's written authorization. Cost for these decals will be the responsibility of the user agency.

(6) Deviation from the SCFA official decals and stickers must receive written prior authorization from the director or designee. [1.5.3.10 NMAC - Rp, 1.5.3.10 NMAC, 7-30-2015]

1.5.3.11 REQUIRED DOCUMENTS IN STATE VEHICLES: Each state agency shall ensure that current copies of the following documents are kept in the glove compartment of all state vehicles in its custody.

A. Auto Loss Form. These are forms and instructions that are included in the packet provided by RMD on how auto accidents in state vehicles are to be dealt with by the authorized driver.

B. Fuel credit cards. Each vehicle will have detailed instructions and procedures for use of the fuel credit card with a list of authorized purchases.

C. How-to brochure. Each vehicle will have a brochure that provides the driver simple instructions regarding the use of the vehicle, telephone numbers, emergency processes, and waivers.

D. RMD financial responsibility document. These documents include the state's official proof of insurance and letter stating the state's responsibility to have proof of registration in a state vehicle.

E. Vehicle maintenance manual. This is the manual that is provided by the manufacturer which includes the manufacturer's specifications. Additional maintenance requirements or specifications may be required by the director or designee and provided to the leasing agency in writing.

F. Vendor list. This is a current list of SCFA authorized motor vehicle maintenance and repair vendors throughout the state of New Mexico. The list is to be used for preventive maintenance, emergency road service and repair.

G. Vehicle registration.

This is the official proof of vehicle ownership/registration document issued by the state motor vehicle division. This document shall remain with the vehicle until ownership is transferred or the vehicle is sold by SCFA.

H. Vehicle mileage log.

This log should have the date, employee name, beginning and ending mileages, destination, purpose of trip, type of fuel purchased, number of gallons purchased, total fuel cost, other vehicle related purchases, and a place for a supervisor to make verifications.

[1.5.3.11 NMAC - Rp, 1.5.3.11 NMAC, 7-30-2015]

1.5.3.12 AUTHORIZED DRIVERS AND PASSENGERS:

A. Authorized drivers.

The director or designee may authorize a state employee who possesses a current valid New Mexico drivers' license or approved out-of-state license, and who has completed a TSD approved NSC defensive driving course and orientation prescribed by the division to operate a state motor vehicle. The state employee must have the appropriate class of driver's license to drive any state vehicle that is not a passenger vehicle. Upon request each agency must provide a list of all authorized drivers.

B. Authorized

passengers. Only authorized passengers may occupy a state vehicle. A person who is not a state employee must obtain written authorization from the director or designee before occupying a state vehicle. Failure to comply may result in suspension of driving privileges.

C. Suspension or revocation of authorized drivers' privileges.

The director or designee may suspend or revoke the authorized driver privileges of any state employee who permits a person who is not an authorized driver to operate a state vehicle or who transports, or permits the transportation of a person who is not an authorized passenger. In addition, such state employee may be held personally liable to the extent permitted by law for any liability for personal injury, death or property damage arising out of the unauthorized use or occupancy of the state vehicle.

D. Reinstatement of driving privileges. An authorized driver whose state driving privileges have been suspended or revoked must complete a NSC/DDC six (6)-hour class instructed by a TSD approved instructor before receiving a written driver privilege reinstatement authorization from the

director or his designee.

E. Exceptions. Nothing in this section shall be construed to prohibit the use or occupancy of a state vehicle:

(1) to render emergency aid or assistance to any person; or

(2) by private sector automobile mechanics or maintenance and repair personnel performing required maintenance or repairs.

[1.5.3.12 NMAC - Rp, 1.5.3.12 NMAC, 7-30-2015]

1.5.3.13 DEFENSIVE DRIVING COURSE:

A. Defensive driving

course. TSD will use the on-site instructor taught course material including the TSD online national safety council (NSC) defensive driving and safety curriculum (DDC). Agencies desiring to provide NSC/DDC training independent of TSD must request authorization to provide NSC/DDC instruction from the director or designee prior to commencing the utilization of any NSC/DDC tools or materials. In addition, the agencies must follow the curriculum approved by the director or designee prior to commencing the utilization of the proposed training tools. It is the responsibility of the proposing agency to incorporate all state of New Mexico TSD requirements into the defensive driving curriculum. All on-line courses are required to be reviewed and permission to utilize these courses must be approved by TSD *prior* to commencing use.

B. Course availability.

TSD shall offer regularly scheduled defensive driving classes in Santa Fe and Albuquerque. This does not preclude TSD from offering these classes at the requesting agency's site. A state agency or state employee should contact the division for information about scheduled classes, locations, costs, registration, or scheduling of department trainings.

C. Instructor

certification. To receive a certificate as a NSC/DDC Instructor, it is necessary to submit the written request to the director or designee for review and approval. This applies to employees who may have received a NSC/DDC instructor certification while under the employment of another governmental agency. All prospective instructors may attend the TSD instructed NSC/DDC - six (6) and four (4) hour classes; and, are required to teach one TSD six (6) hour course and one (1) TSD four (4) hour

course under TSD supervision prior to receiving consideration of approval to teach. Instructors in good standing must complete the TSD certification process every two (2) years. TSD may choose to conduct instructor/class audits.

D. Driver certification

required. All defensive driving certificates are valid for four (4) years. All authorized drivers of state vehicles must have a current TSD approved NSC defensive driving certificate in their possession while driving a state vehicle. TSD requires employees who seek to operate a state vehicle to provide proof of current certification. New employees must successfully take and pass the six (6) hour TSD prescribed NSC defensive driving class with a grade of eighty percent (80%) or better to become an authorized driver. If the new employee provides proof of NSC/DDC certification within two (2) years previous to the date of employment, at the discretion of the director or designee, the employee may only have to take the four (4) hour NSC/DDC, or the administrative use of state vehicles online certification course.

(1) If a state employee needs to operate a state vehicle in furtherance of state business but has not successfully completed the NSC defensive driving course, the state employee must register for the next available NSC defensive driving course, or the TSD online NSC/DDC. The employee's agency head or designee must submit a written request for a temporary waiver not to exceed thirty (30) days of the certification requirement from the director or designee. The waiver request shall include the state employee's name and New Mexico driver's license or an approved out-of-state driver's license number (accompanied by a valid out-of-state driving record), and the date the state employee is scheduled to attend the NSC defensive driving course. If approved, the director or designee will specify the term of the waiver. If the request is denied, the director or designee will specify in writing the reason for the denial within ten (10) working days of the date the waiver request is received by the division. Driver waivers cannot be renewed.

(2) If the state employee's certification has expired, the employee shall be required to successfully complete a six (6)-hour NSC/DDC certification class taught by an instructor or complete the TSD online NSC/DDC.

E. Driver re-certification. Each state employee is required to take the defensive driving refresher course every four (4) years.

(1) An employee may take the four (4) hour refresher course provided by TSD; however, the employee must provide proof of previous NSC/DDC certification.

(2) Failure to provide proof of previous NSC/DDC will require the employee to register to take the six (6) hour NSC/DDC course or the TSD online NSC/DDC.

F. List of certified state employees. The agency vehicle coordinator shall maintain a list of certified state employees employed by the agency, including a current copy of the employee's valid NM drivers' license.

G. User agency requirements.

(1) The user agency is responsible for checking authorized drivers' licenses to assure compliance with motor vehicle division laws.

(2) TSD will provide a template of the TSD database to the instructor.

(3) The maintenance and listing of authorized drivers.

(4) Maintenance and listing of suspended driving privileges including drivers' license revocations, suspensions and driving under the influence (DUI).

(5) The agency is subject to TSD audits of state agency authorized driver records.

(6) Certificates must be printed and have an original instructor signature.

H. Lost certificates. If a state employee loses his or her defensive driving certificate, the TSD will issue a replacement certificate at a cost per certificate. If the state employee cannot provide proof of taking a TSD authorized defensive driving certification course, the employee must register for a six (6) hour NSC defensive driving course or the TSD online NSC/DDC.

[1.5.3.13 NMAC - Rp, 1.5.3.13 NMAC, 7-30-2015]

1.5.3.14 TRAFFIC LAWS AND OPERATOR CONDUCT:

A. Authorized drivers shall obey all applicable traffic laws while operating a state vehicle.

B. Authorized drivers must exercise appropriate caution and prudence while operating a state vehicle.

C. Authorized drivers shall not engage in discourteous behavior or inappropriate conduct while operating a state vehicle.

D. Authorized drivers shall not use state vehicles for inappropriate or illegal activities including personal use; and shall have no reasonable expectation of privacy in the use of any state vehicle.

E. Authorized drivers on official travel, who exceed their post of duty by thirty-five (35) miles, may utilize the state vehicle to take care of personal business such as visiting eating establishments, grocery stores, etc.

F. Authorized drivers shall only utilize a cell phone with a hands free device while operating a state vehicle.

G. At no time will the authorized driver be allowed to text or type on any other device(s) such as a smartphone and laptop computer while driving. At no time is reading from any electronic device or paper source permissible while operating a state vehicle.

H. Authorized drivers shall minimize distractions while operating state vehicles. These distractions include but are not limited to eating and playing with the radio/cd player.

I. Authorized drivers shall operate state vehicles at or below posted speed limits.

J. An authorized driver who receives a traffic citation or parking ticket while using a state vehicle must notify TSD. If TSD receives a state employee's traffic citation or parking ticket involving a SCFA motor vehicle, the director or designee will forward it to the state agency leasing the state motor vehicle to assure the employee promptly clears the citation/ticket.

(1) The driver shall be personally responsible for any costs (cost of ticket, late fees, court fees or administrative fees) associated with the citation or ticket,

(2) The driver is also required to retake and pass a six (6)-hour TSD approved instructor NSC/DDC certification class before operating a state vehicle. An agency may deem that the employee is responsible for paying for additional classes.

(3) If the driver of the vehicle cannot be identified, the agency shall be held responsible for any costs associated with the citation or ticket.

K. Authorized drivers involved in a traffic accident while operating a state vehicle who are found at fault will have their driving privileges suspended or revoked and are required to immediately register for a six (6) hour TSD approved instructor NSC/DDC

certification class.

L. State employees shall carpool to meetings, conferences whenever feasible.

M. Supervisors will ensure that their employees are fit for duty when operating a state vehicle. This includes ensuring that the employee is not fatigued.

[1.5.3.14 NMAC - Rp, 1.5.3.14 NMAC, 7-30-2015]

1.5.3.15 SUSPENSION OF STATE VEHICLE OPERATOR PRIVILEGES:

A. The director or designee shall automatically suspend a state employee's authorization to operate a state vehicle if the state employee's New Mexico driver's license or an approved out-of-state driver's license is expired, revoked, or suspended. This extends to include disqualifications or administrative actions on driver's licenses. An employee whose driving privileges have been suspended or revoked for an expired driver's license may register for the TSD/NSC online Defensive Driving Class (DDC).

B. An authorized driver that receives a citation and is convicted while operating a state vehicle will have their privileges suspended until proof of the ticket being paid is submitted to TSD and a NSC six (6) hour defensive driving class taught by a TSD approved instructor has been taken and passed or successfully completed. Suspensions extend to utilizing personal vehicles to conduct state business.

C. A state agency shall report each suspension or revocation to the director or designee. The director or designee will provide the agency head with names of any state employee's employed by the requesting state agency whose state vehicle operator privileges have been suspended or revoked.

D. To determine that state authorized drivers have a valid driver's license, the director or designee will at random review the driving record of state authorized drivers. The director or designee will review the status of the driving record of any state authorized driver upon receipt of any request for waiver, constituent complaint, registration for DDC, traffic citation, parking ticket, accident, police report or vehicle abuse.

E. An authorized driver that has his/her driving privileges suspended or revoked must successfully complete a six (6) hour TSD approved instructor NSC/DDC class before the director or designee will consider

authorizing the reinstatement of those privileges.

F. The director or designee shall review all complaints of alleged fraud, waste, and abuse involving state vehicles, and shall forward them to the state agency fleet coordinator and to the appropriate state agency management team.

(1) If three (3) vehicle abuse allegations are received within a fiscal year for the same allegation, the authorized driver will have his/her driving privileges temporarily suspended and will be required to retake a TSD approved instructor six (6) hour NSC/DDC class. The agency will then provide a copy of the retaken DDC to TSD.

(2) Failure to comply or respond to final notice of abuse allegations will result in vehicle lease termination.

G. Any agency may require the employee to pay for a DDC class necessary to reinstate their driving privileges.

H. The director or designee or the state agency may suspend or revoke driving privileges of an authorized driver for failure to comply with any provision of this rule. [1.5.3.15 NMAC - Rp, 1.5.3.15 NMAC, 7-30-2015]

1.5.3.16 ALCOHOL, CONTROLLED SUBSTANCE, DRUG, AND TOBACCO USE PROHIBITED REPORTING REQUIREMENTS:

A. No authorized driver shall operate a state vehicle while under the influence of intoxicating alcohol, controlled substances, or drugs. Nor shall an authorized driver transport an individual who has consumed alcohol, controlled substances, or drugs. State law enforcement officers investigating criminal activities as part of their duties can transport individuals who have consumed alcohol, controlled substances, or drugs.

B. No authorized driver shall transport intoxicating alcohol of any type, whether in open or unopened containers, while operating or occupying a state vehicle, unless the person is an employee of the state alcohol and gaming division of the regulation and licensing department or a state law enforcement officer investigating criminal activities as part of their duties.

C. No authorized driver shall operate a state vehicle when he or she is so impaired by a legal drug that renders him or her incapable of operating

a motor vehicle in a safe and responsible manner.

D. No authorized driver or passenger shall smoke or use smokeless tobacco products of any type in any state vehicle.

E. The driving privileges of an authorized driver that is convicted of a DUI citation while operating a state vehicle are immediately and permanently revoked. Reinstatement of the driving privileges may be requested in writing by the head of the state agency in which the employee works. The director or designee will review the request and provide the state agency a written determination as to the employee's state vehicle driving privileges within ten (10) working days of the receipt of the request by the division.

F. It is the sole responsibility of the state employee to report all current convictions of driving while intoxicated to their immediate supervisor and the director. Failure to comply with this section shall cause immediate revocation of their driving privileges of state vehicles. It is the director's responsibility to report DUI convictions to the state employee's immediate supervisor and cabinet secretary or agency head. Disciplinary actions are the responsibility of the state agency.

G. The state authorized driver privileges shall be suspended while the employee goes through the DUI court and administrative process. If convicted, the authorized driver's state vehicle driving privileges shall be revoked. If not convicted, the state agency shall notify the director or designee in writing requesting that driving privileges be reinstated along with evidence of the dismissal of charges. The director or designee will review the request and provide the state agency a written determination as to the employee's state vehicle driving privileges within ten working days of receipt of the request for reinstatement by the division.

H. Revocation of state vehicle driving privileges for a DUI conviction extends to the utilization of the employee's personal vehicle if it is to be used to conduct state business.

[1.5.3.16 NMAC - Rp, 1.5.3.16 NMAC, 7-30-2015]

1.5.3.17 WEAPONS AND PETS PROHIBITED:

A. No authorized driver or passenger shall possess a weapon while operating a state motor vehicle unless the authorized driver or passenger is a certified law enforcement officer. This includes individuals with concealed

weapons licenses.

B. No pets allowed at any time in state vehicles. Upon written request, the director or designee may authorize canine patrols or transportation of other animals including assistance dogs. The director or designee will review the request and provide the state agency a written determination within ten (10) working days of receipt by the division. [1.5.3.17 NMAC - Rp, 1.5.3.17 NMAC, 7-30-2015]

1.5.3.18 SEAT BELT USE:

A. All authorized drivers and passengers of state vehicles shall wear seat belts.

B. All authorized drivers shall observe child safety and restraint laws at all times when transporting a minor in a state vehicle in furtherance of official state business.

C. Violation of this law may result in loss of state authorized driver privileges. [1.5.3.18 NMAC - Rp, 1.5.3.18 NMAC, 07-30-2015]

1.5.3.19 USE OF FUEL CREDIT CARDS:

A. All state agencies and authorized drivers are required to use the GSD/TSD contracted fuel credit card for authorized purchases.

B. The state agency shall assign a single fuel credit card to each vehicle using the state issued license plate number or a unique fixed asset number that is tied back to the vehicle that the card is assigned to.

(1) Credit card shall be kept with the assigned vehicle and not with the driver.

(2) Card is stored in the protective sleeve and out of direct sunlight or other heat sources.

(3) When purchasing items enter exact current mileage (no tenths).

(4) If a problem is encountered at the time of purchase, the driver should contact the credit card company for help.

(5) Lost, damaged, or stolen credit cards need to be reported to their agency fuel card account manager within one (1) working day of the discovery. Card will be suspended and a new card ordered at that time.

C. A personal identification number (PIN) shall be assigned to each authorized driver.

(1) Personal identification number must be six (6) digits long and requested from the

gasoline account manager in your agency at least twenty-four (24) hours in advance of anticipated use.

(2) Authorized drivers shall not share the PIN with anyone else or let someone else use the PIN.

(3) Agency fuel account managers are responsible for terminating personal identification numbers for employees who are no longer with the agency.

D. Whenever possible, authorized drivers shall use self-service fuel pumps when refueling motor pool vehicles. Every attempt shall be made to fill the vehicle at the cheapest location, which is usually a tier II station that sells unbranded fuel. Authorized drivers are required to use alternative fuels when they are approved by the manufacturer and when an alternative fuel vendor is located less than ten (10) miles away at the time fueling is needed. All non-flex fuel gasoline operated vehicles will use E-10 when a vendor is located less than ten (10) miles away at the time fueling is needed.

E. Each agency will evaluate fuel purchase exception reports provided by the fuel credit card company on a monthly basis.

(1) Each agency shall establish use requirements and parameters on their fleet. Such parameters will include multiple daily transactions, number of gallons purchased at one (1) time, limit dollars per transaction, off hour transactions, non-fuel transactions, and unauthorized purchases (soda, candy, etc.).

(2) Transactions that cannot be justified must be investigated with a formal report summarizing the findings with recommendations. A copy of the report will be sent to SCFA.

F. The fuel credit card may be used for road-side service, or emergency service or repairs not to exceed two hundred fifty dollars (\$250) per occurrence.

G. If an authorized driver uses the fuel credit card to purchase an unauthorized item or service, the state agency shall collect the cost of the unauthorized purchase from the authorized driver and an investigation will be conducted. Investigation findings must be sent to SCFA for review. The state agency or the director or designee may suspend or revoke the state vehicle operator privileges of an authorized driver for misuse of a fuel credit card.

H. A state agency or authorized driver shall immediately notify

the vendor contracted by GSD/TSD if the fuel credit card for a motor pool vehicle is lost.

I. All expenses charged to the contracted GSD/TSD fuel credit card shall be paid by the user agency.

J. Under no circumstance shall state fuel credit cards be used for personal vehicles, even if using a personal vehicle to conduct state business.

K. Misuse of state vehicle fuel credit cards will result in disciplinary actions. Disciplinary actions include, but are not limited to, administrative, disciplinary, and may also include criminal action by the state agency, the director, or designee, up to and including termination.

[1.5.3.19 NMAC - Rp, 1.5.3.19 NMAC, 7-30-2015]

1.5.3.20 AUTHORIZATION TO COMMUTE:

A. No authorized driver or passenger shall use a state vehicle for private use.

B. Commuting is defined as the consistent use of a state vehicle from assigned post of duty to domicile and from domicile to assigned post of duty, even if it is for short periods of time, i.e. legislative session. Occasional use is not considered commuting, i.e. taking the vehicle home the night before an out-of-town trip.

C. A state agency must develop a written policy that allows authorized drivers to use state vehicles to commute between work and residence for security purposes or if doing so is in the best interest of the state. Only the leasing agency's cabinet secretary of an executive department or the director of an independent executive state agency (not part of an executive department but still part of the executive) can approve the commuting policy and commuting of individual authorized drivers.

D. All agency cabinet secretaries or agency heads must acquire approval from the governor's office. Approvals must be forwarded to SCFA.

E. Each state agency permitting authorized drivers to utilize this domicile-to-duty privilege shall maintain current records of and provide a current copy of the following to SCFA:

(1) all state authorized commuters/passengers by name and position;

(2) the number of total miles each state authorized driver, who commutes, drives annually between work and residence using a state vehicle;

(3) the number of times annually a state authorized driver who is given written approval to use a state vehicle to commute between his assigned post of duty and his primary residence and is called back when the state employee is off-duty;

(4) review all authorizations to use a state vehicle to commute at least once a year; and

(5) provide an annual commuting report to SCFA that identifies by authorized commuter; the vehicle state plate, total commuting mileage, number of call backs for ending fiscal year; this report shall also identify drivers and state vehicle plates authorized to commute for the following year; this report is due sixty (60) days prior to each fiscal year.

F. State vehicles are not to be used to transport employees to and from public transportation drop off points.

G. Failure to provide this report to SCFA will result in vehicle lease termination.

[1.5.3.20 NMAC - Rp, 1.5.3.20 NMAC, 7-30-2015]

1.5.3.21 STATE VEHICLE CARE AND MAINTENANCE:

A. An authorized driver must turn off the ignition, close all windows, and lock the doors and trunk of a state vehicle whenever the state vehicle is left unattended.

B. State agencies and authorized drivers are responsible for assuring that state vehicles in their custody are parked in secure areas minimizing exposure to vandalism, damage, destruction, wreckage, sabotage, defacement or harm. If after multiple occurrences of vandalism, damage, destruction, wreckage, sabotage, defacement or harm occur, the agency head shall, in writing, request authorization from the director or designee for authorized drivers to take state motor vehicles to their place of residence for security purposes only. The authorization will be provided only if the state agency head or designee can prove that:

(1) the state agency's landlord does not provide a secure space for state vehicles; or,

(2) the state agency cannot avail itself of other secure state of New Mexico parking spaces; or,

(3) the state agency cannot acquire secure private sector parking spaces.

C. If the director or designee provides the approval, the state agency must comply with the reporting

and tracking requirements of 1.5.3.20 NMAC.

D. State agencies must ensure that the subscribed manufacturer's preventive maintenance service is done on all leased state vehicles at regular mileage, or time intervals, in accordance with the manufacturer's specifications, or as otherwise specified by the director or designee. For vehicles leased or owned by TSD, without exception, the agency is required to use TSD approved vendors. If there are vendors that are not on the list that are willing to provide repair or maintenance services the user agency must refer them to the TSD procurement office for inclusion to the TSD authorized vendor list. Under no circumstances will it be permitted for the authorized driver to receive services from an unauthorized vendor without a valid purchase order from TSD. Unauthorized expenses will be billed to the user agency.

(1) The state agency is responsible for ensuring that oil and oil filters on all leased state vehicles are changed in accordance with the manufacturer's specifications, TSD maintenance requirements, and that all other preventive maintenance functions performed are in accordance with the prescribed TSD service schedule, which is an attachment to the vehicle lease.

(2) A state agency, may without the prior approval of the director or designee, use the fuel credit card to perform minor repairs of emergency equipment, such as changing windshield wipers, repairing a damaged tire, replacing a fan belt, or adding a quart of oil, etc., in an amount not to exceed two hundred fifty dollars (\$250). If the emergency repairs will cost more than two hundred fifty dollars (\$250), it is the responsibility of the user agency to notify the TSD procurement officer of the need to execute an "emergency procurement" in accordance with the New Mexico Procurement Code, Chapter 13, Article 1 of the NMSA 1978.

E. State agencies are responsible for the cleanliness of leased state vehicles inside and out. State agencies are also responsible for checking the leased state vehicle's vital engine fluids and tire pressure at each refueling. SCFA will not be responsible for providing emergency road side kits, first aid kits, ice scrapers, fire extinguishers for the vehicles under its' control. State agencies are responsible for providing any of these types of equipment for their vehicles.

F. No authorized driver or passenger shall abuse or misuse a

leased state vehicle. The SCFA or a state agency head or designee may assess authorized drivers and authorized passengers for the costs of loss of or damage to a leased state vehicle if the loss or damage was caused by reckless driving or driving while under the influence of intoxicating liquor, controlled substances or drugs.

G. The SCFA will charge a state agency for the cost of repairing a leased state vehicle damaged due to neglect or abuse. The SCFA will charge the cost of repairs to a state agency if the state agency neglects a leased state vehicle or fails to inform the SCFA of possible damage or a maintenance problem. The director or designee may recall a leased state vehicle or suspend or revoke the authorized driver privileges for damage or improper care of a leased state vehicle.

H. State agencies may not display any commercial advertising on a state vehicle at any time. A state agency may display the agency's toll-free telephone number on a state vehicle. A state agency must be in compliance with the decals defined by Subsection C of 1.5.3.10 NMAC with a New Mexico government license plate. The director or designee must approve, in writing, any agency written requests for other bumper sticker, plaque or signage prior to the state agency affixing it to a state vehicle. For flex fuel vehicles, a state agency must display a sticker next to the gas port indicating the type of alternative fuel the vehicle can accept.

I. No person shall alter, modify, convert, or improve the original vehicle equipment of any state vehicle without the prior written authorization of the director or designee.

J. All TSD leased vehicles must be inspected by TSD at least once a year. Inspections will be held in various locations throughout the state. TSD reserves the right to conduct unannounced inspections of state vehicles. [1.5.3.21 NMAC - Rp, 1.5.3.21 NMAC, 7-30-2015]

1.5.3.22 STATE VEHICLE RETURN:

A. The director or designee may rotate state vehicles within an agency or between agencies if the director or designee determines that a state agency is under or over utilizing an assigned vehicle. The director or designee will notify the state agency of such occurrences and recommend the rotation. The director or designee, in conjunction with the state agency, will make the appropriate changes to the location of the

leased state vehicle.

B. Once TSD has notified a state agency that a replacement vehicle is available to exchange for a vehicle that has met or exceeded its life expectancy, or is no longer road worthy, the agency has thirty (30) days to execute the exchange.

C. The SCFA will notify state agencies if there is a manufacturer's recall applicable to a leased state vehicle. The state agency shall take the leased state vehicle to the appropriate dealer for service or modification, and shall, upon completion of the recall-related work, notify the SCFA.

D. The director or designee in conjunction with the SCFA and the state agency shall determine when a state vehicle needs to be replaced. Life cycles are determined primarily from user requirements provided by the agency fleet coordinator. A state agency must return a leased state vehicle to the division upon receipt of a new or different vehicle.

E. A state agency may return a leased state vehicle in accordance with the terms of the lease agreement. In no case will an agency turn in a vehicle that has not reached its life cycle while requesting additional units unless the agency satisfies the remaining balance of the turned in vehicles replacement cost.

F. A state agency shall not transfer, receive control of, or custody of, a leased state vehicle to or from another state agency without the prior written authorization of the director or designee.

[1.5.3.22 NMAC - Rp, 1.5.3.22 NMAC, 7-30-2015]

1.5.3.23 EMERGENCY REPAIRS AND MECHANICAL BREAKDOWN:

An authorized driver shall immediately take steps to correct any mechanical or operating problem that occurs while a TSD leased state vehicle is in operation. An authorized driver shall, in no case, continue to operate a state vehicle if continued operation could endanger any person or property. Furthermore, the authorized driver is responsible for immediately notifying the state agency fleet coordinator and SCFA account manager of any unsafe vehicle condition. Failure to comply with the notification portion of this section requires any costs to be billed to the user agency or reimbursed to TSD.

[1.5.3.23 NMAC - Rp, 1.5.3.23 NMAC, 7-30-2015]

1.5.3.24 VEHICLE UTILIZATION: The utilization standards establish the minimum

requirements for the use of passenger vehicles for the executive, legislative and judicial branches of the state of New Mexico. TSD, DOT, EMNRD, DGF and DPS develop and maintain vehicle utilization standards. These utilization standards are to be reviewed annually and subject to change based on increased fuel efficiencies (CAFE) and reduction of greenhouse gas emissions benchmarks. [1.5.3.24 NMAC - Rp, 1.5.3.24 NMAC, 7-30-2015]

1.5.3.25 UNDER-UTILIZATION OF STATE

VEHICLES: The director or designee may re-allocate state vehicles that are being under-utilized.

A. The director or designee shall analyze monthly leased state vehicle mileage statistics.

B. The director or designee may rotate state vehicles within an agency or between agencies if it is determined that a state agency is under or over utilizing an assigned vehicle. The director or designee will notify the state agency of such occurrences and recommend the rotation. The director or designee in conjunction with the state agency will make the appropriate changes to the location of the leased state vehicle.

C. If the director or designee finds that a leased state motor vehicle is accumulating low mileage, the director or designee will notify the state agency in writing that a state vehicle assigned to it is being under-utilized.

D. The state agency shall examine its utilization of the state vehicle and respond in writing justifying to the director or designee its need for the state vehicle and describing its intra-agency vehicle rotation plan. If the state agency does not provide such a plan, the director or designee will rotate vehicles among state agencies.

E. The director or designee will continuously monitor mileage utilization of the leased state vehicles. If the agency's use of the leased state motor vehicle does not increase, the director or designee may recall the vehicle or replace it with a state vehicle that has more mileage.

F. The director or designee will consider under-utilization of state vehicles when evaluating a state agency's requests for additional or different vehicles. [1.5.3.25 NMAC - Rp, 1.5.3.25 NMAC, 7-30-2015]

1.5.3.26 VEHICLE

DISPOSAL PROGRAM: The disposal

of vehicles is governed by Chapter 13, Articles 1 and 6 NMSA 1978. The director or designee in conjunction with the SCFA will consider disposing of a state vehicle when:

A. the leased state vehicle reaches the end of its predetermined accounting and life cycle;

B. the estimated cost of repairs exceed the value of the leased state vehicle; or,

C. the leased state vehicle is unsafe, inoperable or obsolete. [1.5.3.26 NMAC - Rp, 1.5.3.26 NMAC, 7-30-2015]

1.5.3.27 OUT-OF-STATE AND OUT-OF-COUNTRY TRAVEL IN-STATE VEHICLES:

A. The director or designee must approve in writing all out-of-state and out-of-country travel requests, in state vehicles, in advance.

B. The state agency must request the appropriate approval in writing including the following information:

(1) names of employee drivers/passengers - if travelers are not employees please provide their names, entity they represent and reason why they need to travel in a state vehicle (relatives or friends that are not conducting business in the furtherance of state of New Mexico business cannot travel in a state car);

(2) NM drivers' license numbers of all authorized drivers;

(3) copies of drivers national safety council/defensive driving certificate;

(4) G or SG-plates of vehicles making the trip;

(5) point of departure;

(6) points of destination, i.e. Santa Fe, New Mexico; to El Paso, Texas; to Ciudad Juárez, Chihuahua; to Chihuahua, Chihuahua; to Torreón, Coahuila, etc.

(7) date of departure;

(8) date of return;

(9) purpose for the travel, and;

(10) an agency approved travel request form including per diem costs.

C. The requesting agency must get approval from the governor's office.

D. The state agency fleet coordinator must provide the appropriate information to the director or designee based on the following schedules:

(1) for a non-state employee passenger waiver, at least five (5) working days notice;

(2) for an out-of-state waiver, at least ten (10) working days notice; and,

(3) for an out-of-country waiver at least ten (10) working days notice.

E. The authorized driver must have the proper insurance, vehicle registration and waiver documentation in-hand prior to the travel date. [1.5.3.27 NMAC - Rp, 1.5.3.27 NMAC, 7-30-2015]

1.5.3.28 ACCIDENTS AND ACCIDENT REPORTING:

A. An authorized driver, or appointed fleet coordinator, of a state vehicle owned or leased by GSD/TSD shall file an auto loss notice for any auto accident in a state vehicle within twenty-four (24) hours or the next business day regardless of the severity of the accident. A police report and automobile loss notice are required with or without property damage, bodily injury, whether or not the authorized driver is at fault.

B. The authorized driver shall provide the police accident report, automobile loss notice, and three (3) quotes for repair costs to RMD and a copy of the same to the agency vehicle coordinator and the TSD account manager.

C. If the authorized driver did not file a police report, the state agency fleet coordinator must complete the automobile loss notice and include the authorized driver's name and driver's license number, and any witnesses, written and notarized affidavit(s) describing the accident in detail, with distribution of the documents as previously described.

D. If the authorized driver is found to be at fault, the driver will be suspended and is required to take and pass a TSD approved instructor taught six (6)-hour NSC/DDC course.

E. RMD will assist the director or designee in maintaining accident reports and filing insurance claims for all state vehicles.

F. Since the premiums for RMD state passenger vehicles are part of the TSD lease rates, the deductible for any loss will be paid by TSD. However, if there is proof that the loss was caused by the negligence or abuse of a state employee, the user agency will bear the costs of the insurance deductibles up to two thousand five hundred dollars (\$2,500) and any other costs as may be determined by the director, or designee, and RMD.

[1.5.3.28 NMAC - Rp, 1.5.3.28 NMAC, 7-30-2015]

1.5.3.29 CUSTODY OF STATE VEHICLES:

A. Determination by director or designee. The director or designee may, on his own initiative or in response to a written request from a state agency, determine that custody of certain state vehicles should reside in a state agency. The director or designee shall make such determination in accordance with the criteria set forth in Subsection B of Section 15-8-6 NMSA 1978. All state vehicles in the custody of other state agencies shall be titled in the name of the division in accordance with Section 15-8-9 NMSA 1978.

B. Responsibilities of state agencies with custody of state vehicles. A state agency that has custody of one or more state vehicles shall:

(1) appoint an agency fleet coordinator who shall be responsible for answering any questions from the director or designee regarding the owned or leased TSD state vehicles in the state agency's custody;

(2) maintain an accurate inventory of all state vehicles in its custody, including any public property with a license plate;

(3) submit an inventory report to the director or designee by June 15th of each year for the fiscal year ending on June 30 of that year;

(4) notify the director or designee within thirty (30) days of any change in the name, address, telephone number, or facsimile number of the state agency or the agency fleet coordinator, or any change in the status of state vehicles in the state agency's custody;

(5) register all state vehicles using the name GSD/TSD/SCFA as the first lien holder or name;

(a) the name of GSD/SCFA as the first lien holder or name one (1); and,

(b) the name of the state agency as name two (2) and the state agency accounting code as "VIN two (2)",

(6) be responsible for all operation, maintenance, repair, and replacement costs of leased state vehicles in the state agency's custody;

(7) budget appropriately for replacement of leased state vehicles;

(8) develop written inventory, administrative,

operational, and replacement policies;

(9) develop a written policy regarding the use of leased state vehicles for commuting between work and residence;

(10) track all special use motor vehicles and motor vehicles leased or purchased totally or partially with federal funds using the vehicle identification number (VIN) instead of the license plate number; and

(11) maintain insurance coverage on non-TSD leased state vehicles in accordance with the requirements established by RMD.

C. License plates. On an annual basis, the director or designee shall determine which type of license plate shall be issued for each state vehicle in the custody of a state agency based on information provided by the requesting agency.

[1.5.3.29 NMAC - Rp, 1.5.3.29 NMAC, 7-30-2015]

1.5.3.30 USE-OF-STATE VEHICLES DURING INCLEMENT WEATHER:

A. No employee should be expected to travel if they feel unsafe due to inclement weather. The employee should inform their supervisor and request that the trip be delayed until the inclement weather hazard has dissipated.

B. No short term lease or "quik ride" vehicles will be issued while inclement weather conditions are present. Reservations will be rescheduled for a later time or date, depending on weather conditions and vehicle availability.

C. TSD reserves the right to prohibit the use of state vehicles during inclement weather.

[1.5.3.30 NMAC - Rp, 1.5.3.30 NMAC, 7-30-2015]

1.5.3.31 GLOBAL POSITIONING SYSTEMS - GPS:

A. GPS will be used to monitor the location and operation of vehicles in order to protect driver and vehicle safety and to improve fleet efficiency.

(1) TSD will establish statewide vehicle alerts in order to identify improper driving behaviors;

(2) TSD will provide oversight of vehicle monitoring and data reporting;

(3) Each agency assigned a state vehicle with a GPS device installed shall have access to the GPS tracking system in order to track and run reports for their agency vehicles and shall inform its employees about the use of the

GPS device and system alerts, including use for disciplinary reports and related purposes;

(4) All costs associated with an agency's use of GPS will be billed by TSD through its monthly billing system. Costs will flow through and be identified as an "add on".

B. Each agency will monitor the vehicles assigned to it in order to identify and document any unusual patterns or activity associated with specific GPS unit numbers by establishing alerts.

(1) each agency will be responsible for its own policy on informing its employees on the use of GPS including their use in determining disciplinary actions; reports displaying violations will be deemed a matter for inclusion in an employee's personnel file;

(2) each vehicle's travel data must be consistent with the work assignment of the employee operating the vehicle. TSD shall retain GPS data for the current calendar year and the previous calendar year; and,

(3) each agency that allows for commuting must still report these vehicle activities to TSD.

C. Each agency shall ensure that all personnel actions associated with the use of the GPS are in accordance to that agency's specific rules and regulations.

(1) TSD recommends that each vehicle that has a GPS device installed have a decal displayed in the interior clearly identifying that a GPS unit is installed and that all activity including speed and location is and will be monitored;

(2) each agency shall establish additional alerts that are specific to their operations such as hours of use and operation, route information, idling time, locations where vehicles travel outside their respective assigned areas, etc.; and,

(3) tampering with any GPS equipment is prohibited and offending employees may be subject to disciplinary action.

[1.5.3.31 NMAC - N, 7-30-2015]

1.5.3.32 WAIVER FROM TSD RULES:

The GSD secretary or authorized designee may waive any portion of this rule provided the request is submitted in writing. The director or designee or the state agency may suspend or revoke driving privileges of an authorized driver for failure to comply with any provision of this rule.

[1.5.3.32 NMAC - Rp, 1.5.3.31 NMAC, 07-30-2015]

HISTORY OF 1.5.3 NMAC:

Pre NMAC History: Material in the part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives: GSD 85-202, State Motor Vehicle Regulations, filed 10-28-85; GSD 90-202, State Motor Vehicle Regulations, filed 11-05-90.

History of Repealed Material:

GSD 90-202, State Motor Vehicle Regulations (filed 11-05-90) repealed 11-01-02.
1.5.3 NMAC, Administration and Use of State Vehicles (filed 10-01-2002) repealed 08-14-08.
1.5.3 NMAC, Administration and Use of State Vehicles (filed 07-30-2008) repealed 1-15-13.
1.5.3 NMAC, Administration and Use of State Vehicles (filed 12-20-2012) repealed 7-30-15.

Other History:

GSD 90-202, State Motor Vehicle Regulations (filed 11-05-90) was replaced by 1.5.3 NMAC, Administration and Use of State Vehicles, effective 11-01-02.
1.5.3 NMAC, Administration and Use of State Vehicles (filed 10-01-2002) was replaced by 1.5.3 NMAC, Administration and Use of State Vehicles, effective 08-14-08.
1.5.3 NMAC, Administration and Use of State Vehicles (filed 07-30-2008) was replaced by 1.5.3 NMAC, Administration and Use of State Vehicles, effective 1-15-13.
1.5.3 NMAC, Administration and Use of State Vehicles (filed 12-20-2012) was replaced by 1.5.3 NMAC, Administration and Use of State Vehicles, effective 07-30-2015.

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 35 INDIAN EDUCATION PART 2 IMPLEMENTING THE INDIAN EDUCATION ACT

6.35.2.1 ISSUING AGENCY:
Public Education Department
[6.35.2.1 NMAC - N, 07-30-15]

6.35.2.2 SCOPE: This rule applies to public school districts and the public education department.
[6.35.2.2 NMAC - N, 07-30-15]

6.35.2.3 STATUTORY AUTHORITY: Sections 9-24-8(D), 22-2-1 and 22-23A-1 et seq. NMSA 1978.
[6.35.2.3 NMAC - N, 07-30-15]

6.35.2.4 DURATION:
Permanent
[6.35.2.4 NMAC - N, 07-30-15]

6.35.2.5 EFFECTIVE DATE:
July 30, 2015, unless a later date is cited at the end of a section.
[6.35.2.5 NMAC - N, 07-30-15]

6.35.2.6 OBJECTIVE: The objective of this rule is to implement the Indian Education Act, Sections 22-23A-1 et seq. NMSA 1978.
[6.35.2.6 NMAC - N, 07-30-15]

6.35.2.7 DEFINITIONS:

A. "Advisory council" means the Indian education advisory council established pursuant to Section 22-23A-6 NMSA 1978.

B. "Assistant secretary" means the assistant secretary for Indian education of the public education department.

C. "Department" means the public education department.

D. "Division" means the Indian education division of the public education department.

E. "Fund" means the Indian education fund created in the state treasury.

F. "Secretary" means the secretary of education.
[6.35.2.7 NMAC - N, 07-30-15]

6.35.2.8 INDIAN EDUCATION ACT PURPOSES: The department will support and advance the purposes of the Indian Education Act to:

A. ensure equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for American Indian students enrolled in public schools;

B. ensure maintenance of native languages;

C. provide for the study, development and implementation of educational systems that positively affect the educational success of American Indian students;

D. ensure that the department partners with tribes to increase

tribal involvement and control over schools and the education of students located in tribal communities;

E. encourage cooperation among the educational leadership of Arizona, Utah, New Mexico and the Navajo Nation to address the unique issues of educating students in Navajo communities that arise due to the location of the Navajo Nation in those states;

F. provide the means for a formal government-to-government relationship between the state and New Mexico tribes and pueblos and the development of relationships with the education division of the bureau of Indian education and other entities that serve American Indian students;

G. provide the means for a relationship between the state and urban American Indian community members to participate in initiatives and educational decisions related to American Indian students residing in urban areas;

H. ensure that parents, tribal departments of education, community-based organizations, the department, universities, and tribal, state and local policymakers work together to find ways to improve educational opportunities for American Indian students;

I. ensure that tribes are notified of all curricula development for their approval and support;

J. encourage an agreement regarding the alignment of the bureau of Indian education and state assessment programs so that comparable information is provided to parents and tribes; and

K. encourage and foster parental involvement in the education of Indian students.
[6.35.2.8 NMAC - N, 07-30-15]

6.35.2.9 POST SECONDARY EDUCATION: The department shall collaborate with the higher education department and New Mexico post-secondary institutions, including teacher education programs, tribal colleges, and tribal education departments, to coordinate transition efforts for American Indian students in public schools pursuing post-secondary education and training, including sharing aggregate data on:

A. placement test scores; and

B. drop-out rates.
[6.35.2.9 NMAC - N, 07-30-15]

6.35.2.10 IMPLEMENTATION OF THE INDIAN EDUCATION ACT:

A. The secretary and the

assistant secretary shall:
 (1) collaborate, in cooperation with the Indian education advisory council, with state and federal departments and agencies and tribal governments to identify ways such entities can assist the department in the implementation of the Indian Education Act; and

(2) convene semiannual government-to-government meetings for the purpose of receiving input on education of tribal students.

B. The assistant secretary shall:

(1) work to expand appropriate Indian education for tribal students in preschool through grade 20;

(2) coordinate with appropriate administrators and divisions to ensure that department administrators make implementation of the Indian Education Act a priority;

(3) in accordance with the rules of the department and after consulting with the Indian education advisory council and determining the resources available within the department:

(a) provide assistance, including advice on allocation of resources, to school districts and tribes to improve services to meet the educational needs of tribal students based on current published indigenous best practices in education;

(b) provide assistance to school districts and New Mexico tribes in the planning, development, implementation and evaluation of curricula in native languages, culture and history designed for tribal and nontribal students as approved by New Mexico tribes;

(c) develop or select for implementation a challenging, sequential, culturally relevant curriculum to provide instruction to tribal students in pre-kindergarten through sixth grade to prepare them for pre-advanced placement and advanced placement coursework in grades seven through 12;

(d) provide assistance to school districts, public post-secondary schools and New Mexico tribes to develop curricula and instructional materials in native languages, culture and history in conjunction and by contract with native language practitioners and tribal elders, unless the use of written language is expressly prohibited by the tribe;

(e) conduct indigenous research and

evaluation for effective curricula for tribal students;

(f) collaborate with the department to provide distance learning for tribal students in public schools to the maximum limits of the department's abilities;

(g) establish, support and maintain an Indian education advisory council;

(h) enter into agreements with each New Mexico tribe or its authorized educational entity to share programmatic information and to coordinate technical assistance for public schools that serve tribal students;

(i) seek funds to establish and maintain an Indian education office in the northwest corner of the state or other geographical location to implement agreements with each New Mexico tribe or its authorized educational entity, monitor the progress of tribal students and coordinate technical assistance at the public pre-kindergarten to post-secondary schools that serve tribal students;

(j) seek funds to establish, develop and implement culturally relevant support services for the purposes of increasing the number of tribal teachers, administrators and principals and providing continued professional development, including training in cultural competency, for educational assistants, teachers and principals serving tribal students; in conjunction with the Indian education advisory council, the assistant secretary shall:

(i) support recruitment and retention of highly qualified teachers and administrators;

(ii) identify academic transition programs;

(iii) identify academic financial support;

(iv) support teacher preparation;

(v) support teacher induction; and

(vi) support professional development;

(k) develop curricula to provide instruction in tribal history and government and develop plans to implement these subjects into history and government courses in school districts throughout the state;

(l) ensure that native language bilingual programs are part of a school district's professional development plan, as provided in Section 22-10A-19.1 NMSA 1978;

(m) encourage participation in cultural competency training by educational assistants, teachers and principals serving tribal students; and

(n) develop a plan to establish a post-secondary investment system for tribal students to which parents, tribes and the state may contribute.

(4) require school districts to obtain a signature of approval by the New Mexico tribal governments or their government designees residing within school district boundaries, verifying that the New Mexico tribes agree to Indian education policies and procedures pursuant to federal requirements.

(a) If the district is unable to obtain the required signature(s), the district must submit a written, signed explanation of the reason(s).

(b) Tribal governments declining to provide a signature of approval will be afforded the opportunity to submit a written, signed explanation of the reason(s) for the refusal.

(c) A tribal leader or authorized designee of a tribe that has students attending a school district's schools may file a written compliant with the United States department of education regarding any action of the school district pursuant to, or relevant to, the school district's Indian policies and procedures in accordance with Subpart G of 34 CFR Part 222. [6.35.2.10 NMAC - N, 07-30-15]

6.35.2.11 TRIBAL EDUCATION STATUS REPORT (TESR):

A. Beginning at the close of school year 2015-2016, each school district with tribal lands located within its boundaries shall provide a districtwide tribal education status report to all New Mexico tribes represented within the school district boundaries. The report(s) must be provided no later than July 30th following the close of the previous school year. Copies of the reports must be provided to the assistant secretary at the time the reports are provided to the respective tribes.

B. The report must include the following information based upon data from the immediately preceding school year:

(1) student achievement as measured by a statewide test approved by the department, with results disaggregated by ethnicity; any cell

with an n of 9 or fewer must be masked;
 (2) school safety;
 (3) the graduation rate;
 (4) attendance;
 (5) parent and community involvement;
 (6) educational programs targeting tribal students;
 (7) financial reports;
 (8) current status of federal Indian education policies and procedures;
 (9) school district initiatives to decrease the number of student dropouts and increase attendance;
 (10) public school use of variable school calendars;
 (11) school district consultations with district Indian education committees, school-site parent advisory councils and tribal, municipal and Indian organizations; and
 (12) indigenous research and evaluation measures and results for effective curricula for tribal students.

C. The division shall submit a statewide tribal education report to all New Mexico tribes on or before November 15 of each year. The report will incorporate data submitted to the assistant secretary in accordance with Subsection A of this section and will further include reports by organizational units within the department regarding activities they are engaged in with tribes and pueblos related to the education of American Indian students.
 [6.35.2.11 NMAC - N, 07-30-15]

6.35.2.12 AWARDS:

A. The fund shall consist of all appropriations, gifts, grants, donations, and income from investment of the fund.

B. Awards from the fund shall be used to support and advance the purposes of the act.

C. At least annually, the department will establish and disseminate procedures for submission of requests for information/applications for grants from the fund, including the requirements that:

(1) requests for information/applications identify the program/goal to be achieved relevant to the act;
 (2) requests for information/applications describe how the program will be sustained beyond the fiscal year(s) being funded; and

(3) requests for information/applications describe how the effectiveness of the program(s) supported by the grant will be measured and reported to the department.

D. The assistant secretary will consult with the advisory committee regarding priorities for funding and the request for information/application process.

E. The recommendations of the advisory council, together with the recommendations of the assistant secretary, will be provided to the secretary. The secretary will make the final determination of projects approved for grant awards.

F. The grant agreements must include provisions for periodic expenditure reports to the division, including a final expenditure report, and for reports measuring the effectiveness of the program(s) supported by the grants.

G. All activities must be completed no later than June 30th of the fiscal year for which the award is made available. Recipients must submit requests for reimbursement or invoices for accounts payable no later than July 7th following the close of the fiscal year for which the award is made available.

[6.35.2.12 NMAC - N, 07-30-15]

HISTORY OF 6.35.2 NMAC:
 [RESERVED]

End of Adopted Rules Section

New Mexico Register
Submittal Deadlines and Publication Dates
Volume XXVI, Issues 1-24
2015

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

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

The New Mexico Register is available free online at <http://www.nmcpr.state.nm.us/nmregister>.
For further information, call 505-476-7942