

New Mexico Register / Volume XXXII, Issue 24 / December 28, 2021**AMENDED NOTICE OF PUBLIC RULE HEARING AND REGULAR BOARD MEETING**

The New Mexico Board of Licensure for Professional Engineers and Professional Surveyors has scheduled a rule hearing on Friday, February 4, 2022, at 9:00 a.m. to continue accepting public comment on proposed rules, which began with a public rule hearing held on Friday, December 4, 2021. Following the rule hearing, the Full Board will convene a regular board meeting to consider adoption of the rules and address regular business. Due to the COVID-19 pandemic and state of emergency, the rule hearing will be held online and telephonically utilizing the Zoom teleconferencing platform. A Board staff member will also be present on the day of the hearing, Friday, February 4, 2022, from approximately 8:00 a.m. to 9:00 a.m. at the Toney Anaya Building, located at 2550 Cerrillos Road, Santa Fe, 3rd floor, NM 87505, to accept comments in written form and submit those comments to the Hearing Officer during the hearing. To attend the hearing online, please use the following link:

<https://us02web.zoom.us/j/89653236490?pwd=WW5wTk45QXErd3lJMmpFb1I1K1R1UT09>

Meeting ID: 896 5323 6490
Passcode: 749785

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The purpose of the rule hearing is to consider proposed amendments, repealing and/or replacing the following rules.

12.8.2 NMAC - Minimum Standards for Surveying in New Mexico
16.39.1 NMAC - General Provisions
16.39.3 NMAC - Engineering Licensure, Disciplines, Applications, Exams, Practice, Seal of Licensee and Endorsements
16.39.5 NMAC - Surveying
16.39.6 NMAC - Licensure for Military Service Members, Spouses and Veterans
16.39.7 NMAC - Misc.

To obtain and review copies of the proposed changes and public comments, you may download them from <https://www.sblpes.state.nm.us/>. A copy of the proposed rules may be requested by contacting BLPEPS via Isaac Maes at Isaac.maes@state.nm.us, via mail at New Mexico Board of Licensure for Professional Engineers and Surveyors ATTN: BLPEPS Request for Rule P.O. Box 25101, Santa Fe, NM 87504 (505) 476-4565 or (505) 476-4802.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes via email to board.licensurepeps@state.nm.us. Alternatively, members of the public may submit written comments by sending an original, signed copy to: New Mexico Board of Licensure for Professional Engineers and Surveyors ATTN: BLPEPS Public Comments P.O. Box 25101, Santa Fe, NM 87504. The Board will accept written public comment received on or before 5:00 PM on January 29, 2022, as well as written public comment hand-delivered between approximately 8:00 a.m. to 9:00 a.m. at the Toney Anaya Building, located at 2550 Cerrillos Road, Santa Fe, 3rd floor, NM 87505 on the date of the rule hearing, Friday, February 4, 2022. All written comments will be posted to the

Board's website no later than three (3) business days following receipt to allow for public viewing. Persons will also be given the opportunity to present their oral or written comments at the public rule hearing via the Zoom teleconferencing platform.

The agenda for the Board meeting will be posted and available at least 72 hours before the meeting on the BLPEPS website at: <https://www.sblpes.state.nm.us/>.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Board office at (505) 476-4565 or (505) 476-4656. The BLPEPS requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Statutory Authority: Subsections B through E of Section 61-23-10 NMSA 1978 of the Engineering and Surveying Practice Act ("ES Practice Act"), Sections 61-23-1 to -36 NMSA 1978, specifically authorizes the Board, the Professional Engineering Committee, the Professional Surveying Committee, and the Joint Engineering and Surveying Committee to promulgate and amend rules of professional responsibility and to effect the provisions of the ES Practice Act. Section 61-23-14.1 NMSA 1978 of the ES Practice Act, provided additional grounds for reciprocity for engineers licensed in other jurisdictions. In addition, Section 61-23-17.4(A) NMSA 1978 of the ES Practice Act, changed the experience requirement for licensure as a professional surveyor and Section 14-4-5.7 of the State Rules Act, Sections 14-4-1 to -11 NMSA 1978 states "no rule is valid or enforceable if it conflicts with statute." Sections 61-1-31.1 and 61-1-34 of the Uniform Licensing Act ("ULA"), Sections 61-1-1 to -36 NMSA 1978, requires the Board to update its expedited licensure for military families. Further, Section 61-1-36 NMSA 1978 of the ULA, requires the Board to "promulgate and post on the board's website rules relating to licensing requirements to list the specific criminal convictions that could disqualify an applicant from receiving a license on the bases of a previous felony conviction." Sections 28-2-3 and 28-2-4 of the Criminal Offender Employment Act, Sections 28-2-1 to -6 NMSA 1978, provide how certain criminal records should be viewed when obtaining a license or other authority to practice the profession pursuant to Section 61-23-4 NMSA 1978.

Purpose of the Proposed Rules: The proposed amendment/repeal/replace of the rules is intended to provide greater clarity in existing regulatory and statutory requirements, ensure continued high levels of professionalism among licensees and certification holders, and to generally satisfy the Board's obligation "to safeguard life, health and property and to promote the public welfare." Section 61-23-2 NMSA 1978. In addition, there are proposed rule changes intended to address statutory changes to the Engineering and Surveying Practice Act. See S.B. 447, 53rd Leg. (N.M. 2019) available at <https://nmlegis.gov/Sessions/19%20Regular/final/SB0447.pdf> and H.B. 105, 46th Leg. (N.M. 2012) available at <https://nmlegis.gov/sessions/12%20Regular/final/HB0105.pdf>. Further, several of the proposed rule changes are intended to address recent statutory changes to address recent statutory changes to the Uniform Licensing Act. See S.B. 2, 55th Leg., 1st S.S. (N.M. 2021) available at <https://nmlegis.gov/Sessions/21%20Special/final/SB0002.pdf>, H.B. 120, 55th Leg., 1st Sess. (N.M. 2021) available at <https://nmlegis.gov/Sessions/21%20Regular/final/HB0120.pdf>, and H.B. 30, 54th Legis., 1st Sess. (N.M. 2020) available at <https://nmlegis.gov/Sessions/20%20Regular/final/HB0030.pdf>. The proposed rules also incorporate statutory changes to the Criminal Offender Employment Act. See S.B. 2, 55th Leg., 1st S.S. (N.M. 2021) available at <https://nmlegis.gov/Sessions/21%20Special/final/SB0002.pdf>.

Summary of the Proposed Changes:

12.8.2 NMAC - Minimum Standards for Surveying in New Mexico

The proposed amendment/repeal/replace to this part is to add "Basis of Bearing" under the definitions by removing the term elevation from the definition.

16.39.1 NMAC - General Provisions

The proposed amendment/repeal/replace to this part is to insert language regarding the Intern certification status, that it would no longer be active once a person attained a professional license as the professional license supersedes the Intern designation, clarifying that a licensee who requests for retired or inactive status cannot be approved unless the licensee does not have any pending complaints, pending litigation, and has completed any imposed disciplinary actions, and modifying the requirements of the reactivation of an inactive license of six (6) years or more.

16.39.3 NMAC - Engineering Licensure, Disciplines, Applications, Exams, Practice, Seal of Licensee and Endorsements

The proposed amendment/repeal/replace to this part is to add definitions for electronic signature, engineering experience and signature as well as to move or create subsections to clarify the subject matter related to the practice of engineering and the industrial exemption, and when more than one electronic signature is required. The rule also incorporates

additional grounds for reciprocity for engineers licensed in other jurisdictions as required by Section 61-23-14.1 NMSA 1978 of the Engineering and Surveying Practice Act.

16.39.5 NMAC - Surveying

The proposed amendment/repeal/replace to this part is clarify the use of acronyms by adding the definition of NCEES, and to align the rules with Section 61-23-17.4(A) NMSA 1978 of the ES Practice Act, which changed the experience requirement for licensure as a professional surveyor and in accordance with Section 14-4-5.7 of the State Rules Act, Sections 14-4-1 to -11 NMSA 1978. The rule also creates a new subsection and clarifies the industrial exemption and when more than one electronic signature is required.

16.39.6 NMAC - Licensure for Military Service Members, Spouses and Veterans

The proposed amendment/repeal/replace to this part is to add subsections to include requiring certain documentation to qualify for expedited licensure for military service members, spouses and veterans, the absence of a license fee for the first three (3) years, and the requirement of the Board to issue the expedited license within 30 days of a completed application pursuant to the Uniform Licensing Act, Sections 61-1-31.1 and 61-1-34 NMSA 1978.

16.39.7 NMAC - Misc.

The proposed amendment/repeal/replace to this part is to modify subsections to comply with the statutory changes to the Criminal Offender Employment Act and the Uniform Licensing Act. The rule also adds new language governing the Board's consideration of criminal convictions in applications and disciplinary matters, pursuant to Section 61-1-36 of the Uniform Licensing Act, listing the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction and adding related limitations on the Board's consideration of such convictions. The purpose of the rule is to ensure that applications and complaints against licensees and certification holders are evaluated and adjudicated in a fair and impartial manner that complies with due process while ensuring the public's continued confidence in the profession.

Technical Information: No technical information provided the basis for any of the proposed rules.