New Mexico
Department of Public Safety

MICHELLE LUJAN GRISHAM
GOVERNOR

JASON R. BOWIE
CABINET SECRETARY

MATT BROOM
INTERIM CHIEF

SYLVIA M. SERNA
DEPUTY SECRETARY

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Via email: Ivan.Ramirez-Arechiga@dps.nm.gov

Iván Ramírez-Aréchiga
Operations Officer
Law Enforcement Certification Board
4491 Cerrillos Road, P.O. Box 1628
Santa Fe, New Mexico 87504-1628

RE: Written comment of the New Mexico Department of Public Safety on the proposed amendment of 10.29.1 NMAC, repeal of 10.29.6 NMAC, and adoption of new 10.28.8.14, 10.28.8.15, 10.28.9.12 and 10.28.9.13 NMAC

(Notice of Public Hearing scheduled October 27 through 29, 2026)

Dear Members of the Law Enforcement Certification Board:

The Department of Public Safety (hereinafter "DPS") submits this written comment on the Law Enforcement Certification Board's (hereinafter "Board") proposed rules. DPS supports the Board's efforts to modernize its procedures and complete the certification-by-waiver framework. Several proposals respond directly to concerns DPS raised in its August 2026 comment on the Standards and Training Council's (hereinafter "Council") companion rules package: the notice correctly cites the Board's rulemaking authority under NMSA 1978, Section 29-7-4.3(H); the retired-district-judge chair and statutory quorum now track the statute; respondents receive thirty (30) days and counsel to answer an investigation; waiver denials become appealable to the Board; and the public misconduct database implements NMSA 1978, Section 29-7-16. Because DPS administers these rules through the New Mexico Law Enforcement Academy (hereinafter "NMLEA") every day, it has also identified significant legal problems that must be corrected before adoption. The most important are set forth below.

The Board's rulemaking authority is limited, and portions of its proposed rules exceed that authority and intrude upon authority expressly assigned to the Council.

The Legislature has expressly vested the Council with broad rulemaking authority under NMSA 1978, Section 29-7-4(E), authorizing the Council to "adopt, publish and file, in accordance with the provisions of the State Rules Act [Chapter 14, Article 4 NMSA 1978], all rules concerning the implementation and enforcement of Sections 29-7-2 through 29-7-7.7, 29-7-12, 29-7-14, 29-7C-4, 29-7C-5 and 29-7C-7 NMSA 1978." NMSA 1978, Section 29-7-4(E). This grant of authority is significant: the Legislature expressly assigned the Council responsibility for all rules concerning the implementation and enforcement of these statutory provisions.

By contrast, the Board's rulemaking authority is limited to "all rules concerning the implementation and enforcement of the Law Enforcement Training Act and Public Safety Telecommunicator Training Act except those sections enumerated in Subsection E of Section 29-7-4 NMSA 1978 for which rules shall be adopted, published and filed by the council." NMSA 1978, Section 29-7-4.3(H). The Board does not possess a general or unlimited rulemaking power over matters arising under Chapter 29, Article 7. Its authority is limited to those matters the Legislature specifically placed within the Board's statutory responsibilities. The Board, therefore, cannot expand its own jurisdiction through rulemaking or promulgate rules governing subjects that the Legislature assigned to the Council.

The Board's proposed 10.28.8 and 10.28.9 NMAC extend into matters directly concerning law enforcement training and the implementation of statutory provisions that fall within the Council's expressly delegated rulemaking authority. To the extent the Board's proposed rules regulate those matters, the Board is not merely duplicating the Council's rules; it is attempting to exercise rulemaking authority that the Legislature did not grant to the Board and instead expressly vested in the Council. This distinction is particularly important because an administrative body's authority to promulgate rules must originate from statute. The Board cannot enlarge the scope of its statutory authority by adopting regulations in areas outside of its legislative mandate. Accordingly, provisions of the Board's proposed 10.28.8 and 10.28.9 NMAC that govern matters committed by statute to the Council exceed the Board's rulemaking authority and should not be promulgated by the Board.

Conflicting and duplicative rules will create substantial uncertainty and significantly disrupt daily operations.

Both the Council and Board are proposing versions of newly created 10.28.8 and 10.28.9 NMAC sections, and the respective versions contain substantive differences. In addition, both sets of proposed rules duplicate various provisions currently contained in 10.29 NMAC, without repealing the existing 10.29 provisions. If all of the proposed rules are promulgated, there could be three separate and potentially conflicting sets of rules governing the same subject matter. This would create significant legal and practical problems. Staff, regulated entities, hearing officers, and decisionmakers would be required to determine, potentially on a case-by-case basis, which of multiple conflicting provisions governs a particular matter and which version of a rule was in effect and applicable at the relevant point in time. That determination could become particularly difficult in matters that span different effective dates or involve conduct, investigations, applications, disciplinary proceedings, or other actions occurring over an extended period.

The resulting uncertainty would directly interfere with daily operations. Rather than applying a single, clearly established regulatory framework, staff would have to repeatedly identify and compare competing provisions before determining how to process matters, provide guidance, make decisions, or take enforcement or administrative action. Different staff or decisionmakers could reasonably reach different conclusions about which rule controls, resulting in inconsistent application, delays, rework, and disputes over the validity of agency actions. As such, the problem would extend well beyond simple confusion: the conflicting regulatory schemes could