make portions of the rules extremely difficult to administer consistently and, in some circumstances, potentially impossible to apply with confidence.

**The new sections of NMAC have no lawful home.**

The Board proposes to adopt the four (4) reserved subsections in 10.28.8 NMAC (10.28.8.14 and 10.28.8.15; 10.28.9.12 and 10.28.9.13), parts of a chapter that exists only as the Council's July 2026 proposal, which has not been adopted or filed. Additionally, each part identifies the Council, not the Board, as the issuing agency, despite being proposed by the Board. Each part's statutory-authority section also cites only the Council's rulemaking subsection—and actually miscites it. There is no "Paragraph (1) of Subsection E of Section 29-7-4" that is stated in 10.28.8.3 NMAC, and Section 29-7-4(E) does not cover the waiver statutes at all. The noted sections, NMSA 1978, Sections 29-7-10 and 29-7C-6, fall outside the Council's enumerated list. Therefore, these rules belong to the Board under NMSA 1978, Section 29-7-4.3(H), in a part that the Board issues, citing the Board's authority, and adopted in coordination with the Council because both waiver statutes allow the Board to act only "with the approval of the council."

If the Council's rules package is not adopted, the Board's sections would refer to parts that do not exist; if it is adopted as noticed in July, two (2) entities will have noticed different texts for the same section numbers, since the Council reserved 10.28.8.14 for the officer waiver program in July, while the Board's 10.28.8.14 in September repeats, word-for-word, the separation rules also appearing in 10.28.8.12. The condition of the carried-forward text underscores the problem: the September formatting removed the subsection lettering after (F) in 10.28.8.11, so Subsection (E) still direct readers to "Subsection G," and Subsection (F) still direct readers to "subsections G through K of 10.28.8.11" for the target-and-scoring methodology, ammunition, equipment, and day and night qualification-course provisions, which now appear with no designations at all. Moreover, the September copy itself flags the dangling "G through K" reference in red highlighting without resolving it.

**Certification by waiver would be repealed but never replaced.**

Current 10.29.6 NMAC contains the operative waiver program: the 80-hour accredited course and its block curriculum, the certification examination at seventy percent, the credit formula of forty (40) hours per year of service up to 400 hours, and the specific pathways for retirees, active-duty military police, out-of-state officers, never-certified academy graduates, and telecommunicators. The proposed repeal eliminates all of it, and the replacement sections cover only out-of-state and federal applicants. Further, they still depend on the very program being repealed: proposed 10.28.8.15(D) requires documentation of "successful completion of an accredited New Mexico certification by waiver program," and the separation rules route officers back through "a certification by waiver of the basic training program," yet no rule in either the Council's or Board's rules package establishes that program, its hours, its curriculum, or its accreditation.

DPS also notes that a 2022 district court decision reversed the Board's predecessor for denying a retiree's application without considering the retiree provision of 10.29.6 NMAC; repealing that provision without any replacement, and without notice to those relying on it, invites the same due-process challenge. *Skotchdopole v. N.M. Law Enf't Acad. Bd.*, No. D-101-CV-2021-01775 (N.M. 1st Jud. Dist. Ct. June 27, 2022). The repeal should not take effect until the Board adopts and implements a complete replacement program, developed with the Council, that sets training curricula under NMSA 1978, Sections 29-7-3(B) and 29-7-4(B), with a savings clause for pending applications.

**Several new provisions conflict with the statutes they implement.**

Proposed 10.28.9.13(D)(2) requires an affidavit of United States citizenship and affidavit of a current driver's license, but NMSA 1978, Section 29-7C-3 qualifies telecommunicator applicants who are citizens or legal residents and contains no driver's-license requirement. Proposed 10.28.9.13(F) would let applicants with "previous dispatch experience" sit for the certification exam without completing an equivalent training program, but NMSA 1978, Section 29-7C-6(A) permits waiver only for applicants who furnish evidence of completed training "substantially equivalent" to the basic program "in the director's opinion;" experience alone is not a statutory basis. Moreover, the same subsections route equivalency questions to the Council, although the statute assigns that opinion to the director. Proposed 10.28.8.15(C)(2) strings the officer qualification items together with "or," turning the mandatory requirements of NMSA 1978, Section 29-7-6(A) into alternatives.

**The 10.29.1 amendment misstates its own effective date.**

The cover line says the amendment is "to be effective 9/9/2026," while the effective-date section reads "TBD." Under NMSA 1978, Section 14-4-5, a rule may not be adopted until the comment period ends, is not valid or enforceable until published in the New Mexico Register, and takes effect on the date of publication unless a later date is stated. No provision of this rules package can carry an effective date of September 9, 2026.

**The Board's own rulemaking-notice rule would be reduced to less than required by law.**

Amended 10.29.1.8(F)(1) deletes the requirements that notice of the Board's rule hearings be published in at least one (1) newspaper of general circulation and provided to persons who requested notice, leaving posting on the Board's website alone. The State Rules Act defines "provide to the public" as distribution through each of seven (7) channels, including the Sunshine Portal and electronic mail to requesters. NMSA 1978, Section 14-4-2(E). It permits an agency's own procedural rules only if they give the public at least as much opportunity to participate as the attorney general's default rules. NMSA 1978, Section 14-4-5.8. NMSA 1978, Section 9-19-6(E) separately requires newspaper publication and mailed notice for department regulations affecting persons outside DPS, a requirement DPS invoked in its August 2026 comment on the Council's rules package. The deletion should be reversed.

**Deleting the admission-qualifications rule creates a gap.**

The amendment strikes the entire current 10.29.1.10, the officer and telecommunicator admission qualifications, and the written status and appeal rights that go with them. The replacements exist only in the Council's unadopted rules package, and in a form that makes the mandatory qualifications of NMSA 1978, Sections 29-7-6 and 29-7C-3 discretionary. Until conforming Council rules are effective, the deletion leaves no admission rule in the Code, contradicts Part 1's own objective clause, and deletes the renumbered grounds section's cross-reference to itself in 10.29.1.10 concerning admission.

**The discipline revisions need internal reconciliation.**

The emergency-action section couples a district-court injunction procedure in *Skotchdopole* with a separate direct suspension-and-revocation notice promising a hearing "within fifteen days" in 10.29.1.10, which cannot be squared with the thirty-day hearing request and ninety-day hearing in 10.29.1.13 or with the notice-and-hearing structure NMSA 1978, Section 29-7-13(B) requires. No statute is cited authorizing the Board to seek injunctions in 10.29.1.10. Telecommunicator grounds appear twice in overlapping subsections in 10.29.1.10; the false statement ground is expanded beyond NMSA 1978, Section 29-7-13(A), while the dishonesty-or-fraud ground is narrowed. Hearings become categorically closed with all exhibits sealed in 10.29.1.14, which reaches farther than the confidentiality NMSA 1978, Section 29-7-4.3(K) gives investigation documents and will likely lead to Inspection of Public Records Act disputes. The requirement that final orders contain findings of fact is stricken in 10.29.1.15. The ten-day address update duty in 10.29.1.16 conflicts with the thirty-day academy rule of 10.28.1.8 in the Council's pending July rules package. The draft also retains extensive visible markup, duplicated words, a skipped subsection letter, and cross-references to renumbered sections. It should be reissued with a clean text version before any adoption.

In summary, DPS respectfully requests that the Board not adopt the rules package as currently noticed. The certification-by-waiver provisions should be developed in coordination with the Council, whose approval is required under both waiver statutes and whose proposed 10.28 NMAC chapter would contain these provisions. Coordination is particularly necessary because both the Council and Board have proposed separate and substantively different versions of 10.28.8 and 10.28.9 NMAC, while provisions in both sets of proposed rules also overlap and conflict with existing provisions of 10.29 NMAC that would remain in effect. If adopted as proposed, these competing rules would create multiple, potentially conflicting regulatory schemes governing the same subject matter, leaving regulated parties and those responsible for administering the rules to determine which provision controls. Therefore, the Council's and Board's rulemaking efforts should be coordinated and appropriately sequenced to eliminate these conflicts and ensure that no existing rule is repealed before its replacement becomes effective and that no rule is adopted into a part that does not yet exist.

Additionally, the proposed amendment to 10.29.1 NMAC should include a clean, reconciled version incorporating the proposed amendments into the existing rule. A corrected rule package, properly noticed in accordance with NMSA 1978, Sections 14-4-5.2 and 14-4-2(E), as well as the publication requirements discussed above, would allow the Board to adopt a clear and internally consistent set of rules that can be implemented immediately and applied consistently, without unnecessary legal or operational uncertainty.

DPS appreciates the Board's work and shares its goal of establishing a complete, legally sound, and workable certification framework that effectively serves New Mexico's law enforcement officers, telecommunicators, and agencies. These comments are offered to identify and resolve significant legal, procedural, and operational issues before the rules are finalized. Addressing these issues is necessary to ensure that the final rules are consistent with the governing statutes, properly aligned with the Council's statutory authority and companion rulemaking, and capable of implementation and consistent application from the date they take effect.

Respectfully submitted,



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cc: Julie M. Gallardo, Acting Chief Legal Counsel, DPS Office of Legal Affairs