

NEW MEXICO AUTO THEFT PREVENTION AUTHORITY

In the Matter of Adopting a
New Rule Regarding the
New Mexico Automobile Theft
Prevention Authority
13.22 and 13.22.2 NMAC Hearings

VIDEOCONFERENCE HEARING

DATE: Tuesday, November 1, 2022
TIME: 9:04 a.m.
BEFORE: Lawrence M. Marcus, Hearing Officer
LOCATION: Remote Proceeding
Santa Fe, NM 87501
REPORTED BY: Brett Torrence, Notary Public
JOB NO.: 5490533

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A P P E A R A N C E S

MARGARET CAFFEY-MOQUIN, CHIEF STAFF COUNSEL (by
videoconference)
Office of Legal Counsel of the
New Mexico Office of Superintendent of Insurance
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DEVIN CHAPMAN, ATTORNEY SUPERVISOR OF PROSECUTION
(by videoconference)
New Mexico Office of Superintendent of Insurance
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ALSO PRESENT:

Freya Joshi (by videoconference)
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freya.joshi@state.nm.us

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E X H I B I T S

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P R O C E E D I N G S

THE REPORTER: Okay. We are now on the record at 9:04 a.m. MT.

THE HEARING OFFICER: Thank you very much.

Good morning. We are on the record in Docket Number 2022-0072, and the time is -- well, it was 9:04 -- according to my computer 9:02, but well, close enough, I guess.

My name is Larry Marcus. I am an associate legal counsel for the Office of Superintendent of Insurance for the State of New Mexico, and I have been appointed by the superintendent of insurance as the hearing officer for this hearing.

Because we are conducting this hearing by videoconference and by telephone, I ask all participants to mute your mic or your phone until called upon. This will ensure that the court reporter can make a clean record and that all participants can hear the proceedings.

I will be presiding over this hearing in Docket Number 2022-0072. Transcripts of the hearing will be filed to the docket for the proposed rule.

1 The caption in this rulemaking is In
2 the Matter of Adopting a New Rule Regarding the New
3 Mexico Automobile Theft Prevention Authority.

4 If the new rule is adopted, it will be
5 incorporated into the New Mexico Administrative Code
6 as Title 13, Chapter 22, Part 2, and this will also
7 create a new chapter of the New Mexico Administrative
8 Code Title 13, Chapter 22.

9 In addition to the general rulemaking
10 authority found in the New Mexico Insurance Code,
11 statutory authority for promulgation of the proposed
12 rule is found at NMSA 1978, Section 59A-16C-5,
13 59-A-16C-16, and 59-A-16C-17.

14 These sections, respectively, authorize
15 the superintendent to promulgate rules related to the
16 creation and operation of the New Mexico Auto Theft
17 Prevention Authority, authorize the superintendent to
18 promulgate rules for the Insurance Fraud Act
19 generally, and create and describe the automobile
20 theft prevention authority.

21 The Notice of Proposed Rulemaking was
22 published, as required by law, in the New Mexico
23 Register on September 27, 2022, and in the Albuquerque
24 Journal on the same day. And also, on that same day,
25 it was distributed via OSI's newsletter to a list of

1 potentially interested parties.

2 The Notice of Proposed Rulemaking and
3 the full text of the proposed rules are available
4 through a link on the OSI website. All have also been
5 available through the New Mexico Sunshine Portal,
6 again, as of September 27, 2022, and upon request from
7 the New Mexico Office of Superintendent of Insurance.

8 In addition to scheduling this public
9 comment hearing, the Notice of Proposed Rulemaking
10 provided the interested parties, including insurers,
11 the attorney general, members of the judiciary, and
12 members of the public, with the opportunity to submit
13 written comments no later than 4:00 p.m., Mountain
14 Daylight Time, today, Tuesday, November 1, 2022.

15 Oral comments will be accepted today at
16 this public hearing of interested persons, and written
17 responses to any written or oral comments may be filed
18 to the docket no later than 4:00 p.m. Mountain
19 Standard Time -- remember to turn your clocks back
20 this weekend -- on Monday, November 14, 2022.

21 Pursuant to the Notice of Proposed
22 Rulemaking, any oral comments from today's hearing and
23 written comments filed for the docket will be
24 considered by the superintendent. And there have been
25 some written comments already filed to the docket.

1 And, again, it remains open until four o'clock in the
2 afternoon today.

3 So that the superintendent does not
4 initiate, permit, or consider a communication directly
5 or indirectly with the party or a party's
6 representative outside of the presence of other
7 parties regarding this matter until the record has
8 been closed, the superintendent will close the record
9 in this matter on the earlier of 30 days following the
10 public hearing -- that will be 30 days from today --
11 or the date a final order is issued in this case.

12 Once the record is closed, no further
13 oral or written communication concerning this
14 rulemaking will be entertained or considered by the
15 superintendent.

16 The purpose of this hearing is for the
17 Office of Superintendent of Insurance to receive oral
18 comments on the rule incorporated by reference into
19 the Notice of Proposed Rulemaking.

20 Pursuant to the Notice of Proposed
21 Rulemaking, all public comments will be accepted at
22 this public hearing.

23 We are continuing to practice social
24 distancing as a result of the COVID-19 pandemic that
25 we are experiencing. Because of the social distancing

1 requirements, we are conducting this public hearing by
2 video conference and by telephone. I ask you to bear
3 with me as we attempt to navigate this unusual
4 situation.

5 Again, for the benefit of our record
6 and for the benefit of all participants, please mute
7 your microphone or telephone until called upon.

8 When I call upon you, don't forget to
9 unmute your audio, but please put it on mute again
10 when finished with your comments. Even normal
11 background noise can interfere with the ability to
12 conduct this hearing.

13 If you intend to offer oral comments at
14 today's public hearing, please type your name into the
15 chat function on your screen directed to everybody. I
16 will then call the participants one at a time to
17 provide comments. If you are appearing by phone, I
18 will ask for your comments after I go through those in
19 the chat. I think the only phone number listed is the
20 court reporter, but I'll see at the end once all the
21 comments in the chat have been reviewed.

22 When I call on you by name for comment,
23 please speak clearly so that everyone can hear you,
24 and state your name, address, and any organization you
25 represent. Please also spell your name for the

1 benefit of the record.

2 There may be times when I or the court
3 reporter will ask you to slow down or repeat something
4 so we can make a complete record of today's hearing.

5 Thank you for your patience.

6 Let's begin the comments with -- let's
7 see, Margaret Caffey-Moquin and Devin Chapman, OSI.

8 By the way, I apologize in advance if I
9 mess up the pronunciation of anyone's name. But you
10 may proceed.

11 MS. CAFFEY-MOQUIN: Thank you,
12 Mr. Hearing Officer. I am Margaret Caffey-Moquin. I
13 am with the Office of Legal Counsel of the Office of
14 Superintendent of Insurance, and I'd like to introduce
15 Mr. Devin Chapman who is the Supervising Prosecuting
16 Attorney of the OSI's Fraud Bureau.

17 And Mr. Chapman will be offering oral
18 comments, and I will ask some questions of Mr. Chapman
19 to elicit his commentary.

20 THE HEARING OFFICER: All right.
21 Proceed please.

22 MS. CAFFEY-MOQUIN: All right.

23 Mr. Chapman, please state your name for
24 the record.

25 MR. CHAPMAN: Good morning, my name is

1 Devin Chapman.

2 MS. CAFFEY-MOQUIN: And how are you
3 employed?

4 MR. CHAPMAN: I am currently the
5 Attorney Supervisor of the Prosecution Section of the
6 OSI's Insurance Fraud Division.

7 MS. CAFFEY-MOQUIN: Thank you. I knew
8 you could answer that with more precision than I
9 described it.

10 Please tell us, briefly, what you do in
11 that capacity.

12 MR. CHAPMAN: In that capacity, I
13 supervise two other prosecuting attorneys as well as
14 three paralegals, all responsible with handling all
15 the prosecution duties that the superintendent's
16 office is charged with covering not only insurance
17 fraud, which has been their responsibility and legacy
18 for, I think, since the creation of the office, but
19 with the addition of the Auto Theft Prevention
20 Authority as a result of the 2018 legislative session,
21 we've also taken on responsibility of administering
22 that program in taking on auto theft prosecutions
23 across the state.

24 MS. CAFFEY-MOQUIN: Thank you.

25 Mr. Court Reporter, I will be referring

1 to the New Mexico Automobile Theft Prevention
2 Authority as NMATPA.

3 THE REPORTER: Understood.

4 MS. CAFFEY-MOQUIN: Mr. Chapman --
5 thank you so much.

6 Mr. Chapman, how does NMATPA fit in
7 with your work?

8 MR. CHAPMAN: Day-to-day wise, we work
9 not only with the five sworn law enforcement officers
10 that are also part of our division within OSI, but we
11 also work with law enforcement agencies across the
12 state in working with them in both investigating and
13 prosecuting the more prolific and more problematic
14 auto theft offenders in various jurisdictions.

15 On a day-to-day basis, that means we're
16 talking to many field detectives and officers,
17 answering questions about warrants, getting -- you
18 know, running the legal ramifications of any of their
19 considered investigatory actions that they're looking
20 at, and then adopting cases that they bring to our
21 attention or that we find fit within the scope of what
22 we're trying to do with the Auto Theft Prevention
23 Authority. And, again, because of the small size, we
24 have to focus on what we believe are the worst of the
25 worst of those offenders and address those.

1 The overall scope of the ATPA was
2 originally envisioned to not only conduct those
3 activities but also to encourage the interaction among
4 law enforcement across the state in conducting auto
5 theft prevention and investigation activities across
6 the state. And this proposed rule that we are here
7 for today is a step in setting up the structure that
8 was envisioned by the originating legislation giving
9 the Authority the ability to issue grants to encourage
10 those kinds of activities.

11 MS. CAFFEY-MOQUIN: And, Mr. Chapman,
12 is auto theft a serious problem in New Mexico?

13 MR. CHAPMAN: For at least the last
14 eight to ten years, New Mexico as a whole, and
15 especially Albuquerque, have been ranked in the top
16 ten of the worst among their peers for auto theft.
17 Beginning, I believe it was in 2016, Albuquerque
18 started a run of three straight years as the worst-
19 rated city in the entire country for auto theft.

20 And because Albuquerque is where the
21 people are, it, for good or ill, often drives what
22 happens across the rest of the state. And New Mexico,
23 as a whole, was rated just as poorly for most of that
24 period of time.

25 It has improved somewhat since the

1 darkest days back in 2016 and '17. But the short
2 answer to your question is: Yes. We are still in the
3 top five, both -- both in Albuquerque the city, and
4 the state as a whole, and it still is a significant
5 problem across the entire state.

6 MS. CAFFEY-MOQUIN: Does the OSI Fraud
7 Bureau staff support the proposed rule?

8 MR. CHAPMAN: Yes, we do.

9 MS. CAFFEY-MOQUIN: And could you
10 please explain why?

11 MR. CHAPMAN: As I mentioned, the
12 originating legislation would give us the ability to
13 implement the duties that were originally outlined in
14 the ATPA legislation as well as mirroring what ATPAs
15 do in other jurisdictions across the country.

16 We don't have a formal structure for
17 administering or issuing the kinds of grants that were
18 envisioned. And this rule would be a step in giving
19 us that kind of structure to allow us to do so once we
20 secure funding to do so.

21 MS. CAFFEY-MOQUIN: And does NMATPA
22 have a board?

23 MR. CHAPMAN: We do. There are, I
24 believe, nine members of the board. There are two
25 permanent members, both the superintendent himself and

1 the executive director of the association of the -- or
2 the Administrative Office of the District Attorney is
3 Henry Valdez. There are two law enforcement officers
4 and four members representing the insurance industry
5 themselves from various corporations, companies
6 working in the insurance industry, and one at-large
7 member.

8 MS. CAFFEY-MOQUIN: Has the board
9 reviewed the proposed rule?

10 MR. CHAPMAN: On multiple occasions,
11 yes, they have, and they have voted unanimously to
12 approve the rule in its current form.

13 MS. CAFFEY-MOQUIN: Thank you. When do
14 you recommend that the rule should take effect?

15 MR. CHAPMAN: I believe we're hoping to
16 have it take effect by the end of the calendar year.

17 MS. CAFFEY-MOQUIN: Do you recommend
18 any change --

19 MR. CHAPMAN: -- any --

20 MS. CAFFEY-MOQUIN: I'm sorry, I didn't
21 hear --

22 MR. CHAPMAN: I'm sorry, I -- I
23 apologize.

24 MS. CAFFEY-MOQUIN: I apologize.
25 Please continue.

1 MR. CHAPMAN: The hope is, as I
2 mentioned and alluded to earlier, we are making
3 efforts again to try and secure funding to allow us to
4 do the grant program that, as I said, was originally
5 envisioned in order to make that an easier decision
6 for our friends in the legislature. We're hoping to
7 be able to present them with this structure to show
8 them that we're ready to go. We just need the funds
9 to do so.

10 MS. CAFFEY-MOQUIN: Thank you. I
11 apologize for the interruption.

12 Do you have any changes you'd like to
13 recommend to the rule as proposed?

14 MR. CHAPMAN: I don't believe I have
15 any others beyond what is included in the initial
16 written comments that were submitted by OSI staff.

17 MS. CAFFEY-MOQUIN: Thank you.

18 Do you have anything to add to your
19 comments this morning?

20 MR. CHAPMAN: Not at this time other
21 than I'd be happy to stand for any questions.

22 MS. CAFFEY-MOQUIN:
23 Mr. Hearing Officer, staff concludes its oral comments
24 for now, but will stand for questions as Mr. Chapman
25 just stated. And, of course, staff reserves the right

1 to respond to other oral comments if necessary during
2 this hearing.

3 THE HEARING OFFICER: I have no
4 questions at this time. Thank you.

5 Ms. Caffey-Moquin and Mr. Chapman,
6 thank you very much for your comments.

7 Now, the next on the list is
8 Brian Terrio -- again, I apologize if I mess up your
9 name -- from the Safeway Insurance Company.

10 You may proceed. Are you there?

11 MR. CHAPMAN: I don't see him on the
12 call any longer, Mr. Hearing Officer.

13 THE HEARING OFFICER: Okay. Maybe he
14 dropped off. Let's see. I don't see him either. He
15 put his name down and then he decided to leave? Well,
16 that happens I guess.

17 He may have had some technical issues.
18 So we can wait a little bit, maybe a couple of minutes
19 just to make sure that he can get in.

20 All right. I figured I'd give him
21 until 9:20. He doesn't seem to be coming back on. I
22 assume he's not in the waiting room.

23 MS. JOSHI: He is not.

24 THE HEARING OFFICER: Okay. All right.
25 In which case, I -- does anyone else have any other

1 comments that they wish to add? I think there was
2 only one phone number and that's the court reporter.
3 Is that -- I can't -- I'm trying to think if there's
4 any -- I can't see -- I don't see any other phone
5 numbers, so there's no one waiting by the -- trying to
6 call into this.

7 Does anyone else have any comments?
8 Going once. Going twice.

9 All right. Well, I guess that
10 concludes the comments.

11 Again, everybody should remember that
12 they have until four o'clock this afternoon to submit
13 written comments. And any responses may be submitted
14 until four o'clock on the 14th.

15 I thank each and every one of you for
16 your participation in and attention to this hearing.

17 This concludes this hearing. The
18 hearing is now adjourned. Thank you very much
19 everyone.

20 We are off the record.

21 THE REPORTER: Off the record at
22 9:23 a.m.

23 (Whereupon, at 9:23 a.m., the
24 proceeding was concluded.)

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CERTIFICATE OF DEPOSITION OFFICER

I, BRETT TORRENCE, the officer before whom
the foregoing proceedings were taken, do hereby
certify that any witness(es) in the foregoing
proceedings, prior to testifying, were duly sworn;
that the proceedings were recorded by me and
thereafter reduced to typewriting by a qualified
transcriptionist; that said digital audio recording of
said proceedings are a true and accurate record to the
best of my knowledge, skills, and ability; that I am
neither counsel for, related to, nor employed by any
of the parties to the action in which this was taken;
and, further, that I am not a relative or employee of
any counsel or attorney employed by the parties
hereto, nor financially or otherwise interested in the
outcome of this action.



BRETT TORRENCE

Notary Public in and for the
State of New Mexico

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CERTIFICATE OF TRANSCRIBER

I, ESTHER M. TAYLOR, do hereby certify that
this transcript was prepared from the digital audio
recording of the foregoing proceeding, that said
transcript is a true and accurate record of the
proceedings to the best of my knowledge, skills, and
ability; that I am neither counsel for, related to,
nor employed by any of the parties to the action in
which this was taken; and, further, that I am not a
relative or employee of any counsel or attorney
employed by the parties hereto, nor financially or
otherwise interested in the outcome of this action.

A handwritten signature in black ink that reads "Esther M. Taylor". The signature is written in a cursive style with a large, stylized 'E' and 'T'.

ESTHER M. TAYLOR

[1 - bureau]

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[legacy - participation]

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[rule - videoconference]

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[videoconference - years]

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