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New Mexico Register

The official publication for all official notices of rulemaking
and filing of proposed, adopted and emergency rules.

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The New Mexico Register

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New Mexico Register

Volume XXXI, Issue 16

August 25, 2020

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Notices of Rulemaking and Proposed Rules

HEALTH, DEPARTMENT OF

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the proposed amendment of rule, 7.8.2 NMAC, "Assisted Living Facilities for Adults." The public hearing will be held on September 25, 2020 at 9:30 am via Cisco Webex online, via telephone, and, comments will be received via email through the day of the hearing until 5:00 pm.

The hearing is being held via internet, email and telephonic means due to the concerns surrounding Coronavirus and in accord with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of a Public Health Emergency, and any subsequent executive orders, and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19. This hearing will be conducted to receive public comment regarding the proposed amendment of the current rule concerning the services for residents at facilities operated for the maintenance or care of two (2) or more adults who need or desire assistance with one (1) or more activities of daily living excluding the residence of an individual who maintains or cares for a maximum of two (2) relatives. All facilities licensed as assisted living facilities pursuant to Subsection A of Section 24-1-5 NMSA 1978, are subject to all provisions of these regulations.

The hearing will be conducted to receive public comments regarding the proposed amendment of the rule, 7.8.2 NMAC, including the following rule parts:

Amended Subsection B of 7.8.2.16 NMAC-Staff Qualifications: change to Subsection B to lower the age of employment to provide direct care to residents to sixteen (16) years of age.

The legal authority authorizing the proposed amendment of the rule by the Department is at Subsection E of Section 9-7-6, Subsection F of Section 24-1-2, Subsection J of Section 24-1-3 and Subsection B of Section 24-1-5 NMSA 1978. A free copy of the full text of the proposed rule can be obtained from the Department's website at <https://nmhealth.org/publication/regulation/>.

Any interested member of the public may attend the hearing and offer public comments on the proposed rule during the hearing. To access the hearing by telephone: please call 1-408-418-9388. Your telephone comments will be recorded. To access the hearing via internet: please go to Webex.com; click the "Join" button; click the "Join a meeting" button; enter the following meeting number and password where indicated on screen-Meeting number (access code): 146 139 4473 #, Meeting password: eKBKTJac843; click the "OK" button. You may also provide comment via Chat during the live streaming.

Written public comments may also be submitted to the mailing address shown below. Please submit any written comments regarding the proposed rule to the attention of:

Christopher Burmeister
Division Director, Health Improvement
New Mexico Department of Health
2040 S. Pacheco,
Santa Fe, NM 87505
Christopher.Burmeis@state.nm.us
505-476-9074

Mailed written comments must be received by 5 pm MST on September 24, 2020. Written comments may also be submitted to the email address shown above through 5:00 pm MST on the date of the hearing. All written comments will be published on the agency website at <https://nmhealth.org/publication/regulation/> within 3 days of receipt, and will be available at the New Mexico Department of

Health Office of General Counsel for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Sheila Apodaca by telephone at (505) 827-2997. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The HSD is developing a new State Funded Assistance Program, the Heat and Eat Program, that will benefit the citizens of New Mexico to not only receive a supplemental energy assistance payment annually but will also increase their standard utility deduction and the SNAP benefit. The rule is being developed under the following statutory authority: New Mexico Statutes Annotated 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the aid to families with dependent children (AFDC), general assistance (GA), shelter care supplement, the burial assistance programs and such other public welfare functions as may be assumed by the state.

A public hearing to receive testimony on this proposed rule, pursuant to Section 14-4-5.6 NMSA 1978, will be held on Friday, September 25, 2020 from 9:00am-10:00am. The hearing will be held virtually through GoTo Meeting at this link: <https://global.gotomeeting.com/join/329083717>. Anyone wishing to join via phone may call +1 (646) 749-3122, Access Code: 329-083-717. Written comment may be dropped off during the scheduled hearing time at the HSD Administrative Services Division (ASD) conference room, 1474 Rodeo Road, Santa Fe, NM

87505 if the individual wishes to provide written comment during the scheduled hearing; this drop off site will be for written comment only. The conference room is located on the first floor in the ASD Rodeo Building.

The Department is proposing to add section 8.106.631 NMAC Heat and Eat Program which is a State Funded Assistance Program. The objective of the New Mexico Heat and Eat Program is to provide households with a cash payment to assist with energy expenses to households that do not pay heating or cooling expenses and do not receive Low Income Heating Energy Assistance Program (LIHEAP) but have an identifiable shelter cost. Payments are credited to recipients through a state managed fund. In addition to the energy assistance payment, households who received the Heat and Eat energy assistance payment will see an increase in their deduction amount used to determine their SNAP benefit allotment. The energy assistance payment will be disbursed at the beginning of every federal fiscal year. Dependent on the availability of funds, the amount of the payment to the household will be no less than \$21. By receiving this payment, households will automatically become eligible to receive the Heating and Cooling Standard Utility Allowance (HCSUA) and in most cases will receive an increase in their SNAP benefits. The Heat and Eat benefit is limited to current SNAP recipients and no additional application is required. Based on the eligibility criteria of the Heat and Eat program, if households qualify for the payment, it will automatically be issued every federal fiscal year and the active SNAP case will be automatically updated. The Heat and Eat program will be for households who: are receiving SNAP after being determined eligible as outlined in 8.139.110 NMAC; have gross income less than 165% of the poverty level; and do not pay for any heating or cooling expenses, including the payment of a fee to use an air conditioner; and are not receiving the

maximum SNAP benefit; and have an identifiable shelter cost. The current New Mexico Administrative Code (NMAC) provisions read that any other assistance payment of \$20 or more will qualify individuals for the HCSUA. This state funded assistance program will give individuals, as defined above, a \$21 case benefit energy assistance payment annually. The \$21 payment will also trigger an automated recalculation of SNAP benefits to include the HCSUA, in the amount of \$348 for Fiscal Year 2021, for the next 12 consecutive issuance months for the household. The HCSUA deduction amount is determined yearly.

The Human Services Register Vol. 43 No. 06 outlining the proposed regulations are available on the HSD's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-registers.aspx>. Individuals wishing to testify or to request a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Santa Fe, New Mexico 87504-2348, or by calling 505-827-7250 or 505-827-7254.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at 505-827-6201 or through the New Mexico Relay system, at 711 or toll free at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing, Friday, September 25, 2020. The agency shall post all written comments on its website, if one exists, as soon as practicable and no more than 3 business days following

receipt to allow for public review. All written comments received by the agency shall also be available for public inspection at the main office of the agency. Please send comments to:

Human Services Department
P.O. Box 2348,
Santa Fe, New Mexico 87504-2348

You may send comments electronically to: HSD-isdrules@state.nm.us

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

NOTICE OF RULEMAKING

The Human Services Department (the Department), Medical Assistance Division (MAD), is promulgating new New Mexico Administrative Code (NMAC): 8.314.7, Long Term Care Services - Waivers, Supports Waiver.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: August 25, 2020
Hearing Date: September 28, 2020
Adoption Date: Proposed as January 1, 2021.

Technical Citations: 42 CFR Chapter IV Subchapter C

8.314.7 NMAC serves to implement, support, and clarify the statute for the Supports Waiver. The Supports Waiver will be the State's fourth Medicaid 1915(c) Home and Community-Based Services (HCBS) waiver program currently operated to serve individuals with special needs. The Supports Waiver will provide services to individuals with intellectual and developmental disabilities on the Department of Health (DOH) Developmental Disabilities (DD) Waiver Wait List.

The Department is proposing to promulgate the rule as follows:

Section 7: Definitions

This section provides definitions for terms found within 8.314.7 NMAC.

Section 8: Mission Statement

This section provides the Department's missions statement.

Section 9: Supports Waiver Home and Community-Based Services

This section provides a description of the Supports Waiver program and its intent to provide support services to eligible recipients to enable work toward self-determination, independence, productivity, integration, and inclusion in all facets of community life across the lifespan.

Section 10: Eligibility Requirements for Recipient Enrollment

This section outlines that eligibility for the Supports Waiver program is contingent upon the applicant meeting the eligibility requirements, the availability of funding as appropriated by the New Mexico legislature, and the number of federally authorized unduplicated eligible recipients.

Section 11: Eligible Recipient Responsibilities

This section outlines the responsibilities that Supports Waiver eligible recipients must comply with. The section also details the eligible recipient's voluntary and involuntary program disenrollment.

Section 12: Supports Waiver Contracted Entities and Providers

This section outlines the Supports Waiver program contracted entities and their responsibilities including requirements to avoid conflict of interest.

Section 13: Qualifications for Eligible Individual Employees, Independent Providers, Provider Agencies, and Vendors

This section lists general and specific qualifications for agency-based and participant-directed service delivery model providers. This section also

outlines the roles and responsibilities of the Employer of Record (EOR) who helps assist Supports Waiver participants accessing services in the participant-directed service delivery model with employer functions.

Section 14: Service Descriptions and Coverage Criteria

This section provides description of the services offered through the Supports Waiver. This section also outlines that service delivery must be in compliance with the Centers for Medicare and Medicaid Services HCBS Settings Final Rule.

Section 15: Non-Covered Services

This section lists non-covered services and specifies that the Supports Waiver program does not pay for the purchase of goods or services that a household without a person with a disability would be expected to pay for as a routine household or personal expense.

Section 16: Individual Service Plan and Authorized Annual Budget

This section outlines the components, requirements, and development of a Supports Waiver participant's Individual Service Plan (ISP) and review and approval of their Authorized Annual Budget (AAB). The section also outlines the process for modification of the ISP.

Section 17: Prior Authorization and Utilization Review

The section clarifies that services covered under the Supports Waiver program are subject to utilization review for medical necessity and program requirements.

Section 18: Recordkeeping and Documentation Responsibilities

This section outlines the recordkeeping and documentation responsibilities of Supports Waiver program providers and participants.

Section 19: Reimbursement

This section outlines reimbursement requirements for agency-based and participant-directed service delivery model providers.

Section 20: Right to an HSD Administrative Hearing

This section outlines that Supports Waiver participants have an opportunity for an administrative hearing and the circumstances under which to request a fair hearing.

Section 21: Continuation of Benefits Pursuant to Timely Appeal

This section outlines that Supports Waiver participants have an opportunity to request a continuation of benefits.

Section 22: Grievance/Complaint System

This section outlines that Supports Waiver participants have an opportunity to register grievances or complaints concerning the provision of services under the Supports Waiver program and describes the process for filing a grievance.

The register and proposed NMAC rule will be available August 25, 2020 on the HSD web site at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> or at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx>. If you do not have Internet access, a copy of the register and proposed rule may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement this rule effective January 1, 2021. A public hearing to receive testimony on this rule will be held via conference call on Monday, September 28, 2020 at 10 a.m., Mountain Time (MT). **Conference Number: 1-800-747-5150. Access Code: 2284263.**

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons

may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on Monday, September 28, 2020. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

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 in Santa Fe at 505-827-1337. The Department requests at least ten (10) 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 RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rule 8.200.510 NMAC Medicaid Eligibility Resource Standards and 8.200.520 NMAC Medicaid Eligibility Income Standards in order to implement the Department of Health and Human Services (HHS) updates to the Federal Poverty Level (FPL) income guidelines for

the Medical Assistance Program categories of eligibility effective April 01, 2020. The SSI and Spousal Impoverishment standards are being updated due to the annual cost of living increase (COLA) that went into effect January 01, 2020. The Department is re-promulgating these sections of the rules in full within six months of issuance of the emergency rule in accordance with the New Mexico State Rules Act.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: August 25, 2020.
Hearing Date: September 25, 2020.
Adoption Date: November 1, 2020.
Technical Citations: 42 USC Section 9902 (2), Federal SSI and Spousal Impoverishment Standards, and SSA COLA Fact Sheet.

Summary of Revisions:

8.200.510 NMAC

Section 11 is amended to reflect current COLA for Community Spouse Resource Allowance.

Section 12 is amended to reflect the current COLA for Post-Eligibility Calculation (Medical Care Credit).

Section 13 is amended to reflect the current COLA for Average Monthly Cost of Nursing Facilities for Private Patients.

Section 14 is amended to reflect the current COLA for Resource Amounts for Supplemental Security Income Related Medicare Savings Programs. Section 15 is amended to reflect the COLA for current Excess Home Equity Amount for Long-Term Care Services.

8.200.520 NMAC

Section 8 is amended to reflect the current mission statement.

Section 11 is amended to reflect upcoming FPL guidelines.

Section 12 is amended to reflect the cost of living increase.

Section 13 is amended to reflect the increase in the Federal Benefit Rate.

Section 15 is amended to reflect the increase in SSI living arrangement amounts.

Section 16 is amended to reflect the increase in the monthly income standard for Institutional Care and Home and Community Based Waiver Services categories.

Section 20 is amended to reflect the increase in the covered quarter income standard.

The register and the proposed rules are available on the HSD website at: <http://www.hsd.state.nm.us/2017-comment-period-open.aspx> and <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting (505) 827-1337.

The Department proposes to implement these rules November 1, 2020. A public hearing to receive testimony on these proposed rules will be held via conference call on Friday, September 25, 2020 at 9:00 a.m., Mountain Time (MT). **Conference Number: 1-800-747-5150. Access Code: 2284263.**

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5:00 p.m. MT on September 25, 2020. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx> along with the applicable register and rule. The public posting

will include the name and any contact information provided by the commenter.

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 in Santa Fe at 505-827-1337. The Department requests at least ten (10) 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 RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rule 8.320.2 NMAC, Early and Periodic Screening, Diagnostic and Treatment (ESPD) Special Rehabilitation (Family Infant Toddler Early Intervention) Services. The Early Childhood Education and Care Department (ECECD) will begin administering the Family Infant Toddler (FIT) Program effective July 1, 2020. This rule is being amended to update references regarding this change.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: August 25, 2020
Hearing Date: September 25, 2020
Adoption Date: Proposed as January 1, 2021

Technical Citations: CFR does not apply.

The Department proposes the following rule amendments:

Section 8 is being amended to include the Department's mission statement.

Section 16 is being amended to change all references to Department of Health to Early Childhood Education and Care Department (ECECD).

The register for these proposed amendments to this rule will be available August 25, 2020 on the HSD website at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> or at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx>. If you do not have Internet access, a copy of the proposed rules may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement this rule effective January 1, 2021. A public hearing to receive testimony on this rule will be held via conference call on Friday, September 25, 2020 at 11:00 a.m., Mountain Time (MT). **Conference Number: 1-800-747-5150. Access Code: 2284263.**

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5:00 p.m. MT on September 25, 2020. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the

HSD website at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

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 in Santa Fe at 505-827-1337. The Department requests at least ten (10) 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 RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to repeal and replace the New Mexico Administrative Code (NMAC) rule 8.326.10 NMAC, Traumatic Brain Injury Trust Fund Program, to be renamed Brain Injury Services Fund Program. The Brain Injury Services Fund Program is a non-Medicaid program. The Brain Injury Services Fund (BISF) was created in 1997, with revenues placed in a trust fund. These funds were for the purpose of providing services and supports to persons who had sustained a documented traumatic brain injury and had no other payer sources to resolve a crisis need related to the brain injury. In 2014, the New Mexico Legislature acted to expand the definition of brain injury to include other acquired brain injuries, allowing the program to serve these individuals as well.

The proposed regulations for the BISF program update the service definitions and requirement for the International Classification of Diseases (ICD) codes for the expanded population; replace the term Traumatic Brain Injury Crisis Interim Services (CIS) with Home and Community-Based Services (HCBS); change the crisis interim period from 90 days to six months; consolidate the requirements for service coordination and fiscal intermediary agency contractors; more clearly define the terms for continued enrollment and disenrollment from the program; replace the \$25,000 annual participant budgetary cap with the annual cap prescribed by HSD; remove Life Skills Coaching as a separately contracted service; add Professional Life Skills Coaching and Organizer services to the list of available BISF HCBS services to be provided by independent contractors trained and certified in life coaching or life skills coaching; and define non-covered goods and services. Overall, the updated rule for the BISF program ensures that the services available to the public and expectations of service providers are communicated in a manner that is more clear, concise and accessible for public inspection.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: August 25, 2020
Hearing Date: September 28, 2020
Adoption Date: January 1, 2021
Technical Citations: CFR does not apply.

The register and proposed rule amendments for this rule will be available August 25, 2020 on the HSD web site at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> or at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx>. If you do not have Internet access, a copy of the proposed rules may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement these rules effective January 1, 2021. A public hearing to receive testimony on this rule will be held via conference call on Monday, September 28, 2020 at 1:00 p.m., Mountain Time (MT). **Conference Number: 1-800-747-5150. Access Code: 2284263.**

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5:00 p.m. MT on September 28, 2020. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

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 in Santa Fe at 505-827-1337. The Department requests at least ten (10) 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.

OSTEOPATHIC MEDICINE, BOARD OF

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

LEGAL NOTICE

The New Mexico Board of Osteopathic Medicine will hold a public rule hearing on Friday, September 25, 2020, at 9:00 a.m. Following the public rule hearing, the Board will convene a regular board meeting to adopt the rules and take care of regular business. The public rule hearing and board meeting will be held via Cisco Webex Meetings.

Cisco Webex Meeting link:
<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e636fbffc8308aa059fbba3998c47d0be>

Meeting number (access code): 146 907 3295

Join by phone:

Phone Number: 1-415-655-0002 United States Toll

The agenda for the regular board meeting will be posted and available at least 72 hours before the meeting on the Board's website at: http://www.rld.state.nm.us/boards/OsteopathicMedicine_Members_and_Meetings.aspx. Copies may also be obtained by contacting Roberta Perea, Board Administrator at (505) 476-4622.

An individual with a disability who needs a reader, amplifier, qualified signed language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting should contact Roberta Perea, Board Administrator at (505) 476-4622.

The purpose of the public rule hearing is to consider proposed amendments to 16.17.3 NMAC to include: acceptable types of continuing medical education (CME) credits obtained from the American Osteopathic Association ("AOA").

The change is related to the following rule:

16.17.3 NMAC – Renewal and Continuing Education Requirements

To obtain and review copies of the proposed changes you may go to the Board's website at:

http://www.rld.state.nm.us/boards/OsteopathicMedicine_Rules_and_Laws.aspx or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Roberta Perea, Board Administrator via electronic mail at osteoboard@state.nm.us or by regular mail at P.O. Box 25101, Santa Fe, NM 87504 no later than Thursday, September 24, 2020. Persons will also be given the opportunity to present their comments at the rule hearing. All written comments will be posted to the Board's website at: http://www.rld.state.nm.us/boards/OsteopathicMedicine_Rules_and_Laws.aspx, no more than three business days following receipt to allow for public view.

Statutory Authority: Section 61-10-5 and 61-10-19. NMSA 1978

Summary of Proposed Changes:

16.17.3.9 NMAC – CME CREDITS REQUIRED

The proposed change is to sub-part A to allow the mandatory minimum of thirty AOA credits to be either category 1-A or category 1-B, or a combination thereof.

Explanation of Purpose of Proposed Changes:

The proposed change will allow for broader availability of CME credits for those licensees that have found it difficult to comply with the current rule. This will allow for greater specificity of medical education within licensees' specialty communities.

**PUBLIC RECORDS,
COMMISSION OF**

**NOTICE OF PROPOSED
RULEMAKING**

NOTICE IS HEREBY GIVEN that the State Records Administrator ("SRA"), or a delegated hearing officer, will hold a rulemaking hearing on September 30 at 10:00 AM. The meeting will be held virtually via Zoom. Members of the public may attend the Zoom meeting on a computer, mobile device, or telephone. The videoconference's Meeting ID and Password, videoconference link, and telephone numbers are as follows:

State Records Administrator
Rulemaking Hearing Invitation for
September 30, 2020 at 10:00 AM.
Waiting room opens at 9:30AM, feel
free to join the meeting early.

Topic: State Records Administrator
Rulemaking Hearing - Virtual
Time: Sept 30, 2020 10:00 AM
Mountain Time (US and Canada)

Join Zoom Meeting
<https://us02web.zoom.us/j/87551608838>

Meeting ID: 875 5160 8838
One tap mobile
+13462487799,,87551608838# US
(Houston)
+16699009128,,87551608838# US
(San Jose)

Dial by your location
+1 346 248 7799 US (Houston)
+1 669 900 9128 US (San Jose)
+1 253 215 8782 US (Tacoma)
+1 312 626 6799 US (Chicago)
+1 646 558 8656 US (New York)
+1 301 715 8592 US

(Germantown)

Meeting ID: 875 5160 8838
Find your local number: <https://us02web.zoom.us/j/87551608838>

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 aid or service to attend or participate in the meeting, please contact Rick Hendricks at 505 476-7955 by September 16, 2020, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. A copy of the agenda is also available on the SRCA website and at the office of the SRA located at 1209 Camino Carlos Rey, Santa Fe, NM. The agenda is subject to change up to 72 hours prior to the meeting.

The SRA will consider the following item of rulemaking at the hearing:

Amend:

1.24.10 NMAC, New Mexico
Administrative Code.

**1.24.10.15 NMAC
TRANSMITTAL FORM:**

F. Each rule filing shall bear the original signature of the issuing authority or authorized designee in black ink on the paper copy of the NMAC transmittal form. If authority is delegated, the box shall be checked. [~~For the duration of state of public health emergency declared by governor under the Public Health Emergency Response Act,~~] Any rule filing may be accepted, with a valid digital signature, and will be filed by administrative law division on appropriate New Mexico register submittal deadline; unless agency needs rule to be filed on a different date, pursuant to Subsection D of Section 14-4-5 or Section 14-4-5.6 NMSA 1978, then alternate arrangements will be made on a case by case basis.

G. Those portions of the transmittal form that are completed by the issuing agency under the concise explanatory statement heading shall be considered sufficient compliance with State Rules Act and shall be provided to the public at the time the issuing agency adopts any rule making.

[1.24.10.15 NMAC - Rp, 1 NMAC 3.3.10.11, 2/29/2000; A, 6/30/2004;

A, 9/15/2014; A, 11/30/2015; A, 7/1/2017; A/E, 4/29/2020; A, 10/27/2020]

Synopsis:

Due to the governor's declaration of a public health emergency, the SRA issued an emergency amendment on April 29, 2020, to section 15 allowing for transmittal form filing with a digital signature. The proposed amendment of 1.24.10.15 NMAC consists of continuing to accept digital signature by eliminating the public health emergency predicate language.

Interested persons may submit comments on the proposed changes to 1.24.10.15 NMAC at the rule hearing or may submit written comments via email at rmd.cpr@state.nm.us. Written comments must be received no later than 5:00 p.m. on Wednesday, September 29, 2020. Interested persons may also provide data, views or arguments, orally at the virtual public rule hearing to be held on September 30, 2020 at 10 am, or in writing at the main entrance at 1205 Camino Carlos Rey, Santa Fe, NM.

Legal authority for this rulemaking can be found in the State Rules Act, Section 14-4-1, et seq. NMSA 1978.

STATE ETHICS COMMISSION

NOTICE OF RULE MAKING AND PUBLIC RULE HEARING

Notice of Rulemaking: The State Ethics Commission [the commission] will hold a public hearing on the proposed adoption of certain rules establishing procedures for requests for advisory opinions and for commission responses; giving notice of and conducting meetings, including virtual meetings, of the commission; and creating a proposed model code of ethics for state officers and employees. These new rules are proposed pursuant to Sections 10-16-11 and 11.1, NMSA 1978; Subsection C of Section 10-15-1, NMSA 1978; Section 10-16G-8, NMSA 1978;

and Paragraph 4 of Subsection B of Section 10-16G-5, NMSA 1978. The proposed rules were published on Pages 464 through 471 of Volume XXXI, Issue 12 of the New Mexico Register. No technical scientific information was consulted in drafting these proposed rules.

Copies of all the proposed rules may be found on Pages 464 through 471 of Volume XXXI, Issue 12 of the New Mexico Register, the Sunshine Portal, the Commission's website, <https://www.sec.state.nm.us>, or at the commission's main office in Albuquerque: the New Mexico Ethics Commission, University of New Mexico Science and Technology Park, 800 Bradbury Drive SE, Suite 215, Albuquerque, NM, 87106.

Notice of Public Rule Hearing: The public rule hearing is scheduled to occur on Friday, October 2, 2020 at 9:00 am in UNM's Science and Technology Park's Executive Board Room, 851 University SE, Suite 200, Albuquerque, NM 87106. It is possible that, pursuant to the Public Health Emergency declared by Governor Michelle Lujan Grisham in Executive Order 2020-004, as extended, and in light of the current pandemic, the Commission will decide to conduct this meeting remotely at that time and date rather than in person. In that case, instructions for public participation will be posted on the Commission's website, <https://www.sec.state.nm.us>. Members of the public are advised to check this website before the meeting to confirm whether it will be held in person or over the internet. The public hearing will be conducted in a fair and equitable manner by the commission and shall be recorded. Any interested member of the public may attend the hearing, in person or remotely, and will be provided a reasonable opportunity to offer public comment, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact

Sonny.Haquani@state.nm.us. The commission will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least five calendar days before the scheduled hearing.

Notice of Acceptance of Written Public Comment: Written public comments, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public will be accepted until 5:00 p.m. on Wednesday, September 30, 2020, by submitting them via email to ethics.commission@state.nm.us with the subject line "SEC Rulemaking R20-01," or via first class mail or by hand delivery to the commission's Albuquerque office: New Mexico Ethics Commission, University of New Mexico Science and Technology Park, 800 Bradbury Drive SE, Suite 215, Albuquerque, NM, 87106.

Description of Proposed Rules: In compliance with Section 14-4-5.2 NMSA 1978, this notice includes the following summary of the proposed amendment and the new proposed rule, a short explanation of the purpose of the amendment and new rule, and specific legal authority authorizing the amendment and proposed new rule. The method and manner of public comment and notice of public hearing on the proposed rules are listed above.

1.8.1.1 NMAC ("General Provisions"); proposed amendments: This rule currently ensures that the state ethics commission is administered so that it works effectively, efficiently and fairly to achieve its constitutional and statutory mission. That mission is to ensure compliance with all applicable public ethics laws by all public officials, employees, candidates, contractors, lobbyists and others subject to the commission's jurisdiction throughout their employment or dealings with New Mexico state government; and to ensure that the public ethics laws are clear, comprehensive and

effective. The first amendment to this rule proposed in this proceeding, 1.8.1.9 and 1.8.1.10 NMAC, will add two new sections describing the procedure for people to request, and for the commission to issue, advisory opinions, either official or informal. The second amendment to this rule, 1.8.1.16 NMAC, creates rules for convening and managing meetings of the commission. These include rules governing executive sessions, virtual meetings, and maintaining order during meetings.

Proposed amendments to 1.8.1 NMAC are provided at pages 465 and 466 of Volume XXXI, Issue 12 of the New Mexico Register, the Sunshine Portal, the Commission's website, <https://www.sec.state.nm.us>, or at the commission's main office in Albuquerque: the New Mexico Ethics Commission, University of New Mexico Science and Technology Park, 800 Bradbury Drive SE, Suite 215, Albuquerque, NM, 87106.

1.8.4.1 NMAC ("Proposed Code of Ethics"): This new proposed rule will create proposed code of ethics for state public officials and state public employees, to be submitted to each elected state public official and agency for adoption, pursuant to Paragraph (4) of Subsection B of Section 10-16G-5 NMSA 1978. The proposed code of ethics will compile in a single rule the ethics provisions of state laws and rules governing the conduct of state officers and employees. Topics to be addressed in the proposed code include the definition of and restrictions on: conflicts of interest, acceptance of gifts, business relations with employees or regulated entities, procurement issues, limitations on former employees, public access to records and meetings of state bodies, allowable political activity and ethical conduct in the workplace, among other subjects.

Proposed 1.8.4 NMAC is provided at pages 466 to 471 of Volume XXXI, Issue 12 of the New Mexico Register, the Sunshine Portal, the Commission's

website, <https://www.sec.state.nm.us>, or at the commission's main office in Albuquerque: the New Mexico Ethics Commission, University of New Mexico Science and Technology Park, 800 Bradbury Drive SE, Suite 215, Albuquerque, NM, 87106.

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF NEW COMMENT PERIOD AND HEARING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance (Superintendent), pursuant to the Insurance Code, Section 59A-1-1 et seq. NMSA 1978 ("Insurance Code") and 13.1.4 NMAC, will begin a new comment period and have an additional public comment hearing on proposed rule 13.10.32 NMAC - COVERAGE FOR CONTRACEPTION.

PURPOSE AND SUMMARY OF THE PROPOSED NEW RULE is to clarify coverage requirements for various contraceptive methods.

STATUTORY AUTHORITY: Sections 59A-2-9, 59A-22-42, 59A-23-7.14, 59A-46-44 and 59A-47-45.5 NMSA 1978.

Copies of the Notice of Proposed Rulemaking and proposed rules are available by electronic download from the OSI website (<https://www.osi.state.nm.us/index.php/idms/>) or the New Mexico Sunshine portal. Please note that the proposed rules for this new comment period have been modified from the rules which were the subject of the previous notice in this matter.

OSI will begin a new comment period on August 25, 2020 and hold a public video/telephonic hearing on the proposed rules on September 28, 2020 at 10:00 a.m.

Join via Video:
<https://us02web.zoom.us/j/2916274744>

Join via telephone: 1-346-248-7799
Meeting ID: 291 627 4744

The Superintendent designates R. Alfred Walker to act as the hearing officer for this rulemaking. Oral comments will be accepted at the video/telephonic hearing from members of the public and any interested parties.

Written comments and proposals will be accepted through 4:00 pm on the day of the public hearing, or the last day of the public hearing if the public hearing extends for more than one day. Responses to written comments or oral comments will be accepted through 4:00 pm on October 9, 2020. Comments may be submitted via email to OSI-docketfiling@state.nm.us or may be filed by sending original copies to:

OSI Records and Docketing, NM
Office of Superintendent of Insurance
1120 Paseo de Peralta, P.O. Box 1689,
Santa Fe, NM 87504-1689

Docket No.: 20-00023-RULE-LH
IN THE MATTER OF ADOPTING
A NEW PROPOSED RULE
13.10.32 NMAC COVERAGE FOR
CONTRACEPTION

Only signed statements, proposals or comments will be accepted. Scanned or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, OSI reserves the right to require that original signatures be provided to verify the electronic or facsimile signature. All filings must be received between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. Any filings after 4:00 will be filed to the docket the next business day.

SPECIAL NEEDS: Any person with a disability who is in need of a reader,

amplifier, qualified sign language interpreter, or other auxiliary aid or service to attend or participate in the hearing should contact Melissa Gutierrez at 505-476-0333 ten (10) business days prior to the hearing.

The Superintendent will consider all oral comments, and will review all timely submitted written comments and responses.

DONE AND ORDERED this 25th day
of August 2020
/S/RUSSELL TOAL

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

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.

ADMINISTRATIVE HEARINGS OFFICE

The Administrative Hearings Office (“AHO”) has repealed its rule 22.600.3 NMAC, Hearings Under the Tax Administration Act - (filed 1/17/2018) and replaced it with 22.600.3 NMAC, Hearings Under the Tax Administration Act, effective 8/25/2020.

ADMINISTRATIVE HEARINGS OFFICE

TITLE 22: COURTS
CHAPTER 600:
ADMINISTRATIVE HEARINGS OFFICE
PART 3: HEARINGS UNDER THE TAX ADMINISTRATION ACT

22.600.3.1 ISSUING
AGENCY: Administrative Hearings Office, Wendell Chino Building, 1220 South St. Francis Drive, P.O. Box 6400, Santa Fe, NM 87502.
[22.600.3.1 NMAC - Rp. 22.600.3.1 NMAC, 8/25/2020]

22.600.3.2 SCOPE: This part applies to the taxation and revenue department and all taxpayers, their agents and representatives protesting an action of the taxation and revenue department under Section 7-1-24 NMSA 1978 of the Tax Administration Act and seeking a hearing under Section 7-1B-8 NMSA 1978 of the Administrative Hearings Office Act.
[22.600.3.2 NMAC - Rp. 22.600.3.2 NMAC, 8/25/2020]

22.600.3.3 STATUTORY AUTHORITY: Paragraph (1) of Subsection A of 7-1.B-5 NMSA 1978.

[22.600.3.3 NMAC - Rp. 22.600.3.3 NMAC, 8/25/2020]

22.600.3.4 DURATION: Permanent.
[22.600.3.4 NMAC - Rp. 22.600.3.4 NMAC, 8/25/2020]

22.600.3.5 EFFECTIVE DATE: August 25, 2020, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[22.600.3.5 NMAC - Rp. 22.600.3.5 NMAC, 8/25/2020]

22.600.3.6 OBJECTIVE: The objective of this part is to provide procedural rules and guidance about the tax protest hearing process before the administrative hearings office under the provisions of the Tax Administration Act and the Administrative Hearings Office Act.
[22.600.3.6 NMAC - Rp. 22.600.3.6 NMAC, 8/25/2020]

22.600.3.7 DEFINITIONS: As used in 22.600.3 NMAC:

A. “Administrative hearings office” is the agency established under Section 7-1B-1 NMSA 1978.

B. “Answer” is TRD’s written statement in response to claims or defenses asserted by a Taxpayer in opposition to any action subject to protest providing with reasonable specificity the legal and factual bases for its position.

C. “Bona fide employee” means any legitimate employee, owner, or member of any board of directors or other governing body of a company, business, or otherwise recognized entity, including trustees acting on behalf of a trust and personal representatives acting on behalf of a decedent’s estate. A bona fide employee is not a person hired for

the limited purpose, scope, or duration of representing a taxpayer before the administrative hearings office during the protest proceeding.

D. “Chief hearing officer” is the appointed head of the administrative hearings office under the Administrative Hearings Office Act, Section 7-1B-3 NMSA 1978, or the chief hearing officer’s designee during the absence of the chief hearing officer, or the acting, interim chief hearing officer pending appointment of that position.

E. “Enrolled agent” means a federally licensed tax practitioner with unlimited rights to represent taxpayers before the internal revenue service.

F. “Hearing” is an on-the-record proceeding before the hearing officer addressing the procedural, evidentiary, or substantive issues of the protest. A hearing includes a merits hearing, a scheduling hearing, or a motion’s hearing.

G. “Merits Hearing” is the formal, administrative hearing focused on the adjudication of the disputed issues under protest.

H. “Scheduling Hearing” is a hearing where the parties appear to discuss the issues involved in the protest, to discuss the need for a discovery and motions practice before the merits hearing, to discuss how much time the parties need to ensure compliance with the statutory fair hearing requirements under Paragraph (2) of Subsection D of Section 7-1B-6 NMSA 1978, and to select a merits hearing date and time. The scheduling hearing is part of the record of the proceeding.

I. “Taxpayer” for the limited purposes of this rule is the generic party name of the individual, person, entity association, business, corporation, partnership or other

recognized entity protesting against TRD in the proceeding before the administrative hearings office. This definition shall not be construed in any manner to change, clarify, or expound the statutory definition of taxpayer contained under the Tax Administration Act.

J. "TRD" is the New Mexico taxation and revenue department.
[22.600.3.7 NMAC - Rp. 22.600.3.7 NMAC, 8/25/2020]

22.600.3.8 REQUESTS FOR HEARING, ANSWERS, SCHEDULING OF MERITS HEARINGS, SCHEDULING HEARINGS, SCHEDULING ORDERS, AND PEREMPTORY EXCUSALS:

A. Pursuant to Subsection B of Section 7-1B-8 NMSA 1978, TRD shall file a request for hearing with the administrative hearings office no less than 60 days and no more than 180 days from the date of its acknowledgement of a valid protest on a form and in a manner specified by the chief hearing officer

B. In instances where TRD has not yet filed a hearing request, pursuant to Subsection B of Section 7-1B-8 NMSA 1978, a taxpayer may but is not required to file a request for hearing with the administrative hearings office on or after the 60th day from the date on which TRD acknowledged its protest.

C. If neither party has filed a request for hearing by 180 days from the acknowledgement of a valid protest, a Taxpayer may request relief from interest under Subsection E of 22.600.3.18 NMAC.

D. In addition to other requirements of this section, a hearing request submitted by TRD shall be accompanied by an answer to a taxpayer's protest. If the taxpayer is the party requesting a hearing, then TRD shall file and serve its answer to the protest within 30 days of the filing of Taxpayer's request for hearing.

E. An answer shall state TRD's response to a taxpayer's protest, including the legal and factual

bases for TRD's position plus other issues it perceives as relevant or in dispute. Matters asserted in the protest which TRD's answer does not explicitly oppose or dispute with reasonable specificity may be deemed admitted or conceded. An answer may be amended no less than 10 days before a scheduled hearing on the merits of the protest, unless another deadline is stated in the governing scheduling order. An amended answer, even if otherwise timely filed, may still be disallowed if the hearing officer determines that the lateness of the amendment unfairly prejudices the taxpayer. In evaluating the issue of prejudice, the hearing officer shall consider whether any newly asserted facts, legal conclusions, or other matters contained in the amended answer were known or should have been known to TRD earlier. Alleging new facts, legal conclusions, or other matters that were known or should have been known earlier will weigh in favor of finding the amended answer to be prejudicial.

F. Requests for hearing shall include (if available) a copy of TRD's initiating document (such as a notice of assessment or denial of claim for refund or credit), action, or inaction that led to the protest, a copy of the taxpayer's protest letter, TRD's acknowledgement letter, any taxpayer information authorization filed with TRD allowing someone other than the named taxpayer (or bona fide employee of the taxpayer) to represent the taxpayer before TRD, the address of record of the taxpayer with TRD, and TRD's answer to the protest if TRD is the party requesting the hearing. If the taxpayer submits the request for hearing, it shall not be required to include TRD's answer, but may do so if it is in the taxpayer's possession. The administrative hearings office may require additional information on any request for hearing or referral and may require the parties to submit such request on a form developed by the administrative hearings office.

G. If both parties submit timely hearing requests in reference to the same protest, the

request filed later in time shall be merged with the request filed earlier in time, and the first-filed timely hearing request shall control the establishment of pertinent deadlines.

H. The party requesting the hearing shall specify whether they believe the matter will be ripe for a merits hearing within 90-days of the request for hearing or whether the parties need additional time to complete discovery, prepare motions, and to ensure both sides have ample and fair opportunity to present their respective cases. The chief hearing officer shall give consideration to the requests of either party for a scheduling hearing but is not bound to such requests if in the view of the chief hearing officer after reviewing the record and the docket, another hearing type is more appropriate to the case.

I. Upon receipt of the hearing request, the chief hearing officer or designee thereof shall review the matter to assess the complexity of the case, the potential discovery required, the potential need for motions practice before conducting the merits hearing, the tax hearing docket, and the preference of the party that filed the hearing request to determine whether the matter should be set promptly for a merits hearing or set for a scheduling hearing within 90 days of the date on which TRD's answer to the protest was filed.

J. Absent a timely objection before or at the time of the scheduling hearing, conducting a scheduling hearing within 90 days of TRD's answer was filed or within 120 days from the filing of taxpayer's request for hearing satisfies the under Subsection F of Section 7-1B-8 NMSA 1978 while allowing sufficient and meaningful time for completion of the statutory requirements contained under Paragraph (2) of Subsection D of Section 7-1B-6 NMSA 1978. Upon completion of the scheduling hearing, the hearing officer will issue a scheduling order and notice of administrative hearing or other form of notice or order as the circumstances require.

K. Upon objection to conducting a scheduling hearing, the administrative hearings office may set the matter for a merits hearing on an expedited basis with a minimum of seven days notice unless the parties consent to a lesser period for notice. All other notices will be sent at least 14 days before the scheduled hearing unless the parties consent to a lesser period for notice.

L. Upon receipt of the notice of scheduling hearing, the parties may consult with each other and agree to a proposed scheduling order, in a format specified by the administrative hearings office, articulating discovery and motions deadlines, length of the potential hearing, a proposed month or months of merits hearing, and an express waiver of the hearing deadlines under Subsection F of Section 7-1B-8 NMSA 1978. If the assigned hearing officer accepts or substantially adopts the proposed scheduling order, the scheduling hearing will be vacated.

M. At the sole discretion of the chief hearing officer, a series of cases involving similar substantive issues or involving small controversies may be scheduled to be heard individually as part of a trailing docket commencing at the beginning of the day, to be heard at some indefinite point during that day after the time of commencement of the docket. If the protest is to be heard as part of a trailing docket:

(1) All parties and their representatives in a case set on a trailing docket shall report at the time and place specified in the notice of hearing for commencement of the trailing docket in a method and manner specified by the administrative hearings office.

(2) Failure to report at the commencement of a trailing docket shall be deemed a non-appearance for the purposes of Section 7-1-16 NMSA 1978.

(3) After the reporting time for the trailing docket, the assigned hearing officer or hearing officers for the conduct of the trailing docket will determine the order of the cases to be heard that day, considering

the appearance or nonappearance of the various parties on that day's docket, the complexity of the cases, the number and availability of witnesses, and if possible, accommodating any scheduling conflicts of the parties on that date.

(4) Upon receipt of notice of hearing set on a trailing docket, a party may file a written objection at least seven days before the scheduled hearing citing good cause as to why the matter should be given a unique setting rather than heard as part of a trailing docket, which the chief hearing officer or the assigned hearing officer may review and determine whether the case should be continued to a specific date with a firm time of commencement of the proceeding.

N. All notices of hearing, including notice of scheduling hearing, notice of administrative hearing, and scheduling order shall be mailed via regular, first class mail to the taxpayer's address of record or the address of taxpayer's representative of record, as well as TRD either through interdepartmental mail or first class mail. Additionally, if the parties provide an email address on the protest letter, entry of appearance, or other subsequent communication, a copy of the notice may be emailed to the party. Notice may be given orally on the record of any proceeding where all parties are present and all parties agree to the proposed hearing date.

[22.600.3.8 NMAC - Rp. 22.600.3.8 NMAC, 8/25/2020]

22.600.3.9 PEREMPTORY EXCUSAL OF PRESIDING HEARING OFFICER:

A. Hearing officers shall be assigned to preside over protests as determined by the chief hearing officer upon consideration of a hearing officer's experience, availability or other considerations bearing on the management of the administrative docket. Notice of an assignment shall be provided in the notice of the initial merits or scheduling hearing set in response

to the request for hearing. Unless otherwise stated in such notice, or in a preceding notice of assignment, the hearing officer assigned to the protest shall be identified by referring to the signature block in the notice of the initial hearing.

B. Either party may exercise its one-time right of peremptory excusal of the assigned hearing officer within 10 days of the notice of hearing or other notice of assignment, whichever is earlier in time, provided that the party seeking the excusal has not previously sought a discretionary ruling of the hearing officer to be excused. Upon a timely and proper notice of excusal, the chief hearing officer shall reassign the protest and provide notice to the parties.

C. In the event both parties seek to excuse the same hearing officer in response to the same notice, only the excusal submitted earlier in time shall be effective and the party whose excusal was filed subsequent to the other shall retain its right to excuse the next-assigned hearing officer provided its notice is filed within 10 days of a notice of reassignment and it has not sought a discretionary ruling of the hearing officer to be excused.

D. At any time while a protest is pending, the chief hearing officer may be required to reassign a case due to unforeseen circumstances, docket management, or agency resource concerns. Circumstances permitting, the chief hearing officer will provide at least 14-day notice of a reassignment. A party that has not previously exercised its peremptory right of excusal shall be permitted 10 days from such notice to excuse the hearing officer provided that they have not sought a discretionary ruling of that hearing officer.

E. A notice of reassignment within 14 days of a scheduled hearing shall not be grounds to necessarily continue the scheduled hearing. Continuance requests under such conditions shall be considered based on the unique circumstances presented by the specific protest.

F. For the purpose of this rule, the term “party” shall include all members of a group of parties. In identifying the group comprising a party, the administrative hearings office may consider whether the parties are represented by the same law firm, accounting firm, or other authorized representative; whether the parties filed a joint protest or have filed joint pleadings; and whether the parties consist of a business entity or other organization and its owners, parents, subsidiaries officers, directors, or major shareholders.

G. An objection to the timeliness or validity of a peremptory excusal may be raised by any party or by the administrative hearings office on its own motion. The chief hearing officer or the presiding hearing officer may rule on the timeliness or validity of any such objection, provided that an order prepared by and signed by the presiding hearing officer shall also be concurrently signed by the chief hearing officer. If the hearing officer or chief hearing officer determines that the excusal has met the applicable procedural and legal requirements in this rule, the hearing officer shall proceed no further in the protest. If the presiding hearing officer or chief hearing officer determines that the excusal has not met the applicable procedural and legal requirements in this rule, the hearing officer may continue to preside over the protest. [22.600.3.9 NMAC - N, 8/25/2020]

22.600.3.10 LOCATION OF HEARINGS: Merits hearings are held in Santa Fe. At the sole discretion of the chief hearing officer, and considering the location of the respective parties, their representatives, the assigned hearing officer, the resources of the administrative hearings office, and the docket, a hearing may be set at the administrative hearings office’s Albuquerque office. If setting a hearing at the Albuquerque office would cause an unreasonable, undue burden to either party, the party may file a written objection to the hearing location within 10 days of issuance of

the notice of hearing, articulating the reasons supporting the objection. The chief hearing officer or designee will promptly review the objection and upon a showing of an unreasonable, undue burden, will order the hearing to occur in Santa Fe. Such changes in hearing location may require the reassignment of the case to another hearing officer as determined necessary by the chief hearing officer. [22.600.3.10 NMAC - Rp. 22.600.3.9 NMAC, 8/25/2020]

22.600.3.11 VIDEO-CONFERENCE HEARINGS, TELEPHONIC HEARINGS, AND TELEPHONIC TESTIMONY:

A. Scheduling hearings and other preliminary, preconference, motions, or prehearing motions hearings may be conducted via telephone, or videoconference or equivalent electronic method without consent or waiver of either party.

B. If both TRD and the taxpayer agree, they may petition the assigned hearing officer at least seven days before the scheduled merits hearing to conduct the merits hearing via secure videoconference pursuant to Subsection H of Section 7-1B-8 NMSA 1978. The hearing officer may grant or deny the request after considering whether a complete and accurate record can be made and a fair hearing can be conducted in the matter via secure videoconference. Even if the initial request is granted, the hearing officer always retains the discretion at any point in the proceeding to order the personal appearance of the parties and witnesses if in the hearing officer’s determination resolution of the disputed facts, evidence, credibility of a witness, question of law, or development of a complete and accurate record requires it.

C. The administrative hearings office may also schedule a merits hearing as a videoconference hearing with consent of the parties, which shall be deemed to have been granted absent either party filing a written objection within 14 days of notice a videoconference merits hearing.

D. If a hearing is scheduled to be conducted via videoconference:

(1)

all parties, witnesses, and the hearing officer will appear via videoconference service specified by the administrative hearings office. The administrative hearings office shall take reasonable precautions to ensure that the videoconference is secure and confidential. However, by requesting or consenting to a videoconference hearing, the parties shall be deemed to understand that the administrative hearings office may contract, license or utilize a third-party service provider to facilitate videoconferencing and that all electronic communications are vulnerable to security breaches beyond the reasonable control or knowledge of the administrative hearings office. If such electronic security breaches were to occur, they constitute unintentional, inadvertent disclosures and do not amount to a breach of statutory confidentiality requirements under relevant law by any party or the hearing officer appearing via videoconference. The parties shall also waive any claims against the administrative hearings office, its employees, agents or contractors, arising from any disclosure and shall be deemed to have assumed risk of disclosure by requesting or agreeing to appear via videoconference;

(2) the

parties shall ensure that they have exchanged all exhibits with each other and provided the assigned hearing officer with an exhibit binder before commencement of the approved videoconference hearing;

(3) the parties

also shall provide contact phone numbers where they will be available at the time of the hearing in case there are technical errors or other issues with conducting the videoconference;

(4) in the

event that technical or other computer problems prevent the videoconference hearing from occurring or interfere with maintaining or developing a complete record at the hearing, the

parties agree and consent upon their submission of a request to conduct the matter via videoconference that the assigned hearing officer at their discretion may continue the matter to a different time without regard to any other statutory deadline, may order the parties to appear for an in-person hearing, or may conduct the hearing via telephone;

(5) in the event of a videoconference hearing, the hearing record will only be the audio recording or transcription of the proceeding and will not include the video portion of the proceeding.

E. Telephonic appearances by the parties, (or their representatives) at a merits hearing are not generally permitted and will only be considered in the event of a genuine medical emergency/hardship, in cases where there is no genuine dispute of fact and parties intend to simply make legal argument, or when a technical problem prevents the conduct of a scheduled videoconference hearing.

F. Telephonic testimony from third-party witnesses may only be permitted in the event that in person or videoconference testimony would create an undue hardship or expense to the third-party witness. In addition to potential undue hardship, the assigned hearing officer in deciding whether to permit the telephonic testimony will consider the nature and purpose of the purported testimony, potential credibility issues regarding the testimony, the potential weight of the testimony as it relates to the particular issues at protest, and whether the testimony is being offered in rebuttal. [22.600.3.11 NMAC - Rp. 22.600.3.10 NMAC, 8/25/2020]

22.600.3.12 APPEARANCES BY AUTHORIZED REPRESENTATIVES:

A. Taxpayers may appear at a hearing for themselves or may be represented by any person expressly authorized under the Tax Administration Act or the Administrative Hearings Office Act to represent a taxpayer before

the administrative hearings office. Unless otherwise changed, amended or repealed, Subsection H of Section 7-1B-8 NMSA 1978 expressly authorizes a taxpayer to represent themselves, or be represented by a bona fide employee, an attorney, a certified public accountant, an expressly authorized employee of a New Mexico licensed certified public accounting firm, or an enrolled agent. When the taxpayer is two individuals who have been jointly assessed, such as a married couple who filed a joint personal income tax return, either individual may serve as the taxpayer's representative.

B. Any attorney representing a taxpayer before the administrative hearings office shall file an entry of appearance in the matter. If the attorney has prepared the protest letter on behalf of the taxpayer, the protest letter signed by the attorney constitutes a valid entry of appearance unless otherwise expressly limited by the taxpayer or the attorney. An attorney's entry of appearance constitutes a written authorization for representation of a taxpayer without need for the specific, separate, signed taxpayer authorization specified in Subsection C. Any attorney, including those employed as in-house counsel, representing taxpayers in the filing of any motion, conduct of motions hearing, or conduct of a merits hearing must be licensed in good standing to practice law in New Mexico or in compliance with the pro hac vice requirements found under Rule 24-106 NMRA.

C. If a taxpayer intends to be represented by the authorized employee of a New Mexico licensed certified public accounting firm, then that firm shall provide a written authorization permitting its employee to act in a representative capacity for the taxpayer, on behalf of the firm. The authorization shall be executed by an individual having supervisory responsibility over the designated employee and authority to bind the New Mexico licensed certified public accounting firm in contract.

D. Except as otherwise provided, a taxpayer shall file a signed, written authorization with the administrative hearings office designating any person, except an attorney, expressly authorized under the Tax Administration Act or the administrative hearings office to represent the taxpayer in a specific protest proceeding. When the taxpayer is an entity, the signature of any bona fide employee of the taxpayer shall be deemed to be the taxpayer's signature. The written authorization need not be a specific or technical form, but may be included as a statement in the protest designating an authorized representative, on a taxpayer information authorization form filed with TRD, or as a statement in a subsequent pleading filed with the administrative hearings office.

E. All written authorizations or entries of appearance should include the name, mailing address, phone number, and electronic mail address of the authorized representative. The taxpayer and any representative who has entered an appearance or written authorization to appear has an ongoing duty to inform the administrative hearings office and the opposing party of any change of mailing address, contact phone number, or contact email address.

F. After a written authorization or entry of appearance has been filed in a case, a change in a taxpayer's representation requires a new, signed written authorization from the taxpayer, an entry of appearance from an attorney if no attorney has previously represented the taxpayer, or a substitution of counsel and new entry of appearance in the event that a taxpayer has engaged a different attorney to represent the taxpayer in the protest.

G. Any person designated by the taxpayer in the protest letter, through a written authorization or entry of appearance shall be deemed to be an authorized representative of the taxpayer for the purposes of conducting the scheduling hearing(s) before the

administrative hearings office. At the scheduling hearing, the taxpayer and their representative (if any) will be advised of the statutory right to and limitations of representation during the hearing process.

H. After the scheduling hearing and advisement of the statutory right to and limitations of representation during the hearing process, if the taxpayer's representative is not a person who is expressly authorized to represent the taxpayer before the administrative hearings office under the Tax Administration Act or the Administrative Hearings Office Act, that person may not serve as a representative of the taxpayer in the proceeding before the administrative hearings office. In that event, the taxpayer may be granted an additional opportunity before conduct of the hearing to arrange for appropriate representation. Any delay in the hearing process for this reason will be attributed to the taxpayer.

I. All parties shall have a responsibility of candor to the administrative hearings office and shall not knowingly make false statements to the hearing officer. The administrative hearings office is a tribunal for purposes of Rule 16-303 NMRA. An attorney, a certified public accountant, the authorized employee of a New Mexico certified public accountant, an enrolled agent, or any other statutorily permitted representative of a taxpayer in a protest hearing shall abide by their respective controlling professional or ethical standards of conduct at all stages of the administrative proceeding before the administrative hearings office. In the event of an apparent breach of applicable standards of conduct, ethics or professionalism, in addition to reporting the breach to the appropriate disciplinary board, the assigned hearing officer may take other reasonable and appropriate measures within the hearing officer's statutory and regulatory authority necessary to maintain order and ensure a fair hearing process for all parties, up to and including disqualification.

[22.600.3.12 NMAC - Rp.
22.600.3.11 NMAC, 8/25/2020]

**22.600.3.13 TAX
PROTEST HEARINGS
CLOSED TO PUBLIC, FILE
IS CONFIDENTIAL, AND
SEALING OF RECORDS IN THE
PROCEEDING:**

A. Hearings are not open to the public except upon request of the taxpayer.

B. Pursuant to Section 7-1-8.3 NMSA 1978, all documents, exhibits, pleadings and materials contained in the administrative tax file and the record of the administrative hearing are confidential and may not be released to the public, except that the final decision and order without redaction and any evidentiary or procedural ruling made by the hearing officer with redaction of identifiable taxpayer information may be revealed.

C. Either party may ask for, and submit, a proposed order sealing particular records, documents, or exhibits that may contain confidential third-party taxpayer information or as is required by relevant internal revenue service information sharing agreements or other applicable federal law. Upon issuance of an order sealing such documents of exhibits, those records will remain under seal throughout the proceeding and shall be returned to the submitting party at the conclusion of the appeal period or the appeal. The opposing party shall be entitled to promptly review those documents in preparing for the hearing, and may rely on those documents during the hearing as necessary to ensure a fair hearing process, but shall not maintain its own copy of the sealed document after conclusion of the hearing nor reveal, discuss, or disclose the contents of those sealed documents to any other party outside of the hearing process.

D. In the event of an appeal, the complete record of the proceeding, including any sealed records, will be provided to the relevant judicial body, as required under Section 7-1-8.4 NMSA 1978.

E. The hearing officer's notes taken during the course of the hearing, any written discussions with another hearing officer related to the deliberative process, and any draft orders or draft decisions are confidential as part of the deliberative process and are not subject to public disclosure under any recognized exception contained under Section 7-1-8.3 NMSA 1978. Only the hearing officer's final decision and order and other final procedural or evidentiary orders (with appropriate taxpayer information redacted) may be revealed to the public under Section 7-1-8.3 NMSA 1978.
[22.600.3.13 NMAC - Rp.
22.600.3.12 NMAC, 8/25/2020]

**22.600.3.14 WITHDRAWAL
OF PROTESTS:**

A. A taxpayer electing to withdraw a protest pending before the administrative hearings office shall execute a written withdrawal of protest. The written withdrawal must include the taxpayer's signature or the signature of a bona fide employee of the taxpayer, even when the taxpayer has an authorized representative. The written withdrawal need not include the taxpayer's reasons for withdrawing the protest. The written withdrawal must include adequate information to properly identify the taxpayer and the file at protest, such as the administrative hearings office's case number, TRD's assessment letter i.d. number or the date the protest was filed. A written withdrawal form provided and approved by TRD is sufficient to adequately identify the taxpayer and the protest.

B. A properly executed withdrawal of protest satisfying the requirements of this section shall result in the issuance of an order closing of the protest, the administrative file, and vacating any scheduled hearings in the matter. The withdrawal shall be deemed conclusive and dispositive as to all issues that were raised, or could have been raised, in the protest.

C. Upon receipt of a withdrawal of protest which does not satisfy the requirement stated herein,

which appears irregular on its face, which fails to adequately address all issues pending in a protest, or which is indefinite, uncertain, or ambiguous, the hearing officer may require the parties to address the deficiencies, may reject the withdrawal as inadequate, may leave the matter on the calendar as scheduled, may set a status conference to address the issues with the withdrawal, or may order the parties to submit a new withdrawal, if they are able to, addressing the deficiencies. The hearing officer may also choose to accept an inadequate withdrawal as is, noting the deficiency for the record and giving the parties a period of time to correct the deficiencies or make any objections in light of the identified deficiencies before the withdrawal is adopted as conclusive in the matter.

[22.600.3.14 NMAC - Rp.

22.600.3.13 NMAC, 8/25/2020]

22.600.3.15 SUMMARY DISPOSITIONS OF PROTESTS:

Where there is well-settled law addressing the issue identified on the face of the pleadings, or when it appears from the face of the pleadings in the administrative file that there is no genuine issue as to any material fact, the hearing officer may propose a summary disposition of the protest under the following procedure:

A. the hearing officer shall provide to the parties, their attorneys, or authorized representatives a written proposed summary disposition based on a review of the administrative file;

B. the parties, their attorneys, or authorized representatives shall be provided with no less than 15 days in which to respond to the proposed summary disposition;

C. a response to a proposed summary disposition shall include the factual or legal basis in support of or in opposition to the proposed summary disposition;

D. no reply to a response shall be allowed;

E. the failure to respond to a proposed summary disposition may be deemed as

concurrency in the proposed summary disposition;

F. upon review of the responses to a proposed summary disposition, the hearing officer shall withdraw the proposed summary disposition and schedule the matter to be heard if either party makes a bona fide objection and argument, or enter a decision and order consistent with the proposed summary disposition if the parties consent, concede, fail to object or otherwise fail to meaningfully address the proposed summary disposition.

[22.600.3.15 NMAC - Rp.

22.600.3.14 NMAC, 8/25/2020]

22.600.3.16 FILING METHODS AND MOTIONS:

A. All pleadings may be filed with the administrative hearings office through mail, facsimile, or electronic mail as specified in the relevant notice of hearing, with a copy of such pleading contemporaneously provided to the opposing party through the same method of service of the filing. The moving party should include an attestation, or equivalent statement or information, that they provided a copy of the pleading to the opposing party.

B. A filing by facsimile shall include a cover sheet indicating the name of the matter, the name of the individual submitting the filing, the number of pages contained in the transmission, and a telephone number to contact in the event there are any errors with the transmission.

C. Documents filed by email or other electronic means shall not be submitted in an editable format unless specifically requested by the hearing officer. Absent specific instructions to do so, pleadings, motions or other papers shall not be submitted directly to the assigned hearing officer.

D. All motions, except motions made on the record during the hearing or a continuance request made in a genuine unforeseen emergency circumstance (such as an unexpected accident, force majeure, or major medical emergency occurring in such close proximity

to the date of the scheduled hearing that a written motion could not be completed), shall be in writing and shall state with particularity the grounds and the relief sought.

E. Before submission of any motion, request for relief, or request for continuance, the requesting party should make reasonable efforts to consult with the opposing party about that party's position on the motion unless the nature of the pleading is such that it can be reasonably assumed the opposing party would oppose the requested relief. The party shall state the position of the opposing party in the pleading.

F. A party moving to obtain an order compelling discovery shall explicitly confirm that the parties have made a good faith effort to resolve the issue prior to filing the motion to compel. A motion failing to explicitly confirm such effort may be summarily denied.

G. An unopposed motion may be accompanied by a stipulated order indicating approval by the parties, attorneys, or authorized representatives. Approval may be indicated by an original, photocopy, facsimile, or electronic signature of the individual providing approval, or by a statement indicating approval by other means such as by email. The hearing officer retains the authority to deny the relief requested in an unopposed or stipulated motion and may adopt, modify, or reject any stipulated order accompanying an unopposed motion.

H. Unless a different deadline applies under an applicable order of the assigned hearing officer, the opposing party has 14 calendar days to file a written response to a pleading. If any deadline falls on a Saturday, Sunday, or state-recognized holiday, the deadline falls on the next business day. The assigned hearing officer may require a shorter response deadline, especially for time-sensitive or basic motions like continuance requests. Failure to file a response in opposition may be presumed to be consent to the relief sought, although the hearing

officer is not required to make such a default ruling on the motion if the relief would be contrary to the hearing officer's view of the facts or law on the issues. The moving party shall file a notice that the matter is ripe for ruling upon receipt of the opposing party's response or in the event that the opposing party has not filed a timely response upon expiration of the response period.

I. Unless otherwise provided in a scheduling order, dispositive motions shall be filed no less than 75 days preceding a hearing on the merits of a protest and shall specify whether the moving party seeks to convert the scheduling hearing to a hearing on the motion. Dispositive motions shall be ruled upon no less than 30 days prior to a merits hearing. The chief hearing officer or the presiding hearing officer retains discretion, subject to objections from the parties, to continue or vacate a merits hearing pending a ruling on a dispositive motion if in the hearing officer's opinion, thorough consideration and preparation of a proper written ruling might cause the ruling to be rendered less than 30 days prior to a scheduled hearing.

J. A party attaching one or more exhibits to a pleading, motion, or other paper shall designate the exhibit in a manner to specifically associate it with the pleading, motion, or other paper which it is intended to accompany. An appropriate designation for an exhibit to a motion will include an abbreviation for the type of motion, and an identifying letter for TRD or a number for the taxpayer. For example only, an exhibit to a motion for summary judgment presented by a taxpayer may be designated as "Taxpayer MSJ #1". An exhibit to a response to the motion filed by TRD may be designated as "Dept. Resp. MSJ A".

K. Absent express permission of the assigned hearing officer with good cause shown, no pleading, including motions and attached memorandums of support, filed in a hearing involving the tax administration act or property tax

code shall exceed 20 pages, not including the certificate of service, of double-spaced (except for block quotations), 12-point font.

[22.600.3.16 NMAC - Rp.
22.600.3.15 NMAC, 8/25/2020]

22.600.3.17 DISCOVERY:

New Mexico is a liberal discovery state and to that end the parties are expected to cooperate in good faith to accomplish adequate discovery by the time the formal hearing is held without a specific order or intervention of the hearing officer. Discovery need not be a formal, time-consuming, litigious, or burdensome process; instead, the parties should make a good-faith effort to achieve discovery through informal consultation, discussion, stipulations, and good-faith, efficient exchange of relevant materials. If adequate discovery is not achieved informally within a reasonable time prior to the time a formal hearing is scheduled or by the deadline contained in a scheduling order issued by the hearing officer, any party may apply to the hearing officer for an order requiring a more formalized discovery process, including requiring depositions, production of records or answers to interrogatories/ requests for admissions. The parties shall file only certificates of service regarding discovery requests and productions unless the hearing officer requires otherwise, such as when there is a motion to compel. Depositions may be taken orally or by written interrogatories and cross-interrogatories. Unless ordered otherwise by the hearing officer, responses to interrogatories, requests for production of documents and requests for admission shall be due thirty days after service on a party. Unless ordered otherwise by the hearing officer, any notice of deposition shall be served on all opposing parties at least 14 days prior to the date of the deposition. The parties have an obligation to cooperate in the scheduling of depositions to avoid unnecessary expense to the parties and inconvenience to witnesses.

[22.600.3.17 NMAC - Rp.
22.600.3.16 NMAC, 8/25/2020]

22.600.3.18 CONSEQUENCES OF FAILURE TO COMPLY WITH ORDERS AND STATUTORY DEADLINES:

A. If a party or an officer or agent of a party fails to comply with an order of the hearing officer, the hearing officer may, for the purpose of resolving issues and disposing of the proceeding without unnecessary delay despite such failure, take such action in regard thereto as is just, including but not limited to the following:

(1) infer that the admission, testimony, documents or other evidence sought by discovery would have been adverse to the party failing to comply;

(2) issue an order to show cause;

(3) rule that, for the purposes of the proceeding, the matter or matters concerning which the order was issued be taken as established adversely to the party failing to comply;

(4) rule that the noncomplying party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer or agent or upon the documents or other evidence discovery of which has been denied;

(5) rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents or other evidence would have shown;

(6) disregard the content of any document filed after the deadline for filing said document has passed;

(7) disregard the content of any document filed after the merits hearing has been conducted, unless the hearing officer has granted permission to file such document; or

(8) dismiss the protest or order that the protest be granted.

B. Any such action may be taken by written or oral order issued in the course of the proceeding or by inclusion in the decision of the hearing officer. It shall be the duty of parties to seek and the hearing officer to grant such of the foregoing means of relief or other appropriate relief as may be sufficient to remedy the failure to comply with the order or withheld testimony, documents or other evidence.

C. The failure to comply in good faith with the orders of the hearing officer may be taken into consideration regarding the reasonableness of administrative costs or the reasonableness of a party's position when there is a motion for costs and fees under Section 7-1-29.1 NMSA 1978.

D. In the event a third-party refuses to comply with a valid subpoena, the hearing officer may allow the party who requested the subpoena to make a proffer of evidence that the party believes would have been obtained had the third-party complied with the subpoena. The opposing party shall have the opportunity to refute the proffer, including by making a proffer of its own as to what it believes would have been shown if the third-party complied with the subpoena. The hearing officer may give the proffers whatever weight she/he deems reasonable in light of all of the evidence presented and with due consideration of the statutory presumption of correctness.

E. Upon motion of the taxpayer or upon its own initiative, the administrative hearings office may evaluate whether TRD satisfied the applicable statutory requirements and deadlines for acknowledging a valid protest, for providing notice and an opportunity to correct an invalid protest, for conducting an informal conference, for requesting a hearing on the protest or in filing a timely and adequate answer consistent with Subsection E of Section 7-1B-8 NMSA 1978, as amended. Except upon good cause shown, finding that TRD failed to comply with applicable statutory requirements and deadlines

may cause the accrual of interest on the protested liability to be suspended from the day after the date on which TRD should have, but did not act, or from another date considering the unique circumstances at issue in the protest.

[22.600.3.18 NMAC - Rp.
22.600.3.17 NMAC, 8/25/2020]

22.600.3.19 PREHEARING CONFERENCES, STATUS CONFERENCES, AND STATUS CHECKS:

A. The hearing officer may direct the parties or their representatives to meet together or with the hearing officer present for a prehearing conference to consider any or all of the following:

(1) simplify, clarify, narrow or resolve the pending issues;

(2) stipulations and admissions of fact and of the contents and authenticity of documents;

(3) expedition in the discovery and presentation of evidence, including, but not limited to, restriction of the number of expert, economic or technical witnesses;

(4) matters of which administrative notice will be taken; and

(5) such other matters as may aid in the orderly and expeditious disposition of the proceeding, including disclosure of the names of witnesses and the identity of documents or other physical exhibits which will be introduced in evidence in the course of the proceeding.

B. Prehearing conferences conducted by the hearing officer will be recorded.

C. The hearing officer may enter in the record an order that recites the results of the conference conducted by the hearing officer. Such order shall include the hearing officer's rulings upon matters considered at the conference, together with appropriate directions to the parties. The hearing officer's order shall control the subsequent course of the proceeding, unless modified to prevent manifest injustice.

D. The hearing officer may require the parties to submit a written report of any conference ordered to be conducted between the parties updating the status of the proceeding in light of the conference.

E. The hearing officer may conduct a status conference upon the request of either party or on the hearing officer's own initiative, at which time the hearing officer may require the parties, attorneys, or authorized representatives, to provide information regarding the status of a protest in order that the administrative hearings office may arrange its docket to expedite the disposition of cases.

F. As part of basic docket management and to ensure efficient use of staff resources, the chief hearing officer, or a designee of the chief hearing officer other than the assigned hearing officer on the case, at any point in the proceeding may contact the parties and inquire about the status of any scheduled or pending case or cases.

[22.600.3.19 NMAC - Rp.
22.600.3.18 NMAC, 8/25/2020]

22.600.3.20 SUBPOENAS:

Any request for issuance of subpoenas in matters before the administrative hearings office shall be guided by Rule 45 of the rules of civil procedure for the district courts of New Mexico, except where provisions of that rule conflict with the limited powers of the administrative hearings office. Any subpoena issued shall be in the name of the chief hearing officer of the administrative hearings office. The party requesting the subpoena shall prepare a proposed subpoena using a form approved by the administrative hearings office, submit the proposed subpoena to the administrative hearings office for approval and to the opposing party, and to timely and reasonably serve the subpoena on the person or entity subject to the subpoena. Unless good cause is shown for a shorter period, a subpoena shall provide at least 10 day notice before compelled attendance at a hearing or deposition, and at least 10 day notice before compelled production of materials.

All returns or certificates of service on served subpoenas shall be filed with the administrative hearings office, copied to the opposing party, and shall be made part of the record of the proceeding.

[22.600.3.20 NMAC - Rp.

22.600.3.19 NMAC, 8/25/2020

22.600.3.21 REQUESTS FOR CONTINUANCES:

A. Either party may request that a scheduled hearing be continued until a different date and time by filing a written request for continuance. The request for continuance should include a description of the reason why the requesting party would like the matter rescheduled, the opposing party's position on the request unless the opposing party does not respond after reasonable efforts were made to contact them, how much additional time the moving party seeks before the matter is rescheduled, and any dates where the parties are unavailable for rescheduling the matter.

B. The hearing officer will generally only consider requests for a continuance made in writing at least seven days before the scheduled hearing and supported by good cause, absent extraordinary, unforeseen circumstances which the requesting party could not have known earlier than seven days before the hearing. Within seven days of the scheduled hearing, the hearing officer may reject a continuance request even if the opposing party has stipulated or does not oppose the request. Unless and until the parties are affirmatively informed by order or other communication of an administrative hearings office employee that the continuance request has been granted, the scheduled hearing remains on the calendar and the parties must appear at the hearing. Failure to appear at the scheduled time of the hearing shall be deemed a non-appearance for the purposes of Section 7-1-16 NMSA 1978.

C. As part of the continuance request, the moving party must waive the 90-day hearing

requirement. In the absence of such express waiver, as a condition of granting the request, the hearing officer may deem that the 90-day hearing requirement was met and attribute any delay in the conduct of the hearing to the moving party.

D. The assigned hearing officer and the chief hearing officer or designee may continue or reschedule a scheduled hearing, or reassign a scheduled hearing to another hearing officer, as necessary to manage the tax docket and state resources in an efficient manner and account for changes in office staffing. [22.600.3.21 NMAC - Rp. 22.600.3.20 NMAC, 8/25/2020]

22.600.1.22 FAILURE TO APPEAR:

A. A taxpayer's failure to appear at the scheduled time of the noticed protest hearing shall be deemed a non-appearance for the purposes of Section 7-1-16 NMSA 1978.

B. If a taxpayer has appeared but a representative of TRD fails to appear at a noticed hearing, the hearing officer may issue an order to show cause as to why the protest shall not be granted, may allow the taxpayer to present their case in the absence of TRD's representative and rule upon the protest, or take other appropriate actions within the hearing officer's power.

C. In considering the non-appearance and whether the person received appropriate notice, the hearing officer may consider the contents of the administrative file, information conveyed to or known by administrative hearings office staff, information related to mailing, including mail tracking, returned receipt information, and notes written on returned envelopes of the United States postal service or other mail tracking services, and arguments offered by the present party, all of which shall be addressed on the record of the hearing or in any subsequent order.

D. Oral rulings based on failure to appear are not final until reduced to writing. Such rulings

may be changed in the written order as new information arises after the hearing related to whether the notice of hearing was properly sent to the correct address or otherwise properly served.

[22.600.3.22 NMAC - Rp.

22.600.3.21 NMAC, 8/25/2020]

22.600.3.23 HEARING OFFICER POWERS AND RESPONSIBILITIES:

A. Hearings in adjudicative proceedings shall be presided over by a hearing officer designated by the chief hearing officer of the administrative hearings office.

B. The hearing officer shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the proceedings and to maintain order. The hearing officer shall have the powers necessary to carry out these duties, including the following:

- (1) to administer or have administered oaths and affirmations;
- (2) to cause depositions to be taken;
- (3) to require the production or inspection of documents and other items;
- (4) to require the answering of interrogatories and requests for admissions;
- (5) to rule upon offers of proof and receive evidence;
- (6) to regulate the course of hearings and the conduct of the parties and their representatives therein;
- (7) to issue a scheduling order, schedule a prehearing conference for simplification of the issues, or any other proper purpose;
- (8) to schedule, continue and reschedule formal hearings;
- (9) to consider and rule upon all procedural and other motions appropriate in proceeding;
- (10) to require the filing of briefs on specific legal issues prior to or after the formal hearing;

(11) to cause a complete record of proceedings in formal hearings to be made;

(12) to make and issue decisions and orders; and

(13) to reprimand, or, with warning in extreme instances exclude from the hearing, any person for engaging in a continuing pattern of indecorous, obstinate, recalcitrant, obstreperous, unethical, unprofessional or improper conduct that interferes with the conduct of a fair and orderly hearing or development of a complete record.

C. In the performance of these functions, the hearing officer shall not be responsible to or subject to the direction of any officer, employee or agent of the taxation and revenue department or the department of finance and administration.

D. In the performance of these adjudicative functions, the hearing officer is prohibited from engaging in any improper ex parte communications about the substantive issues with any party on any matter, as addressed in regulation 22.600.2.16 NMAC. An improper ex parte communication occurs when the hearing officer discusses the substance of a case without the opposing party being present, except that it is not an improper ex parte communication for the hearing officer to go on the record with only one party when the other party has failed to appear at a scheduled hearing.

[22.600.3.23 NMAC - Rp.

22.600.3.22 NMAC, 8/25/2020]

22.600.3.24 EVIDENCE AT HEARING:

A. Every party shall have the right of notice, cross-examination, presentation of evidence, objection, motion, argument and all other rights essential to a fair hearing.

B. The taxpayer shall have the burden of proof, except as otherwise provided by law. Because the taxpayer must overcome the presumption of correctness or otherwise establish entitlement to the claim or relief sought during the protest, the taxpayer will ordinarily

present their case first, followed by TRD, except as otherwise provided by law or as otherwise ordered by the hearing officer for good cause.

The party with the burden in the case shall have an opportunity to make a final rebuttal argument at the hearing. However, in the event closing argument is submitted after the hearing in writing, the hearing officer may require that each side submit simultaneous written closing arguments in the matter without an opportunity for rebuttal argument.

C. The New Mexico rules of evidence and New Mexico rules of civil procedure shall not apply in any matter before the administrative hearings office unless otherwise expressly and specifically prescribed by statute, regulation, or order of the hearing officer.

Relevant and material evidence shall be admissible. Irrelevant, immaterial, unreliable, or unduly repetitious evidence may be excluded. Immaterial or irrelevant portions of an otherwise admissible document shall be segregated or redacted and excluded so far as is practicable. The hearing officer shall consider and give appropriate weight to all relevant and material evidence admitted in rendering a final decision on the merits of a matter.

D. Reliable hearsay evidence is admissible during the protest proceeding.

E. An adverse party, or an officer, agent or employee thereof, and any witness who appears to be hostile, unwilling or evasive may be interrogated by leading questions and may also be contradicted and impeached by the party calling that person.

F. The parties may agree to, and the hearing officer may accept, the joint submission of stipulated facts relevant to the issue or issues. The hearing officer may order the parties to stipulate, subject to objections as to relevance or materiality, to uncontested facts and to exhibits. The hearing officer may also order the parties to stipulate to the admissibility of basic documents concerning the controversy, such as

audit reports of TRD, assessments issued by TRD, returns and payments filed by taxpayer, correspondence between the parties, and to basic facts concerning the identity and business of a taxpayer, such as the taxpayer's business locations in New Mexico and elsewhere, the location of its business headquarters and, if applicable, the state of its incorporation or registration.

G. The hearing officer may take administrative notice of facts not subject to reasonable dispute that are generally known within the community, capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably disputed, or as provided by an applicable statute. Administrative notice may be taken at any stage in the proceeding whether or not requested by the parties. A party is entitled to respond as to the propriety of taking administrative notice which shall include the opportunity to refute a noticed fact.

H. Parties objecting to evidence shall timely and briefly state the grounds for the objection. Rulings on evidentiary objections may be addressed on the record at the time of the objection, or reserved for ruling in a subsequent written order.

I. Formal exception to an adverse ruling is not required.

J. When an objection to admission of an exhibit or to a question propounded to a witness is sustained, the proponent may make a specific offer of what the representative expects to prove by introduction of the exhibit or by the answer of the witness, or the hearing officer may, with discretion, receive and have reported the evidence in full. Excluded exhibits, adequately marked for identification, may be retained in the record so as to be available for consideration by any reviewing authority.

K. In general, documentary evidence should be no larger than 8.5 inches by 11 inches unless expressly allowed by the hearing officer. The hearing officer may admit a documentary exhibit presented at hearing which exceeds

8.5 inches by 11 inches or which cannot be folded, provided the proponent of such exhibit provide the administrative hearings office a copy of the exhibit reduced to 8.5 inches by 11 inches. After the hearing at which the exhibit was admitted, the reduced copy shall be substituted for the larger exhibit and made part of the record of the hearing. The administrative hearings office may permit the proponent of a large exhibit to make arrangements to obtain a reduced copy, provided that a failure by the proponent to provide a reduced copy shall be construed as a withdrawal of the exhibit. For the purposes of maintaining an adequate record for submission to the Court of Appeals upon an appeal of either party, the hearing officer may request or require the submission of electronic copies of all tendered exhibits either in addition to or in lieu of the physical copies of tendered exhibits.

L. Objects introduced as exhibits shall be returned to the proponent at the conclusion of the hearing unless otherwise ordered by the hearing officer. In lieu of the object itself, the hearing officer may require the moving party to submit a photograph, video, or other appropriate substitute such as verbal description of the pertinent characteristics of the object for the record. If an object is retained for the record, it may be returned to the proponent no less than 45 days after a final decision and order is rendered on the merits of a protest provided that a party has not filed a notice of appeal. [22.600.3.24 NMAC - Rp. 22.600.3.23 NMAC, 8/25/2020]

22.600.3.25 RECORD: Hearings shall be electronically recorded unless the hearing officer allows recording by any alternative means approved by the New Mexico supreme court for the recording of judicial proceedings. Any party may request that a hearing be recorded by such an alternative in writing at least seven days before the scheduled hearing. Unless otherwise ordered by the hearing officer, the party requesting recording by an alternate

means will be responsible for the full cost thereof, including the provision of the original transcript to the hearing officer and copies to opposing parties. In the event of a videoconference hearing, only the audio portion of the recording shall be maintained as part of the record.

[22.600.3.25 NMAC - Rp. 22.600.3.24 NMAC, 8/25/2020]

22.600.3.26 PROPOSED FINDINGS, CONCLUSIONS AND BRIEFS: At the close of the reception of evidence, or within a reasonable time thereafter fixed by the hearing officer, the hearing officer may require or allow any party to file with the hearing officer proposed orders, proposed findings of fact, and proposed conclusions of law, together with reasons therefore and briefs in support thereof. The hearing officer may adopt the proposed findings in part, in whole, or may make his or her own findings. The period for preparing the final decision and order shall not commence until after the final pleadings, including any ordered briefings, findings of fact, or conclusions of law, are filed.

[22.600.3.26 NMAC - Rp. 22.600.3.25 NMAC, 8/25/2020]

22.600.3.27 DATE OF MAILING OR DELIVERY:
A. Use of the phrase “date of mailing or delivery” in Section 7-1-25A NMSA 1978 authorizes the administrative hearings office to choose between mailing and hand-delivering the written decision and order of the hearing officer.

B. “Date of mailing” means the time that the hearing officer’s decision and order enclosed in properly addressed envelope or wrapper was postmarked by the U.S. postal service. “Delivery” means time of hand delivery of the written decision and order to the party’s business residence.

[22.600.3.27 NMAC - Rp. 22.600.3.26, 8/25/2020]

22.600.3.28 REASONABLE ADMINISTRATIVE COSTS, LITIGATION COSTS AND ATTORNEY FEES:

A. At any time after the evidentiary record has closed in reference to the merits of a protest, the presiding hearing officer may request additional information from the parties relevant to determining whether the taxpayer should be awarded reasonable administrative costs, litigation costs and attorney fees pursuant to Section 7-1-29.1 NMSA 1978. The hearing officer may make such request regardless of whether the administrative record contains an explicit prior request for fees and costs. For the purpose of this subsection, additional information may include legal briefing, affidavits, documents, or live testimony or legal argument limited to the issue of whether a taxpayer should be considered a prevailing party, whether TRD’s position in the proceeding was based upon a reasonable application of the law to the facts of the case, or for determining the reasonableness of a potential award.

B. In circumstances where the issue of reasonable administrative costs, litigation costs and attorney fees remains outstanding after the parties have resolved, compromised, or conceded all other disputed issues in the protest, taxpayer shall by motion or other written communication, notify TRD and the administrative hearings office that it is seeking a determination on that issue prior to withdrawing its protest. A request for an award of reasonable administrative costs, litigation costs and attorney fees will not be considered subsequent to the withdrawal of the protest in which the taxpayer alleges the fees and costs were incurred. In any manner where a request for hearing before the administrative hearings office has been filed by either party, the jurisdiction of the administrative hearings office to consider reasonable administrative costs, litigation costs and attorney fees shall not be extinguished by the full abatement of an assessment, full allowance of a refund or credit, or other concession which if not for the issue of fees and costs, would resolve the protest in favor of the taxpayer without the need

for a hearing.
[22.600.3.28 NMAC - N, 8/25/2020]

22.600.3.29

RECONSIDERATIONS:

A. A party may file a motion for reconsideration no more than seven calendar days after the date on the final decision and order. The opposing party may file a response no more than seven calendar days after the motion for reconsideration was filed. Motions for reconsideration that are not filed within this deadline may be denied automatically.

B. The prevailing party shall not file a motion for reconsideration. However, if a requested action is granted in part and denied in part, either party may file a motion for reconsideration.

C. Motions for reconsideration shall not endeavor to present new evidence previously available, or discoverable through reasonable diligence, to the parties before the hearing. Motions for reconsideration shall not reargue the weight of evidence already ruled upon and shall not reiterate legal arguments already ruled upon. However, a motion for reconsideration may address gross factual or legal errors/ omissions in the final decision and order.

D. An order shall be issued within seven calendar days of the response deadline or the motion to reconsider shall be deemed denied.

E. The parties should not presume that the filing of a motion for reconsideration will extend the deadline to appeal a decision and order under the Tax Administration Act, even if reconsideration is sought within the specified deadlines.

[22.600.3.29 NMAC - N 8/25/2020]

22.600.3.30 APPEALS:

A. Appeals of a final tax decision and order of the administrative hearings office are taken by filing a timely notice of appeal directly with the New Mexico court of appeals in accord with the New Mexico rules of appellate procedure. Writing or otherwise communicating to the administrative

hearings office a general intent to appeal a final decision is insufficient to perfect an appeal of the case.

B. Upon filing the required docketing statement with the New Mexico court of appeals, the appellant shall serve a copy of the docketing statement with the administrative hearings office. The administrative hearings office will then prepare and file the record proper with the New Mexico court of appeals in accord with the New Mexico rules of appellate procedure, providing a copy to the appellant and the other party.

C. The administrative hearings office, as the adjudicative body, is not a party to the appeal and all requests for positions related to motions in the appeal should be addressed to the opposing party or where appropriate, to the relevant appellate court.

[22.600.3.30 NMAC - Rp, 22.600.3.27 NMAC, 8/25/2020]

HISTORY of 22.600.3 NMAC: [RESERVED]

History of Repealed Material: 22.600.3 NMAC, Hearings Under The Tax Administrative Act, filed 1/17/2018 - Repealed 8/25/2020.

Other History: 22.600.3 NMAC, Hearings Under The Tax Administrative Act, filed 1/17/2018 Replaced 22.600.3 NMAC, Hearings Under The Tax Administrative Act, effective 8/25/2020.

**ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
ENERGY CONSERVATION AND MANAGEMENT DIVISION**

**TITLE 3 TAXATION
CHAPTER 3 PERSONAL INCOME TAXES
PART 14 NEW SOLAR MARKET DEVELOPMENT INCOME TAX CREDIT**

3.3.14.1 ISSUING AGENCY: Energy, Minerals and

Natural Resources Department, Energy, Conservation and Management Division.

[3.3.14.1 NMAC - N, 8/25/2020]

3.3.14.2 SCOPE: 3.3.14 NMAC applies to the application and certification procedures for administration of the new solar market development income tax credit.

[3.3.14.2 NMAC - N, 8/25/2020]

3.3.14.3 STATUTORY AUTHORITY: 3.3.14 NMAC is established under the authority of Laws 2020, Chapter 13, Section 1.

[3.3.14.3 NMAC - N, 8/25/2020]

3.3.14.4 DURATION: Permanent.

[3.3.14.4 NMAC - N, 8/25/2020]

3.3.14.5 EFFECTIVE DATE: August 25, 2020 unless a later date is cited at the end of a section.

[3.3.14.5 NMAC - N, 8/25/2020]

3.3.14.6 OBJECTIVE: 3.3.14 NMAC's objective is to establish procedures for administering the certification program for the new solar market development income tax credit.

[3.3.14.6 NMAC - N, 8/25/2020]

3.3.14.7 DEFINITIONS:

A. "Applicant" means a New Mexico taxpayer that has installed a solar energy system at a residence, business or agricultural enterprise that the taxpayer owns who desires to have the department certify the solar energy system pursuant to 3.3.14 NMAC so that the tax payer may receive a state tax credit.

B. "Application package" means the application documents an applicant submits to the department for certification to receive a state tax credit.

C. "Array" means the collectors of a solar thermal system or the modules of a photovoltaic system.

D. "Balance of system" means portions of a solar energy system other than the array.

E. “Building code authority” means the New Mexico regulation and licensing department, construction industries department or the local government agency having jurisdiction for building, electrical and mechanical codes.

F. “Certified” or “certification” means department approval of a solar energy system, which makes the applicant owning the system eligible for a state tax credit.

G. “Collector” means the solar thermal system component that absorbs solar energy for conversion into heat.

H. “Collector aperture” means the area of a solar thermal collector that absorbs solar energy for conversion into usable heat.

I. “Component” means a solar energy system’s equipment and materials.

J. “Department” means the energy, minerals and natural resources department.

K. “Division” means the department’s energy conservation and management division.

L. “Energy system” means an engineered system that delivers solar energy to an end use by flow of fluid or electricity caused by energized components such as pumps, fans, inverters or controllers.

M. “Install” or “installation” means the direct work of placing a solar energy system into service to operate and produce energy at the expected level for a system of its size.

N. “Interconnection” means connection of a photovoltaic system that an electric utility customer operates to that utility’s distribution grid system.

O. “Interconnection agreement” means an agreement allowing the applicant to interconnect a solar energy system of a specified type and size to a suitable electric transmission or distribution line.

P. “Module” means the photovoltaic system component that absorbs sunlight for conversion into electricity.

Q. “New” means the condition of being recently manufactured and not used previously in any installation.

R. “New solar market development income tax credit” means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.

S. “Non-residential” means a business or agricultural enterprise.

T. “OG” means operating guidelines that the solar rating and certification corporation has or will establish including system performance or component characteristics the SRCC defines in its directory. Operating guidelines shall be from the directory in effect on March 1, 2006 and all successive revisions.

U. “Portable” means not permanently connected to a residence, business or agricultural enterprise or connected to a mobile vehicle that is a part of a residence, business or agricultural enterprise.

V. “Solar collector” means a solar thermal collector or photovoltaic module.

W. “Solar energy system” means a solar thermal system or photovoltaic system.

X. “Solar storage tank” means a tank provided as a component in a solar thermal system that is not heated by electricity or a heating fuel.

Y. “SRCC” means the solar rating and certification corporation.

Z. “Standard test conditions” means the environmental conditions under which a manufacturer tests a photovoltaic module for power output, which are a photovoltaic cell temperature of 25 degrees Celsius and solar insolation of 1000 watts per square meter on the photovoltaic cell surface.

AA. “State tax credit” means the new solar market development income tax credit.
[3.3.14.7 NMAC - N, 8/25/2020]

3.3.14.8 GENERAL PROVISIONS:

A. Only a New Mexico applicant who has purchased and installed an operating solar energy system on property that he or she owns, and that the department has certified is eligible for a state tax credit.

B. An applicant must own the residence, business, or agriculture enterprise on which the solar energy system is located to qualify for the tax credit. The applicant may rent a residence, business or agricultural enterprise that the applicant owns to another entity. The renter does not qualify for the tax credit.

C. The annual aggregate amounts of the state tax credit available to applicants owning certified solar energy systems is limited to \$8,000,000 per calendar year. When the \$8,000,000 limit for solar energy systems is reached based on the total of applicants certified, the department will no longer certify systems in that year. Applications received after the aggregate limit is reached shall not be approved and will be returned to applicant. The department shall keep a record of the order of receipt of all application packages to ensure the annual aggregate amount is not exceeded in any given year.

D. In the event of a discrepancy between a requirement of 3.3.14 NMAC and an existing New Mexico regulation and licensing department or New Mexico taxation and revenue department rule promulgated prior to 3.3.14 NMAC’s adoption, the existing rule shall govern.

[3.3.14.8 NMAC - N, 8/25/2020]

3.3.14.9 APPLICATION:

A. To apply for a state tax credit an applicant shall submit an application package to the division through a secure electronic portal or by mail. The department will not accept applications submitted by email. An applicant may obtain a state tax credit application form and system installation form from the division.

B. An application package shall include a completed state tax credit application form and written attachments for a solar thermal system or photovoltaic system. The applicant shall submit the state tax credit application form and any attachments required at the same time as a complete application package. An applicant shall submit one application package for each solar energy system. If there are multiple owners a joint application must be submitted. All material submitted in the application package shall be capable of being provided on 8½-inch x 11-inch paper.

C. The application package shall meet 3.3.14 NMAC's requirements. If an application package fails to meet a requirement, the department shall disapprove the application.

D. The completed application form shall consist of the following information:

(1) the applicant's name, mailing address, telephone number and social security number or employer identification number (EIN) provided by a business or agricultural enterprise;

(2) the address where the solar energy system is located, if located at a residence, business or agricultural enterprise, or a location description if located at an agricultural enterprise;

(3) the solar energy system's type and description;

(4) the date the solar energy system started continuous operation;

(5) if a contractor installed the solar energy system, the contractor's name, address, telephone number, license category and license number;

(6) acknowledgement that the applicant installed the solar energy system, if applicable;

(7) the net cost of equipment, materials and labor of the solar energy system, excluding the expenses and income listed in 3.3.14 NMAC;

(8) a statement that the applicant signed and dated, which may be a form of electronic signature if approved by the department, agreeing that:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge;

(b) applicant has read the certification requirements contained in 3.3.14 NMAC;

(c) applicant understands that there is annual aggregate state tax credit limit in place for solar energy systems;

(d) applicant understands that the department must certify the solar energy system documented in the application package before becoming eligible for a state tax credit;

(e) applicant agrees to make any changes the department requires to the solar energy system for compliance with 3.3.14 NMAC; and

(f) to ensure compliance with 3.3.14 NMAC applicant agrees to allow the department or its authorized representative to inspect the solar energy system that is described in the application package at any time after the date of submittal of the application package until three years after the department has certified the solar energy system, upon the department providing a minimum of five days' notice to the applicant.

E. The application form shall request the following information from the applicant:

(1) applicant's email address; and

(2) contractor's email address.

F. The application package shall consist of the following information provided as attachments:

(1) a copy of a current property tax bill to the applicant for the residence, business or agricultural enterprise where the solar energy system is located;

(2) a copy of the invoice of itemized equipment and labor costs for the solar energy system;

(3) a copy of the solar energy system's design schematic and technical specifications as described in 3.3.14 NMAC;

(4) a completed system installation form;

(5) if application is for a solar thermal system, a completed solar thermal list form that includes the:

(a) manufacturer or supplier of system components and their model numbers;

(b) number of collectors;

(c) collector aperture dimensions;

(d) orientation of collectors by providing the azimuth angle from true south and tilt angle from horizontal;

(e) SRCC solar collector certification identification number;

(f) a description of the freeze protection;

(g) a description of overheating protection;

(h) thermal storage fluid or material and its volume, if thermal storage is a part of the system and if the thermal storage does not have energy provided from a non-solar or non-renewable source; and

(i) manufacturer's specifications for collectors, if collectors are unglazed;

(6) if application is for a photovoltaic system, a completed solar photovoltaic list form that includes the:

(a) manufacturer or supplier of major system components and their model numbers;

(b) number of modules;

(c) module rated direct current power output in watts under manufacturer's standard test conditions;

(d) collectors' orientation by providing the azimuth angle from true south and tilt angle from horizontal;

(e) total inverter capacity in kilowatts, if an inverter is a part of the system;

(f) battery storage size and capacity in kilowatts and kilowatt-hours, if battery storage is a part of the system; and

(g) the contract number and a copy of the signature pages of the interconnection agreement with the electric utility if the photovoltaic system is interconnected to a utility transmission line or distribution system; and

(7) other information the department needs to evaluate the specific system type for certification.

G. The completed system installation form shall include the following information:

(1) printed name of the applicant who is identified on the application form;

(2) printed name, title and telephone number of the contractor's authorized representative, if applicable, who approved the system installation form;

(3) printed organizational name, e-mail address and telephone number of the building code authority issuing the building permit;

(4) date on which solar energy system installation was substantially complete and ready to operate;

(5) if a contractor installed the solar energy system, a statement that the contractor's authorized representative has signed and dated, which may be a form of electronic signature if approved by the department, agreeing that:

(a) the solar energy system was installed in full compliance with all applicable federal, state and local government statutes or ordinances, rules or regulations and codes and standards

that are in effect at the time of installation;

(b) contractor has read 3.3.14 NMAC's certification requirements;

(c) the date on which the solar energy system was ready to operate;

(d) the installed solar energy system will work properly with regular maintenance; and

(e) contractor provided written operations and maintenance instructions to the applicant and posted a one-page summary of these instructions in a sheltered accessible location acceptable to the applicant and which is near or at the solar energy system's array or balance of system components; and

(6) the building code authority's permit number and issuance date, and date of successful inspection noted on a form or a web-based report the building code authority approves.

[3.3.14.9 NMAC - N, 8/25/2020]

3.3.14.10 APPLICATION REVIEW PROCESS:

A. The department shall consider applications in the order received. If the department receives multiple applications on the same day that would cumulatively exceed the overall limit of state tax credit availability, the department shall certify the first application received for the last remaining tax credit.

B. The department shall review the application package to calculate the state tax credit, check the accuracy of the applicant's documentation and determine whether the department shall certify the solar energy system.

C. If the department finds that the application package meets 3.3.14 NMAC's requirements and a state tax credit is available, the department shall certify the applicant's solar energy system and document the applicant as eligible for a state tax credit. If a state tax credit is not available in the calendar year

when the application was submitted, the applicant is notified that the program has reached the tax credit cap and their application is not certified. The department provides certification through written notification to the applicant. The notification shall include the applicant's contact information, last four digits of the social security number or EIN, system certification number and the state tax credit amount.

D. The department shall report to the taxation and revenue department the information required to verify, process and distribute each state tax credit by providing a copy of the department's certification notification.

E. The applicant may submit a revised application package to the department. The department shall place the resubmitted application in the review schedule as if it were a new application.

F. The department shall disapprove an application that is not complete or correct or does not meet the approval criteria. The department shall also disapprove applications received after the annual cap for that calendar year is reached. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The department places the resubmitted application in the review schedule as if it were a new application. [3.3.14.10 NMAC - N, 8/25/2020]

3.3.14.11 SAFETY, CODES AND STANDARDS:

A. Solar energy systems that the department may certify shall meet the following requirements:

(1) compliance with the latest adopted version of all applicable federal, state and local government statutes or ordinances, rules or regulations and codes and standards that are in effect at the time that the applicant submits the application package;

(2) compliance with all applicable utility company or heating fuel vendor requirements, if the system being served with a solar energy system is also served by utility electricity or a heating fuel;

(3) compliance with the building code authority's structural design requirements, as applicable to new and existing structures upon which solar energy system components may be mounted and support structures of solar energy system components;

(4) permitted and inspected by the building code authority for building, electrical or mechanical code compliance, as applicable to the type of solar energy system installed; and

(5) a written final inspection approval obtained from the building code authority after the solar energy system's installation, as applicable to the solar energy system type.

B. Solar thermal systems that the department may certify shall meet the following requirements:

(1) installation by a certified mechanical journeyman who is an employee of a company holding a valid New Mexico mechanical contractor license; and

(2) design, permitting and installation in full compliance with all applicable provisions of the New Mexico Plumbing Code 14.8.2 NMAC, the New Mexico Mechanical Codes 14.9.2 NMAC, Solar Energy Code 14.9.6 NMAC, the New Mexico General Construction Building Codes, 14.7.2 to 14.7.7 NMAC and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under Sections 3-17-6 and 3-18-6 NMSA 1978.

C. Photovoltaic systems that the department may certify shall meet the following requirements:

(1) installed by a certified electrical journeyman who is an employee of a company

holding a valid New Mexico electrical contractor license; and

(2) design, permitting and installation in full compliance with all applicable provisions of the New Mexico Electrical Code 14.10.4 NMAC and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under Sections 3-17-6 and 3-18-6 NMSA 1978.

[3.3.14.11 NMAC - N, 8/25/2020]

3.3.14.12 SOLAR COLLECTOR AND MODULE ORIENTATION AND SUN EXPOSURE:

A. A solar energy system array the department certifies shall have an azimuth angle or sun exposure reduction due to shading or other factors that results in annual energy production of the total solar energy system having a combined derating of not more than twenty five percent when compared to an ideal solar energy system at the same location that has an unshaded array tilt equal to local latitude and azimuth of true south. For cases in which the combined impact of orientation and sun exposure of an array is evaluated, the applicant shall estimate a derating using a department approved method or model.

B. A tracking array of a solar energy system that the department certifies shall have a mechanism to track the sun so that the array absorber surface consistently receives the sun's direct beam at all times when the direct beam of full sun is available, without requiring manual adjustment, except for a solar energy system having the following tracking array control features:

(1) automatic and intentional stowage of the array due to high velocity wind to avoid damage to the array and its support structure;

(2) automatic and intentional adjustment to off-direct-beam array orientations at low sun angles to optimize the solar energy system's annual energy production; or

(3) other automatic and intentional array control features that demonstrate to the department's satisfaction that the solar energy system's annual energy production is optimized.

C. A solar energy system that the department certifies shall have an array and balance of system components that are automatically controlled to collect sunlight or solar heat and deliver to an end use, without requiring manual operation.

D. It is the applicant's sole responsibility to take action or meet the Solar Rights Act's requirements, if applicable. [3.3.14.12 NMAC - N, 8/25/2020]

3.3.14.13 MINIMUM SYSTEM SIZES, SYSTEM APPLICATIONS AND LISTS OF ELIGIBLE COMPONENTS:

A. Solar energy systems or their portions that the department may certify shall meet the following requirements:

(1) be made of new equipment, components and materials;

(2) if installed by a contractor, have a written minimum two-year warranty provided by the contractor on parts, equipment and labor with the following exceptions:

(a) the warranty provided by the contractor on each specific piece of equipment shall not exceed the duration and conditions of the warranty provided by the manufacturer of the equipment against defects in materials and workmanship; and

(b) in the case of an expansion of an existing system, the warranty provided by the contractor shall be limited to cover only parts, equipment and labor directly related to the expansion;

(3) be a complete energy system that collects, converts and distributes solar energy to the residence, business or agricultural enterprise it serves, unless

requirements are met for expansion of an existing solar energy system;

(4) if an expansion of an existing solar energy system, end use annual energy production of the new system shall be increased in comparison to the existing system by the amount of the minimum system size requirement and the contractor or applicant shall provide a written summary of the condition of each major component of the system; and

(5) if a specialty component is required for a complete solar energy system, then that component shall be included as part of the solar energy system that is eligible for department certification.

B. Solar energy systems or their portions that the department shall not certify are as follows:

(1) a system or portion of a system that uses non-solar or non-renewable sources in its operation, except for the following:

(a) power necessary to provide for solar energy system components' incidental electricity needs; and

(b) non-solar or non-renewable sources that do not exceed twenty five percent of the system's annual energy production;

(2) a system or portion of a system that would be present if the solar energy system was not installed;

(3) a system that increases an existing residence, business or agricultural enterprise's average annual energy consumption;

(4) a system that is mobile and does not serve a permanent end use energy load or is not permanently located in New Mexico;

(5) a system that is not connected to a structure or foundation and does not serve a permanent end use energy load or is not permanently located in New Mexico;

(6) a system or portion of a system having one or more components not manufactured

on a regular basis by a business enterprise;

(7) a system installed on a recreational vehicle;

(8) a system not serving an end use energy load; or

(9) a system or portion of a system that replaces a system or portion of a system the department has certified in a previous application for a state tax credit.

C. The department may disapprove a system type, solar thermal collector type, photovoltaic module type or a solar energy system component if not listed in 3.3.14 NMAC for certification.

D. Solar thermal systems that the department may certify include:

(1) the system applications of solar domestic hot water, solar space heating, solar air heating, solar process heating, solar space cooling or combinations of solar thermal system applications listed in 3.3.14 NMAC;

(2) the collector types of flat plate, parabolic trough and evacuated tube; and

(3) the listed component categories of collectors, pumps, fans, solar storage tanks, expansion tanks, valves, controllers and heat exchangers.

E. A solar thermal system component that the department may certify is a photovoltaic system providing power for a solar thermal system component's incidental electricity needs. The department shall not certify such a photovoltaic system as a separate solar energy system eligible for a separate state tax credit.

F. Solar thermal systems or their components that the department shall not certify are as follows:

(1) a heating system or heating system components necessary for a swimming pool or a hot tub;

(2) equipment sheds, wall preparation, cabinetry, site-built enclosures, distribution piping and associated installation costs;

(3) a building design element used for passive solar space heating, space cooling, daylighting or other environmental comfort attribute;

(4) a water quality distillation or processing system;

(5) in a combined system, the portions of the system not allowed to receive a state tax credit or for which the department shall not certify the system;

(6) systems without adequate freeze protection;

(7) systems incorporating drain down as a freeze protection method;

(8) systems without adequate overheating protection; and

(9) systems using solar rated low-pressure components with high pressure refrigerant compressors.

G. Solar thermal systems that the department may certify shall meet the following requirements:

(1) minimum system size of 15 square feet of solar collector aperture area;

(2) for solar domestic hot water systems installed at a residence or business, a minimum of fifty percent of the total domestic water heating load provided by solar energy;

(3) a collector that is:

(a) listed as certified by the SRCC by OG-100 collector certification or OG-300 system certification processes;

(b) if glazed, made of all-metal enclosures, absorber plates, fasteners and fittings; aperture glazing of tempered glass; and fiberglass or polyisocyanurate insulation; or

(c) if unglazed, made of durable materials having a minimum 12-year warranty period for full replacement; and

(4) all components approved by an agency accredited by the American national standards institute, if available for that specific component category.

H. Photovoltaic systems that the department may certify include:

(1) the system applications of direct power without battery storage, utility grid interconnected without battery storage, utility grid interconnected with battery storage, stand-alone with battery storage, stand-alone with utility backup capability and water pumping;

(2) the flat plate module types of crystalline, poly-crystalline or thin-film amorphous silicon;

(3) the listed component categories of modules, inverters, batteries, manufactured battery enclosures, charge controllers, power point trackers, well pumps, racks, sun tracking mechanisms, performance monitoring equipment, communications, datalogging or lightning protection; and

(4) disconnect components, safety components, standard electrical materials and standard electrical hardware necessary for the assembly of the listed component categories into a complete, safe and fully operational system.

I. Photovoltaic systems that the department may certify shall meet the following requirements:

(1) a minimum total array power output of 100 watts direct current at manufacturer’s standard test conditions;

(2) all components listed and labeled by a nationally recognized testing laboratory, if such listing is available for that specific component category; and

(3) an agricultural enterprise photovoltaic system on a farm or ranch that is not connected to an electric utility transmission or distribution system.

J. Photovoltaic systems or their portions that the department shall not certify are as follows:

(1) a commercial or industrial photovoltaic system that is not connected to

an electric utility transmission or distribution system;

(2) power equipment sheds, wall preparation, cabinetry, site-built battery enclosures, distribution wiring and associated installation costs;

(3) the drilling, well casing, storage tanks, distribution piping, distribution controls and associated installation costs of a water pumping system; and

(4) a packaged product powered by photovoltaic cells that an applicant purchased directly from a retail business enterprise, is not custom designed, and does not require a permit from the building code authority for installation, including watches, calculators, walkway lights and toys.

[3.3.14.13 NMAC - N, 8/25/2020]

3.3.14.14 CERTIFICATION:

A. The purpose of the department’s certification program is to evaluate certification of complete solar energy systems for state tax credit eligibility that are comprised of components and materials that are tested, certified, approved or listed, as applicable, by other organizations identified or referenced in 3.3.14 NMAC.

B. For purposes of monitoring compliance with 3.3.14 NMAC, the department or its authorized representative shall have the authority to inspect a solar energy system owned by an applicant who has submitted an application for certification, upon the department providing five days’ notice to the applicant.

[3.3.14.14 NMAC - N, 8/25/2020]

3.3.14.15 CALCULATING THE SOLAR ENERGY SYSTEM COST:

A. A state tax credit shall be based on the equipment, materials and labor costs of a solar energy system the department has certified.

B. The equipment, materials and labor costs of a solar energy system the department certifies shall be documented in writing.

C. The cost of a solar energy system the department certifies shall be the net cost of acquiring the system and shall not include the following:

(1) expenses, including but not limited to:

(a) unpaid labor or the applicant’s labor;

(b) unpaid equipment or materials;

(c) land costs or property taxes;

(d) costs of structural, surface protection and other functions in building elements that would be included in building construction if a solar energy system were not installed;

(e) mortgage, lease or rental costs of the residence, business or agricultural enterprise;

(f) legal and court costs;

(g) research fees or patent search fees;

(h) fees for use permits or variances;

(i) membership fees;

(j) financing costs or loan interest;

(k) marketing, promotional or advertising costs;

(l) repair, operating or maintenance costs;

(m) extended warranty costs;

(n) system resale costs;

(o) system visual barrier costs;

(p) adjacent structure modification costs; and

(q) vegetation maintenance costs including tree trimming; or

(2) income, including:

(a) payments the solar energy system contractor or other parties provide that reduce the system cost, including rebates, discounts and refunds except

for federal, state and local government and utility company solar incentives;

(b)

services, benefits or material goods the solar energy system contractor or other parties provide by the same or separate contract, whether written or verbal; and

(c)

other financial incentives provided for solar energy system installation, if applicable.

D. The department shall make the final determination of the net cost of a solar energy system the department certifies pursuant to 3.3.14 NMAC.

[3.3.14.15 NMAC - N, 8/25/2020]

3.3.14.16 CALCULATING THE STATE TAX CREDIT:

A. A state tax credit to an applicant for a solar energy system the department has certified shall not exceed:

(1) ten percent of the net solar energy system cost as provided in 3.3.14.15 NMAC; and

(2) \$6,000.

B. The taxation and revenue department shall make the final determination of the amount of a state tax credit.

[3.3.14.16 NMAC - N, 8/25/2020]

3.3.14.17 CLAIMING THE STATE TAX CREDIT:

A. An applicant shall apply for the state tax credit with the taxation and revenue department and provide the certification and any other information the tax and revenue department requires within 12 months following the calendar year in which the system was installed.

B. If the amount of state tax credit claimed exceeds the applicant's individual income tax liability, the applicant may carry the excess forward for up to five consecutive taxable years.

C. An applicant claiming a state tax credit shall not claim a state tax credit pursuant to another law for costs related to the same solar energy system costs.

[3.3.14.17 NMAC - N, 8/25/2020]

3.3.14.18 CONSUMER INFORMATION:

A. If a contractor installs the solar energy system, the contractor shall inform the applicant about system design, installation, performance, operation and maintenance by providing the following:

(1) prior to system installation, a summary of the specific system type that meets all 3.3.14 NMAC's requirements, the system's capacity or size and the system's estimated annual energy production;

(2) upon completion of system installation, written operation and maintenance instructions, including how to conduct simple diagnostic observations and tests to determine if the solar energy system is working properly to produce energy;

(3) upon completion of system installation, a written summary of operation and maintenance instructions on one page, posted at an accessible location acceptable to the applicant and that is near or at the solar energy system's array or balance of system components; and

(4) upon completion of system installation, written warranties in effect for equipment and contractor's labor, including their start and end dates and telephone, address and website contact information, as applicable, for honoring or extending warranties.

B. If the solar energy system is a solar thermal system, the following information shall be displayed:

(1) pump or fan status by a visual indicator, as applicable;

(2) outlet temperature of the collector loop;

(3) if a liquid collector, the collector loop's pressure; and

(4) the solar storage tank's temperature, if applicable.

C. If the solar energy system is a photovoltaic system,

the following information shall be displayed:

(1) for all photovoltaic systems, a visual indicator for operating status;

(2) for an electric utility interconnected system without batteries,

(a) daily and cumulative energy production in kilowatt-hours alternating current of the inverter display or as shown on online data monitoring; and

(b) instantaneous power output in kilowatts alternating current of the inverter display or as shown on online data monitoring;

(3) for an electric utility interconnected system with batteries, a method to enable real-time evaluation of system power or energy production; and

(4) for a stand-alone system with battery storage,

(a) voltage and amperes of module array; and

(b) battery storage level.

[3.3.14.18 NMAC - N, 8/25/2020]

3.3.14.19 INSPECTION OF SOLAR ENERGY SYSTEMS:

A. The inspections required through the application process for certification of an applicant's solar energy system are:

(1) inspection by the building code authority for building, electrical or mechanical code compliance, as applicable to the solar energy system type; and

(2) inspection for compliance with electric utility company requirements for photovoltaic systems that are interconnected to the distribution grid of that electric utility company, if applicable.

B. For purposes of inspecting the solar energy system's installation, the department or its authorized representative shall have the right to inspect a solar energy system an applicant owns and the department has certified, within

three years after the department's certification, upon the department providing a minimum of five days' notice to the applicant.
[3.3.14.19 NMAC - N, 8/25/2020]

HISTORY OF 3.3.14 NMAC:
Pre-NMAC History: None.

History of Repealed Material:
[RESERVED]

ENVIRONMENT DEPARTMENT

This is an emergency amendment to 11.5.1 NMAC, Section 16 effective 08/5/2020

Explanatory note: The New Mexico Environment Department (NMED) will issue a temporary emergency amendment which will be effective for 120 days. The temporary emergency amendment is in response to the current state of public health emergency regarding COVID-19. The rule is being amended to avoid causing an imminent peril to the public health, safety or welfare. This temporary emergency rulemaking does not permanently amend or repeal the existing rule. The emergency amendment will only remain in effect for 120 days following the effective date unless a permanent rule takes effect under the normal rule making process.

11.5.1.16 RECORDKEEPING AND REPORTING OCCUPATIONAL INJURIES, ILLNESSES AND FATALITIES:

A. General: Except as otherwise provided in Subsection B of this section, the provisions of 29 CFR Part 1904, Recording and Reporting Occupational Injuries and Illnesses (internet: www.osha.gov), are hereby incorporated into this section.

B. Exception: Work-related injuries, illnesses and fatalities which are required to be reported by 29 CFR Part 1904.39 shall be reported, by email, telephone or facsimile machine, to the bureau in

lieu of the location specified in 29 CFR Part 1904.39. The bureau's address, email, and telephone/facsimile numbers are: occupational health and safety bureau, New Mexico environment department, P.O. Box 5469, Santa Fe, NM 87502, email: nmenv-osh@state.nm.us, Tel: (505) 476-8700, Fax: (505) 476-8734.

C. Reporting
COVID-19 cases: Within four (4) hours of learning that an employee tested positive for coronavirus disease 2019 (COVID-19), each employer shall report the positive test to the bureau at the email, telephone or facsimile number specified in Subsection B of this section.
[10/9/1975, 9/3/1978, 3/21/1979, 5/10/1981, 11/17/1983, 7/19/1994, 1/1/1996, 8/15/1998; 11.5.1.16 NMAC - Rn & A, 11 NMAC 5.1.16, 10/30/2008; A, 7/16/2015; A/E, 8/5/2020]

GAME AND FISH DEPARTMENT

The State Game Commission at its 8/13/2020 meeting, repealed its rule 19.30.4 NMAC, Boundary Descriptions for Game Management Units, filed 6/27/2013, and replaced it with 19.30.4 NMAC, Boundary Descriptions for Game Management Units, adopted on 8/13/2020 and becomes effective 8/25/2020.

GAME AND FISH DEPARTMENT

TITLE 19 NATURAL RESOURCES AND WILDLIFE CHAPTER 30 WILDLIFE ADMINISTRATION PART 4 BOUNDARY DESCRIPTIONS FOR GAME MANAGEMENT UNITS

19.30.4.1 ISSUING
AGENCY: New Mexico department of game and fish.
[19.30.4.1 NMAC - Rp, 19.30.4.1 NMAC, 8/25/2020]

19.30.4.2 SCOPE:
Department staff and licensed hunters and trappers.
[19.30.4.2 NMAC - Rp, 19.30.4.2 NMAC, 8/25/2020]

19.30.4.3 STATUTORY AUTHORITY: 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds and fish.
[19.30.4.3 NMAC - Rp, 19.30.4.3 NMAC, 8/25/2020]

19.30.4.4 DURATION:
Permanent.
[19.30.4.4 NMAC - Rp, 19.30.4.4 NMAC, 8/25/2020]

19.30.4.5 EFFECTIVE DATE: August 25, 2020, unless a different date is cited at the end of a section.
[19.30.4.5 NMAC - Rp, 19.30.4.5 NMAC, 8/25/2020]

19.30.4.6 OBJECTIVE:
Establishing boundary descriptions for game management units and other designated areas.
[19.30.4.6 NMAC - Rp, 19.30.4.6 NMAC, 8/25/2020]

19.30.4.7 DEFINITIONS:
A. "County road"
or "CR" as used herein shall be a numbered road that is designated and managed by New Mexico county governments.

B. "East" or "E"
as used herein shall be the cardinal direction east.

C. "Forest road"
or "FR" as used herein shall be a numbered road that is under the jurisdiction of and managed by the United States Forest Service.

D. "Forest trail"
or "FT" as used herein shall be a numbered trail that is under the jurisdiction of and managed by the United States Forest Service.

E. “Game management unit” or “GMU” as used herein, shall be a geographical subdivision of the state used to manage game species.

F. “Interstate” or “I-” as used herein shall be a numbered controlled access highway that is part of the United States Interstate Highway System.

G. “New Mexico highway” or “NM” as used herein shall be a numbered highway or route that is part of the New Mexico State Highway System managed by the New Mexico Department of Transportation.

H. “North” or “N” as used herein shall be the cardinal direction north.

I. “Range” or “R” as used herein shall be range designations based on the New Mexico Principal Meridian and Base Line of the United States Public Land Survey System. Ranges are numbered in order east and west from the principal meridian (e.g. R10E is the 10th range east of the principle meridian).

J. “South” or “S” as used herein shall be the cardinal direction south.

K. “Township” or “T” as used herein shall be township designations based on the New Mexico Principal Meridian and Base Line of the United States Public Land Survey System. Townships are numbered in order north and south from the base line (e.g. T2N is the second township north of the base line).

L. “United States highway” or “US” as used herein shall be a numbered highway that is part of the United States Numbered Highway System coordinated by the American Association of State Highway and Transportation Officials.

M. “West” or “W” as used herein shall be the cardinal direction west.
[19.30.4.7 NMAC - Rp, 19.30.4.7 NMAC, 8/25/2020]

19.30.4.8 GAME MANAGEMENT UNITS:

A. GMU 1: The Ute Mountain Ute Tribe reservation and all contiguous portions of the Navajo Nation reservation north and west of and including section 31, T 17 N, R 13 W.

B. GMU 2: Beginning at the junction of the east boundary of the Ute Mountain Ute Tribe reservation and the Colorado-New Mexico state line and running east along the state line to the western boundary of the Jicarilla Apache Nation reservation, then south, west and south along the reservation boundary to its intersection with US 550, then northwest along US 550 to its intersection with the San Juan river, then west along the San Juan river to the east boundary of the Navajo Nation reservation, then north along the east boundary of the Navajo reservation to its junction with the south boundary of the Ute Mountain Ute Tribe reservation, then east and north along the Ute Mountain Ute Tribe reservation boundary to the Colorado-New Mexico state line.

C. GMU 2A: That portion of GMU 2 west of the Los Pinos river (Pine Arm of Navajo reservoir) and north of the San Juan river.

D. GMU 2B: That portion of GMU 2 east and north of the following line: from the junction of the New Mexico-Colorado state line and Pine river, then south along the Pine river to its junction with the San Juan river, then south and west along the San Juan river to its junction with Largo canyon, then south and east along the central wash of Largo canyon to its junction with Carrizo canyon (Cereza canyon), then south and east along the central wash of Carrizo canyon (Cereza canyon) to the Jicarilla Apache Nation reservation boundary.

E. GMU 2C: That portion of GMU 2 south and west of the following line: from the junction of US 550 and the San Juan river at Bloomfield, then east along the San Juan river to its junction with Largo canyon, then south and east along the central wash of Largo canyon to its junction with Carrizo canyon (Cereza

canyon), then south and east along the central wash of Carrizo canyon (Cereza canyon) to the Jicarilla Apache Nation reservation boundary.

F. GMU 3: The Jicarilla Apache Nation reservation.

G. GMU 4: Beginning at the junction of the east boundary of the Jicarilla Apache Nation reservation and the Colorado-New Mexico state line and running east along the state line to the eastern boundary of the Tierra Amarilla grant, then south along the east boundary of the Tierra Amarilla grant and west along its south boundary to its junction with the east boundary of the Jicarilla Apache Nation reservation, then north along the east boundary of the reservation to its junction with the Colorado-New Mexico state line.

H. GMU 5: Beginning at the intersection of the east boundary of the Jicarilla Apache Nation reservation, the south boundary of the Tierra Amarilla grant and the Rio Chama, running south along the Rio Chama to its intersection with the Piedra Lumbre grant boundary line, then northeast along the Piedra Lumbre grant boundary line to its intersection with US 84, then south along US 84 to its junction with NM 96 northwest of Abiquiu, then west along NM 96 to its junction with NM 595 north of Regina, then west along NM 595 to its intersection with the east boundary of the Jicarilla Apache Nation reservation, then northerly along the east boundary of the reservation to its junction with the south boundary of the Tierra Amarilla grant and the Rio Chama.

I. GMU 5A: That portion of GMU 5 beginning at the junction of the northwest boundary of the Santa Fe national forest administrative boundary with the Jicarilla Apache Nation reservation north of Lindrith and following the forest administrative boundary south towards Lindrith, then northeasterly past Llaves, thence southerly to its intersection with NM 96, then west along NM 96 to its junction with NM 595 north of Regina, then west along NM 595 to its intersection with the

east boundary of the Jicarilla Apache Nation reservation, then following the reservation boundary north to its intersection with the northwest corner of the Santa Fe national forest administrative boundary.

J. GMU 5B: That portion of GMU 5 beginning at the intersection of the east boundary of the Jicarilla Apache Nation reservation, the south boundary of the Tierra Amarilla grant and the Rio Chama, running south along the Rio Chama to its intersection with the Piedra Lumbre grant boundary line, then northeast along the Piedra Lumbre grant boundary line to its intersection with US 84, then south along US 84 to its junction with NM 96 northwest of Abiquiu, then west along NM 96 to its junction with the Santa Fe national forest administrative boundary west of Gallina, then following the forest boundary north then west past Llaves then southwesterly to south of Lindrith, then north along the forest service administrative boundary line to its intersection with the Jicarilla Apache Nation reservation, then east along the reservation boundary to the junction of the reservation, the south boundary of the Tierra Amarilla grant and the Rio Chama.

K. GMU 6: Beginning at the junction of I-25 and US 550 near Bernalillo and running northwest and west along US 550 past San Ysidro to its intersection with the boundary of the Pueblo of Zia reservation, then south, west and north along the Pueblo of Zia reservation boundary to the boundary of the Pueblo of Jemez reservation, then west, north and east along the Pueblo of Jemez reservation boundary to its intersection with US 550 near La Ventana, then north and west along US 550 to its intersection with the south boundary of the Jicarilla Apache Nation reservation, then east along the south boundary of the reservation and north along its east boundary to its intersection with NM 595, then east along NM 595 to its junction with NM 96, then east along NM 96 to its junction with US 84 northwest of Abiquiu, then southeast along US

84 to its junction with I-25 at Santa Fe, then southwest along I-25 to its junction with US 550.

L. GMU 6A: That portion of GMU 6 starting at the junction of I-25 and US 550 at Bernalillo and running northwest and west along US 550 past San Ysidro to its intersection with the boundary of the Pueblo of Zia reservation, then south, west and north along the Pueblo of Zia reservation boundary to the Pueblo of Jemez reservation, then west, north and east along Pueblo of Jemez reservation boundary to its intersection with US 550 near La Ventana, then north and west along US 550 to its intersection with the south boundary of the Jicarilla Apache Nation reservation, then east along the south boundary of the Jicarilla Apache Nation reservation and north along its east boundary to its intersection with NM 595, then east along NM 595 to its junction with NM 96, then east along NM 96 to its junction with Santa Fe FR 103, then south along Santa Fe FR 103 to its junction with Santa Fe FR 117, then south along Santa Fe FR 117 to its junction with Santa Fe FR 527 (Pipeline road), then east along Santa Fe FR 527 to its junction with the west boundary of the Valles Caldera national preserve, then south and east along the boundary of the Valles Caldera national preserve to its junction with Santa Fe FR 280 and NM 4, then south along Santa Fe FR 280 to its junction with Santa Fe FT 140, then south along Santa Fe FT 140 to Peralta creek, then south and east along Peralta creek to its junction with Santa Fe FR 266, then south and east along Santa Fe FR 266 to its junction with NM 22, then along NM 22 to its junction with NM 16, then southeast along NM 16 to its junction with I-25, then south and west along I-25 to its junction with US 550 at Bernalillo.

M. GMU 6B: That portion of GMU 6 comprised of all lands within the fenced or posted boundary of the Valles Caldera national preserve as fenced or posted by the United States forest service.

N. GMU 6C: That portion of GMU 6 starting at the

junction of NM 96 and Santa Fe FR 103 east of Gallina and running south along Santa Fe FR 103 to its junction with Santa Fe FR 117, then south along Santa Fe FR 117 to its junction with Santa Fe FR 527 (Pipeline road), then east along Santa Fe FR 527 to its junction with the west boundary of the Valles Caldera national preserve, then north, east, south and west along the boundary of the Valles Caldera national preserve to its junction with NM 4 and Santa Fe FR 280, then south along Santa Fe FR 280 to its junction with Santa Fe FT 140, then south along Santa Fe FT 140 to Peralta creek, then south and east along Peralta creek to its junction with Santa Fe FR 266, then south and east along Santa Fe FR 266 to its junction with NM 22, then along NM 22 to its junction with NM 16, then south and east along NM 16 to its junction with I-25, then north along I-25 to its junction with US 84 at Santa Fe, then north along US 84 to its junction with NM 96 west of Abiquiu, then west along NM 96 to its junction with Santa Fe FR 103.

O. GMU 7: Beginning at the intersection of the east boundary of the Navajo Nation reservation and Navajo W Route 9 at section 31, T18N, R13W, then running north along the reservation boundary to the northeastern corner immediately west of Farmington, then east along the San Juan river to its intersection with US 550 at Bloomfield, then southeast along US 550 to its intersection with the west boundary of the Jicarilla Apache Nation reservation, then south along the west boundary of the reservation and east along its south boundary to its intersection with US 550, then east and south along US 550 to its intersection with the north boundary of the Pueblo of Jemez reservation south of La Ventana, then west along the north boundary of the reservation and south along its west boundary to its intersection with the San Luis road, then southwest along San Luis road to its intersection with arroyo Chico, then west up arroyo Chico to its junction with Voght draw, then west up Voght draw to its junction with

Inditos draw, then west up Inditos draw to its intersection with NM 509, south of Hospah, south along NM 509 to McKinley CR 19-A (Prewitt road), then southwest along McKinley CR 19-A (Prewitt road) to its junction with the continental divide (near Borrego pass), then westerly along the continental divide to its intersection with NM 371, then north along NM 371 to its junction with Navajo W Route 9, then northwest along Navajo W Route 9 to its intersection with the boundary of the Navajo Nation reservation at section 31, T18N, R13W.

P. GMU 8: Beginning at the intersection of I-40 and I-25 at Albuquerque and running northeast along I-25 to its junction with NM 14, then south along NM 14 to Santa Fe CR 42, then southeast along the county road to its junction with NM 41 at Galisteo, then south along NM 41 to its intersection with I-40 at Moriarty, then west along I-40 to its intersection with I-25.

Q. GMU 9: Beginning at Prewitt at the junction of I-40 and NM 412 and running north along NM 412 to NM 122, then east along NM 122 to its intersection with McKinley CR 19-A (Prewitt road), then north along CR 19-A to its intersection with NM 509, then north along NM 509 to its intersection with Inditos draw, then south and east down Inditos draw to its junction with Voght draw, then east down Voght draw to its junction with arroyo Chico, then east down arroyo Chico to its intersection with the San Luis road, then northeast along the San Luis road to its intersection with the west boundary of the Pueblo of Jemez reservation, then east along the Pueblo of Jemez reservation southern boundary to the boundary of the Pueblo of Zia reservation, then south and east along the Pueblo of Zia reservation boundary to its intersection with US 550 west of San Ysidro, then east and southeast along US 550 to its junction with I-25 at Bernalillo, then south along I-25 to its junction with NM 6 at Los Lunas, then west and northwest along NM 6 to its junction with I-40, then west along I-40 to Prewitt.

R. GMU 10: Beginning at the junction of the north boundary of the Pueblo of Zuni reservation with the Arizona-New Mexico state line and running north along the state line to the boundary of the Navajo Nation reservation at section 35, T17N, R21W, then east along the contiguous southern boundary of the Navajo Nation reservation and north along its east boundary to its intersection with Navajo W Route 9 at section 31, T18N, R13W, then southeast along Navajo W Route 9 to its junction with NM 371, then east and south along NM 371 to its intersection with the continental divide, then east along the continental divide to its junction with McKinley CR 19-A (Prewitt road) near Borrego pass, then south along CR 19-A to NM 122, then west along NM 122 to NM 412, then south along NM 412 to its junction with I-40 at Prewitt, then southeast along I-40 to its junction with NM 53 (Ice Caves road) near Grants, then south and west along NM 53 to its intersection with the east boundary of the Pueblo of Zuni reservation, then north along the east boundary of the Pueblo of Zuni reservation and west along its north boundary to its junction with the Arizona-New Mexico state line.

S. GMU 11: The Pueblo of Zuni reservation.

T. GMU 12: Beginning at the intersection of US 60 and the Arizona-New Mexico state line and running north along the state line to the south boundary of the Pueblo of Zuni reservation, then east along the south boundary of the reservation and north along its east boundary to its intersection with NM 53, then east along NM 53 to its junction with Cibola CR 42, then south along Cibola CR 42 to its junction with NM 117, then east along NM 117 to its junction with Cibola CR 41, then south along Cibola CR 41 to its junction with Catron CR A083, then south along Catron CR A083 to its junction with NM 603, then south along NM 603 to its junction with US 60 at Pie Town, thence west along US 60 to the Arizona-New Mexico state line.

U. GMU 13: Beginning at the junction of NM 53 (Ice Caves road) and I-40 west of Grants and running east along I-40 to its junction with NM 6, then southeast along NM 6 to its junction with I-25 at Los Lunas, then south along I-25 to its junction with US 60 at Socorro, then west along US 60 to its junction with NM 12 at Datil, then southwest along NM 12 to its junction with Catron CR B034, then northwest along Catron CR B034 to its junction with Greens Gap road (Catron CR A130), then west and north along Greens Gap road (Catron CR A130) to its junction with Pie Town road (Catron CR A056), then north along Pie Town road (Catron CR A056) to Pie Town, then north along NM 603 to its junction with York Ranch road (Catron CR A083), then north along York Ranch road (Catron CR A083 and Cibola CR 41) to its junction with NM 117, then west along NM 117 to its junction with Back Country Byway (Cibola CR 42), then north along Back Country Byway (Cibola CR 42) to its junction with NM 53, then east and north along NM 53 to its junction with I-40 west of Grants.

V. GMU 14: Beginning at the junction of US 60 and I-25 at Bernardo and running north along I-25 to its intersection with I-40 at Albuquerque, then east along I-40 to its intersection with NM 41 at Moriarty, then south along NM 41 to its junction with US 60 at Willard, then west along US 60 to its junction with I-25.

W. GMU 15: Beginning at the intersection of the Arizona-New Mexico state line and US 60 and running east along US 60 to its intersection with NM 603 at Pie Town, then south and east along Pie Town road (Catron CR A056) to its junction with Greens Gap road (Catron CR A130), then east along Greens Gap road (Catron CR A130) to its junction with NM 12 south of Datil, then southwest along NM 12 to its junction with US 180 west of Reserve, then northwest along US 180 to its intersection with the Arizona-New Mexico state line, then north along the Arizona-New Mexico state line to its intersection with US 60.

X. GMU 16:

Beginning at the junction of NM 12 and US 60 at Datil and running east along US 60 to its intersection with NM 52, then southwest along NM 52 to its intersection with NM 163, then southwest along NM 163 to its intersection with the continental divide, then south and southwest along the continental divide to its intersection with the Grant-Sierra county line at Reed's peak, then south along the Grant-Sierra county line to its intersection with Gila FR 152 at Board Gate saddle, then northwest and southwest along Gila FR 152 to its junction with NM 35, then northwest along NM 35 to its junction with Sapillo creek, then west along Sapillo creek to its junction with the Gila river, then northwest along the Gila river to its intersection with Turkey creek, then northwest along Turkey creek to its intersection with Gila FT 158, then northwest along Gila FT 158 through Woodrow canyon to Mogollon creek, then northwest along Mogollon creek to its junction with the west fork of Mogollon creek and Gila FT 224, then northwest along the west fork of Mogollon creek and Gila FT 224 to its junction with Gila FT 182, then north and west on Gila FT 182 to its junction with Bursum road (NM 159) at Sandy point, then west on Bursum road to its junction with US 180 south of Alma, then north on US 180 to its intersection with NM 12, thence northeast along NM 12 to its junction with US 60 at Datil.

Y. GMU 16A: That portion of GMU 16 beginning at the junction of Bursum road (NM 159) and US 180, then north along US 180 to its junction with NM 12, then northeast along NM 12 to its junction with NM 435, then south along NM 435 to its junction with Negrito creek south of Reserve, then east along Negrito creek to its junction with the north fork of Negrito creek, then east along the north fork of Negrito creek to its junction with Gila FR 94 at Collins park, then south on Gila FR 94 to its junction with Gila FR 28, then southeasterly on Gila FR 28 to its junction with Gila FR 30, then

southeasterly on Gila FR 30 to its junction with Snow Lake road (Catron CR 021), then southwesterly on Snow Lake road to its junction with Gila FR 142C west of Cooney prairie, then south on Gila FR 142C to the Gila wilderness boundary, then west along the Gila wilderness boundary to its junction with Snow creek below Snow lake, then south along Snow creek to its junction with Gilita creek, then west along Gilita creek to its junction with Willow creek, then west along Willow creek to its junction with Gila FT 138, then westerly along Gila FT 138 to its junction with Gila FT 182, then north on Gila FT 182 to its junction with Bursum road (NM 159) at Sandy point, then west along Bursum road (NM 159) to its junction with US 180.

Z. GMU 16B: That portion of GMU 16 beginning at the junction of Gila FR 152 and the Grant-Sierra county line southwest of Board Gate saddle, then north along the Grant-Sierra county line to Reeds peak and the continental divide, thence north along the continental divide to its intersection with Gila FT 42, then west along Gila FT 42 to its junction with Gila FT 40 at Diamond creek, then west along Gila FT 40 and Diamond creek to Gila FR 4069G, then west to Gila FR 225, then southwest along Gila FR 225 to its junction with Gila FR 18, then northwest along Gila FR 18 to its junction with Gila FR 704, then west along Gila FR 704 to Gila FR 4208P, then northwesterly along Gila FR 4208P to Gila FT 772, then northwesterly along Gila FT 772 to Black mountain, then west from Black mountain along Gila FT 23 to Gila FT 812, then north along Gila FT 812 to its intersection with the south fork of Christie canyon and the wilderness boundary, then west along the wilderness boundary to Snow creek, then south along Snow creek to Gilita creek, then west along Gilita creek to Willow creek, then west along Willow creek to Gila FT 138, then westerly along Gila FT 138 to Gila FT 182, then south and east on Gila FT 182 to its junction with Gila FT 224 at west fork saddle, then south

along Gila FT 224 and down the west fork of Mogollon creek to its junction with Mogollon creek, then easterly along Mogollon creek to Gila FT 158 at Woodrow canyon, then southeast along Gila FT 158 to Turkey creek, then south along Turkey creek to the Gila river, then east along the Gila river to Sapillo creek, then east along Sapillo creek to NM 35, then east along NM 35 to its intersection with Gila FR 152, then northeast along Gila FR 152 to its junction with the Sierra-Grant county line southwest of Board Gate saddle.

AA. GMU 16C: That portion of GMU 16 beginning at the road junction of O Bar O Canyon road (Catron CR 072) and Gila FR 30 in Railroad canyon, then northeast along O Bar O Canyon road to its junction with NM 163, then northeast along NM 163 to the continental divide, then south along the continental divide to Gila FT 42, then south along Gila FT 42 to Gila FT 40, then west on Gila FT 40 to Gila FR 4069G, then west to Gila FR 225, then southwest along Gila FR 225 to Gila FR 18, then northwest along Gila FR 18 to Gila FR 704, then west along Gila FR 704 to Gila FR 4208P, then northwesterly along Gila FR 4208P to Gila FT 772, then northwest along Gila FT 772 to Gila FT 23 on Black mountain, then northwest along Gila FT 23 to Gila FT 812, then north along Gila FT 812 to south fork of Christie canyon, then north and west along south fork of Christie canyon to Gila FR 142C, then north along Gila FR 142C to Snow Lake road (Catron CR 021), then northeast along Snow Lake road to its junction with Gila FR 30, then east along Gila FR 30 to its junction with O Bar O Canyon road in Railroad canyon.

BB. GMU 16D: That portion of GMU 16 beginning at Apache creek and continuing south and west along NM 12 to its junction with NM 435 at Reserve, then south along NM 435 to its junction with Negrito creek, then east along Negrito creek to its junction with the north fork of Negrito creek, then east along the north fork of Negrito creek to its junction with Gila FR 94 at Collins

park, then south along Gila FR 94 to its junction with Gila FR 28, then east along Gila FR 28 to junction with Gila FR 30, then southeast along Gila FR 30 to its intersection with Coyote Canyon road (Catron CR 016), then north and west along Coyote Canyon road to its junction with Bursum road (Catron CR 019), then north along Bursum road to its intersection with NM 12, then west on NM 12 to Apache creek.

CC. GMU 16E: That portion of GMU 16 beginning at the intersection of Coyote Canyon road (Catron CR 016) and Gila FR 30, then northwesterly along Coyote Canyon road to its intersection with Bursum road (Catron CR 019), then north on Bursum road to its intersection with NM 12, then east on NM 12 to its intersection with NM 60 at Datil, then east on NM 60 to its intersection with NM 52, then south on NM 52 to its intersection with NM 163, then west on NM 163 to its intersection with O Bar O Canyon road (Catron CR 072), then west on O Bar O Canyon road to its intersection with Gila FR 30, then west on Gila FR 30 to its intersection with Coyote Canyon road.

DD. GMU 17: Beginning at the junction of NM 52 and US 60 east of Datil and running east along US 60 to its junction with I-25 at Socorro, then south along I-25 to its junction with NM 181, then north along NM 181 to its junction with NM 52 east of Cuchillo, then west along NM 52 to its junction with NM 142, then northwest along NM 142 to its junction with Alamosa creek at Monticello, then northwest along Alamosa creek through Monticello canyon to its junction with NM 52 south of Dusty, then north along NM 52 to its junction with US 60.

EE. GMU 18: Beginning at the junction of US 380 and I-25 at San Antonio and running north along I-25 to its junction with US 60 at Bernardo, then east along US 60 to NM 55 at Mountainair, then south and southeast along NM 55 to its junction with US 54, then south along US 54 to its intersection with the Lincoln-Otero county line, then

west along the county line to the east boundary of White Sands missile range, then north along the east boundary and west along the north boundary of White Sands missile range to the northwest corner of the missile range, then due north to US 380, then west along US 380 to its junction with I-25 at San Antonio.

FF. GMU 19:

Beginning at the intersection of US 70 and the west boundary of the White Sands missile range east of Organ and running north along the west boundary, east along the north boundary, and south along the east boundary of White Sands missile range, then southerly following the eastern boundary of Holloman Air Force base, continuing south along the east boundary of White Sands missile range, then south and east along the eastern boundary of Fort Bliss - Dona Ana Range Camp to its intersection with US 54 south of Orogrande, then south along US 54 to its intersection with the New Mexico-Texas state line, then west along the state line to its intersection with I-10, then northwest along I-10 to its junction with I-25, then north along I-25 to its junction with US 70 at Las Cruces, then east along US 70 to its intersection with the west boundary of the White Sands missile range.

GG. GMU 20:

Beginning at the junction of US 70 and I-25 at Las Cruces and running north along I-25 to its junction with US 380 at San Antonio, then east along US 380 to a point due north of the northwestern corner of the White Sands missile range, then due south to the northwest corner of the missile range, then south along the west boundary of the missile range to its intersection with US 70 east of Organ, then west along US 70 to its junction with I-25.

HH. GMU 21:

Beginning at the junction of US 180 and NM 26 north of Deming and running northeast along NM 26 to its junction with NM 27 at Nutt, then northwest along NM 27 to its intersection with the Sierra-Luna county line, then west along the south boundary of Sierra county

and north along its west boundary to the junction of the county line and the continental divide, then north along the continental divide to its intersection with NM 163, then northeast along NM 163 to its junction with NM 52, then southeast along NM 52 to its intersection with Alamosa creek south of Dusty, then southeast along Alamosa creek through Monticello canyon to its intersection with NM 142 at Monticello, then southeast along NM 142 to its intersection with NM 52, then southeast along NM 52 to its junction with NM 181, then south along NM 181 to its junction with I-25, then south along I-25 to its junction with US 180 at Las Cruces, then west along US 180 to Deming and north along US 180 to its junction with NM 26.

II. GMU 21A: That northwest portion of GMU 21 that lies within the Gila national forest boundary.

JJ. GMU 21B: That portion of GMU 21 that lies outside the Gila national forest boundary.

KK. GMU 22: Beginning at the intersection of the Gila river and US 180 south of Cliff running north along US 180 to its junction with Bursum road (NM 159), then east along Bursum road to its junction with Gila FT 182 at Sandy point, then south along Gila FT 182 to its junction with Gila FT 224 at the west fork saddle, then south on Gila FT 224 down the west fork of Mogollon creek to its junction with the main Mogollon creek, then easterly along Mogollon creek to the junction of Gila FT 158 at Woodrow canyon, then south along Gila FT 158 to main Turkey creek, then south along Turkey creek to its junction at the Gila river, then southwest along the Gila river to its junction with US 180.

LL. GMU 23: Beginning at the intersection of US 180 and the Arizona-New Mexico state line west of Luna, then south along the state line to its intersection with US 70, then southeast along US 70 to its junction with US 180 at Deming, thence northwest along US

180 to its junction with the Arizona-New Mexico state line.

MM. GMU 24:

Beginning at the junction of NM 26 and US 180 north of Deming and running northwest along US 180 to its intersection with the Gila river south of Cliff, then northeast along the Gila river to its junction with Sapillo creek, then east along Sapillo creek to NM 35, then east and south on NM 35 to its junction with Gila FR 152, then northeast along Gila FR 152 to its junction with the Grant-Sierra county line southwest of Board Gate saddle, then south along the west boundary of Sierra county and east along its south boundary to its intersection with NM 27, then south along NM 27 to its junction with NM 26, then southwest along NM 26 to its junction with US 180.

NN. GMU 25:

Beginning at the junction of the United States-Mexico boundary with the west boundary of Luna county and running north along the county line to its intersection with NM 9, then northwest along NM 9 to its intersection with NM 146 (old NM 81) at Hachita, then north along NM 146 (old NM 81) to its junction with I-10, then east and south along I-10 to its junction with US 70, then east along US 70 to its junction with I-25, then south along I-25 to its junction with I-10, then south along I-10 to its intersection with the Texas-New Mexico state line, then west and south along the Texas state line to the United States-Mexico boundary, then west along the international boundary to the west boundary of Luna county.

OO. GMU 26:

Beginning at Paskle gate on the United States-Mexico boundary, near international boundary marker No. 69, then north on the private dirt road from Paskle gate to its intersection with NM 338 approximately 100 yards west of Cloverdale and running north along NM 338 to its intersection with I-10, then north and east along I-10 to its intersection with NM 146 (old NM 81), then south along NM 146 to its intersection with NM 9 at Hachita, then east along NM 9 to its intersection with the west boundary

of Luna county, then south along the Luna county line to the United States-Mexico boundary, then south and west along the international boundary to Paskle gate.

PP. GMU 27:

Beginning at Paskle gate on the United States-Mexico boundary, near international boundary marker No. 69, then north on the private dirt road from Paskle gate to its intersection with NM 338 approximately 100 yards west of Cloverdale, then north along NM 338 to its intersection with I-10, then east along I-10 to its intersection with US 70 at Lordsburg, then northwest along US 70 to the Arizona-New Mexico state line, then south along the state line to its intersection with the United States-Mexico boundary, then east along the international boundary to Paskle gate.

QQ. GMU 28:

The Fort Bliss-McGregor Range Camp military reservation east of US 54, excluding that part of the Sacramento division of the Lincoln national forest lying within the McGregor range co-use area.

RR. GMU 29:

Beginning at the junction of the New Mexico-Texas state line and the east boundary of the Fort Bliss military reservation and running northeast along the military reservation boundary to its intersection with NM 506 (Otero CR E038) leading to Pinon, then east, north and east along NM 506 (Otero CR E038) to its intersection with NM 24 at Pinon, then east on NM 24 and Pinon Dunken road approximately three miles to its intersection with Cornucopia Canyon road and NM 506, then running southerly along Cornucopia Canyon road and NM 506 through Cornucopia draw and Crow flats to its intersection with the New Mexico-Texas state line near Dell City, Texas, then west along the state line to the east boundary of the Fort Bliss military reservation.

SS. GMU 30:

Beginning at the New Mexico-Texas state line near Dell City, Texas, and its intersection with NM 506, then northerly along NM 506 and Cornucopia Canyon road through

Crow flats and Cornucopia draw to its junction with Pinon Dunken road east of Pinon, then northeast along Pinon Dunken to its junction with US 82 north of Dunken, then east along US 82 to its intersection with US 285 at Artesia, then south and southeast along US 285 to its junction with US 180 at Carlsbad, then south along US 180 to its intersection with the New Mexico-Texas state line, then west along the state line to its intersection with NM 506.

TT. GMU 31:

Beginning at the intersection of the New Mexico-Texas state line and US 180, southwest of Carlsbad, and running northeast along US 180 to its junction with US 285 at Carlsbad, then north along US 285 to its intersection with US 82 at Artesia, then east along US 82 to its junction with NM 249 at Maljamar, then north along NM 249 to its junction with NM 172, then north along NM 172 (Tower road) to its junction with US 380 west of Caprock, then east along US 380 to its junction with Button Mesa road, then north along Button Mesa road continuing north along Lea CR T-156, continuing north along Reserve road, continuing north along S Roosevelt road AK to its junction at Elida, then north along NM 330 to its junction with NM 267 west of Floyd, then north along NM 267 to its junction with US 60 east of Melrose, then east along US 60 to the New Mexico-Texas state line, then south and west along the state line to its intersection with US 180 southwest of Carlsbad.

UU. GMU 32:

Beginning at the intersection of US 380 and the east boundary of Lincoln county and running north along the east boundary of Lincoln county to the west boundary of De Baca county, then north along the west boundary of De Baca county to its intersection with US 60, then east along US 60 to its junction with NM 267 east of Melrose, then south along NM 267 to its junction with NM 330 west of Floyd, then south along NM 330 to its junction with US 70 at Elida, then southwest along US 70 to its intersection with the Pecos river,

then south along the Pecos river to its intersection with Aberdeen road (NM 249) at Hagerman, then west along Aberdeen road (NM 249) to its junction with NM 2, then south along NM 2 to its intersection with US 285 north of Artesia, then south on US 285 to its intersection with US 82 at Artesia, then west along US 82 to its junction with Picacho road (Chaves CR C433) near mile marker 60, then north along Picacho road to its intersection with Felix Canyon road near Flying H, then west along Felix Canyon road to its intersection with Picacho road, then north along Picacho road continuing northerly along Picacho road (Lincoln CR E030 and Lincoln CR E028) to its junction with US 380. about a mile west of Picacho, then east along US 380 to its intersection with the east boundary of Lincoln county.

VV. GMU 33:

Beginning at the intersection of US 82 and US 285 at Artesia and running north along US 285 to its junction with NM 2, then north on NM 2 to its intersection with NM 249 at Hagerman, then east along NM 249 to its intersection with the Pecos river, then north along the Pecos river to its intersection with US 70, then northeast along US 70 to S Roosevelt road AK at Elida, then south along S Roosevelt road AK continuing south along Reserve road, Button Mesa road and Lea CR T-156, then northwest along US 380 to NM 172 to US 82, then west along US 82 to US 285 at Artesia.

WW. GMU 34:

Beginning at the junction of Tulie Gate road (Otero CR B-006) and the east boundary of the White Sands missile range at Tularosa gate and running east along Tulie Gate road to its junction with Railroad avenue (Otero CR B-009), then north on Railroad avenue to its intersection with US 54, then running south along US 54 to its intersection with US 70 at Tularosa, then running northeast along US 70 to its intersection with the west boundary of the Mescalero Apache Tribe reservation, then south along the west boundary of the reservation, east along its south

boundary, and north along its east boundary to the Lincoln-Chaves county line, then east along the county line approximately two miles to its intersection with Picacho road, then southerly along Picacho road to its intersection with Felix Canyon road, then east along Felix Canyon road to its intersection with Picacho road, then south along Picacho road to its intersection with US 82, then west along US 82 to its junction with NM 24 north of Dunken, then south along Pinon Dunken road (NM 24) to its intersection with Owen Prather highway (NM 506) at Pinon, then west, south and west on Owen Prather highway (NM 506) to the east boundary of the Fort Bliss military reservation, then north and west along the boundary of the Fort Bliss-McGregor Range Camp military reservation to its intersection with the Sacramento division of the Lincoln national forest, then west and north along the boundary of the Sacramento division of the Lincoln national forest to its intersection with the north boundary of the Fort Bliss-McGregor Range Camp military reservation, then west and south along the boundary of the Fort Bliss-McGregor Range Camp military reservation to its junction with the east boundary of the Fort Bliss-Dona Ana Range Camp at US 54 south of Orogrande, then north along the east boundary of Fort Bliss-Dona Ana Range Camp, then north along the east boundary of White Sands missile range to Holloman Air Force base, then east and north along the eastern Holloman Air Force base boundary to the east boundary of White Sands missile range, then north along the east boundary of White Sands missile range to its intersection of Tulie Gate road (Otero CR B-006) at Tularosa gate.

XX. GMU 35: The Mescalero Apache Tribe reservation.

YY. GMU 36: Beginning at the junction of Otero CR B-006 and the east boundary of the White Sands missile range at Tularosa gate and running north along the east boundary to its intersection with the Lincoln-Otero county line,

then east along the county line to its intersection with US 54, then north along US 54 to its intersection with US 380 at Carrizozo, then east along US 380 to its junction with Picacho road (Lincoln CR E028), approximately 1 mile west of Picacho, then south along Picacho road (Lincoln CR E028) to its intersection with Picacho road (Lincoln CR E030), then south and west along Picacho road (Lincoln CR E030) to its intersection with the Lincoln-Chaves county line, then west along the county line to the east boundary of the Mescalero Apache Tribe reservation, then north along the east boundary of the reservation, west along its north boundary, and south along its west boundary to its intersection with US 70, then west along US 70 to its junction with US 54 at Tularosa, then north along US 54 to its junction with Otero CR B-009, then south along CR B-009 to its junction with Tulie Gate road (Otero CR B-006), then west along Tulie Gate road (Otero CR B-006) to its junction with the east boundary of White Sands missile range at Tularosa gate.

ZZ. GMU 37:

Beginning at the intersection of US 380 and US 54 at Carrizozo and running north along US 54 to its junction with NM 462 west of Ancho, then east along NM 462 to its intersection with the Southern Pacific railroad tracks, then north along the railroad tracks to Hasparos canyon, then east down Hasparos canyon to the east boundary of Lincoln county, then south along the east boundary of Lincoln county to its intersection with US 380, then west along US 380 to its intersection with US 54 at Carrizozo.

AAA. GMU 38:

Beginning at the junction of US 54 and NM 55 and running northwesterly along NM 55 to its junction with US 60 at Mountainair, then east along US 60 to the Guadalupe-De Baca county line, then south along the county line and along the east boundary of Lincoln county to its intersection with Hasparos canyon, then west up Hasparos canyon to the Southern Pacific railroad tracks northeast of Ancho, then south along the railroad

tracks to their intersection with NM 462 at Ancho, then west along NM 462 to its junction with US 54, then south along US 54 to its junction with NM 55.

BBB. GMU 39:

Beginning at the junction of US 60 and NM 41 west of Willard and running north along NM 41 to its intersection with I-40 at Moriarty, then east along I-40 to its junction with US 84 east of Santa Rosa, then southeast along US 84 to its junction with US 60 at Fort Sumner, then west along US 60 to its junction with NM 41 west of Willard.

CCC. GMU 40:

Beginning at the junction of US 84 and I-40 east of Santa Rosa and running east along I-40 to the New Mexico-Texas state line, then south along the state line to its intersection with US 84, then west and north along US 84 to its junction with I-40.

DDD. GMU 41:

Beginning at the junction of I-40 and NM 469 at San Jon and running north along NM 469 to its junction with US 54 south of Logan, then north along US 54 to its intersection with NM 39 north of Logan, then northwest along NM 39 to its junction with NM 102 east of Mosquero, then east, north and east along NM 102 to its intersection with NM 402 north of Amistad, then north along NM 402 to its intersection with NM 421 north of Stead, then east along NM 421 to the New Mexico-Texas state line, then south along the state line to its intersection with I-40, then west along I-40 to its intersection with NM 469 at San Jon.

EEE. GMU 42:

Beginning at the intersection of I-40 and the Pecos river at Santa Rosa and running northwest up the Pecos river to its intersection with US 84 at Dilia, then northwest along US 84 to its junction with I-25 at Romeroville, then northeast along I-25 to its intersection with the Mora river at Watrous, then east down the Mora river to the Canadian river, then south down the Canadian river to its intersection with NM 419 south of Sabinoso, then northeast along NM 419 to its junction with NM 39 northwest of Mosquero,

then southeast along NM 39 to its intersection with US 54, then south along US 54 to its intersection with NM 469, then south along NM 469 to its intersection with I-40 at San Jon, then west along I-40 to its intersection with the Pecos river.

FFF. GMU 43:

Beginning at the intersection of I-40 and NM 41 at Moriarty and running north along NM 41 to the junction at Galisteo with Santa Fe CR 42, then west along the county road to the junction with NM 14, then north along NM 14 to its junction with I-25, then northeast along I-25 to Santa Fe and east along I-25 to its junction with US 84 at Romeroville, then southeast along US 84 to its intersection with the Pecos river at Dilia, then east and south along the Pecos river to its intersection with I-40 at Santa Rosa, then west along I-40 to its intersection with NM 41.

GGG. GMU 45:

Beginning at Glorieta on US 84, and running west and north along US 84 to its intersection with NM 68 at Espanola, then northeast along NM 68 to its intersection with NM 75 at Embudo, then east along NM 75 to its intersection with NM 518, then east along NM 518 to its intersection with the Santa Fe national forest administrative boundary line near Holman hill, then south along the Santa Fe national forest administrative boundary line to its intersection with the Tecolote land grant boundary line, then south along the Tecolote land grant boundary line to its intersection with US 84/I-25, then west along US 84/I-25 to Glorieta.

HHH. GMU 46:

Beginning at the junction of I-25 and NM 120 at Wagon Mound and running northwest along NM 120 to its junction with NM 434, Black lake area, then north on NM 434 to Carson FR 76 to the Carson national forest administrative boundary, then south following the Carson national forest administrative boundary to the Santa Fe national forest administrative boundary at Holman hill, then continue south along the Santa Fe national forest administrative boundary to the Tecolote land grant

boundary, then south along the Tecolote land grant boundary to I-25, then north along I-25 to the junction of I-25 and NM 120 at Wagon Mound.

III. GMU 47:

Beginning at the intersection of the Mora river and I-25 near Watrous and running northeast along I-25 to its junction with US 56 at Springer, then east along US 56 to its junction with NM 39 at Abbott, then south and southeast along NM 39 to its junction with NM 419 southeast of Solano, then southwest along NM 419 to its intersection with the Canadian river, then northwest up the Canadian river to the Mora river, then west up the Mora river to its intersection with I-25.

JJJ. GMU 48:

Beginning at the intersection of I-25 and NM 120 at Wagon Mound, then northwest along NM 120 to its intersection with the south boundary of the Maxwell grant, then east along the south boundary of the Maxwell grant to its intersection with I-25, then south along I-25 to its intersection with NM 120 at Wagon Mound.

KKK. GMU 49:

Beginning on the Rio Grande at Embudo creek and running north along the Rio Grande to its intersection with NM 567 at Taos junction bridge, then east on NM 567 to NM 570, then northeast on NM 570 to its junction with NM 68 immediately south of Ranchos de Taos, then north along NM 68 to the south boundary of the Pueblo of Taos, then east along the Pueblo of Taos's south boundary to the Taos county line, then south along the Taos county line to its intersection with US 64, then east along US 64 to its junction with NM 434 north of Black lake, then south along NM 434 to the Carson national forest administrative boundary at Carson FR 76, then south along Carson national forest administrative boundary to its intersection with NM 518 at Holman hill, then westerly along NM 518 to its junction with NM 75, then west along NM 75 to NM 68, then south on NM 68 to Embudo creek, then west on Embudo creek to the Rio Grande.

LLL. GMU 50:

Beginning at the junction of US 84 and NM 554 east of Abiquiu and running north and east along NM 554 to its junction with NM 111, then southeast along NM 111 to its junction with US 285, then north along US 285 to the Colorado-New Mexico state line, then east along the state line to its intersection with the Rio Grande, then south along the Rio Grande to its junction with Embudo creek, then east up Embudo creek to NM 68 at Embudo, then southwest along NM 68 to its junction with US 84 at Espanola, then northwest along US 84 to its junction with NM 554.

MMM. GMU 51:

Beginning at the intersection of US 64 and the eastern boundary of the Tierra Amarilla grant, running south then west along the Tierra Amarilla grant boundary line to its intersection with the Rio Chama, then south along the Rio Chama to its intersection with the Piedra Lumbre grant boundary line, then northeast along the Piedra Lumbre grant boundary line to its intersection with US 84 northwest of Abiquiu, then southeast along US 84 to its intersection with NM 554 east of Abiquiu, then north and east along NM 554 to its intersection with NM 111, then south along NM 111 to its intersection with US 285 north of Ojo Caliente, then east and north along US 285 to its intersection with US 64 at Tres Piedras, then west along US 64 to its intersection with the Tierra Amarilla grant boundary.

NNN. GMU 51A: That portion of GMU 51 beginning at the intersection of US 64 and the eastern boundary of the Tierra Amarilla grant, running south then west along the Tierra Amarilla grant boundary line to its junction with US 84, then southeast along US 84 to its intersection with NM 554 east of Abiquiu, then north and east along NM 554 to its intersection with NM 111, then south along NM 111 to its intersection with US 285 north of Ojo Caliente, then east and north along US 285 to its intersection with US 64 at Tres Piedras, then west along US 64 to its intersection with the Tierra Amarilla grant boundary.

OOO. GMU 51B: That portion of GMU 51 beginning at the intersection of the east boundary of the Jicarilla Apache Nation reservation, the south boundary of the Tierra Amarilla grant and the Rio Chama, running south along the Rio Chama to its intersection with the Piedra Lumbre grant boundary line, then northeast along the Piedra Lumbre grant boundary line to its intersection with US 84, then north along US 84 to its junction with the south boundary of the Tierra Amarilla grant, then west along the south boundary of the Tierra Amarilla grant to its junction with the Rio Chama.

PPP. GMU 52:

Beginning at the intersection of US 64 and the east boundary of the Tierra Amarilla grant and running north along the eastern boundary of the grant to the Colorado-New Mexico state line, then east along the state line to its intersection with US 285, then south along US 285 to its junction with US 64 at Tres Piedras, then west along US 64 to its intersection with the east boundary of the Tierra Amarilla grant.

QQQ. GMU 53:

Beginning at the intersection of NM 567 and the Rio Grande and running north along the Rio Grande to the Colorado-New Mexico state line, then east along the state line to its junction with NM 522, then south along NM 522 to the south boundary of the Sangre de Cristo grant, then east along the grant boundary to the Taos-Colfax county line, then south along the Colfax county line to the south boundary of the Pueblo of Taos, then west along the south boundary of the Pueblo of Taos to NM 68, then south along NM 68 to NM 570 immediately south of Ranchos de Taos, then west along NM 570 to its junction with NM 567, then west along NM 567 to its intersection with the Rio Grande.

RRR. GMU 54:

Beginning at the intersection of the south boundary of the Maxwell grant and NM 434 and running north along NM 434 to its junction with US 64, then north and east along US 64 to its junction with NM 21 west of Cimarron, then south and east

along NM 21 to its junction with I-25 south of Springer, then south along I-25 to its intersection with the south boundary of the Maxwell grant, then west along the south boundary of the grant to its intersection with NM 434.

SSS. GMU 55:

Beginning at the junction of NM 21 and US 64 west of Cimarron and running west and south along US 64 to the Colfax-Taos county line at Palo Flechado pass, then north along the Colfax county line to the south boundary of the Sangre de Cristo grant, then north and west along the Sangre de Cristo grant's south boundary to NM 522, then north along NM 522 to the Colorado-New Mexico state line, then east along the state line to its intersection with I-25, then south along I-25 to its junction with NM 21 at Springer, then west and north along NM 21 to its junction with US 64 west of Cimarron.

TTT. GMU 55A: That portion of GMU 55 beginning at the junction of NM 58 and US 64 at Cimarron and running west and south along US 64 to the Colfax-Taos county line at Palo Flechado pass, then north along the Colfax county line to the south boundary of the Sangre de Cristo grant, then north and west along the Sangre de Cristo grant's south boundary to NM 522, then north along NM 522 to the Colorado-New Mexico state line, then east along the state line to its intersection with I-25, then south along I-25 to its junction with US 64, thence southwest along US 64 to its junction with NM 58 at Cimarron.

UUU. GMU 55B: That portion of GMU 55 beginning at the junction of I-25 and US 64 south of Raton, then south and west along US 64 to its junction with NM 21 west of Cimarron, then south and east along NM 21 to its junction with I-25 south of Springer, then north along I-25 to its junction with US 64 south of Raton.

VVV. GMU 56:

Beginning at the junction of US 56 and I-25 at Springer and running north along I-25 to its junction with US 64 at Raton, then east along US 64 to its junction with US 56 at Clayton,

then west along US 56 to its junction with I-25.

WWW. GMU 57:

Beginning at the junction of US 64 and I-25 at Raton and running north along I-25 to the Colorado-New Mexico state line, then east along the state line to NM 551, then south along NM 551 to its junction with NM 456, then southwest along NM 456 to its junction with NM 325, then southwest along NM 325 to its junction with US 64, then west along US 64 to its junction with I-25.

XXX. GMU 58:

Beginning at the junction of US 64 and NM 325 at Capulin and running northeast along NM 325 to its junction with NM 456, then northeast along NM 456 to its junction with NM 551, then north along NM 551 to the Colorado-New Mexico state line, then east along the state line to the Oklahoma-New Mexico state line, then south along the state line to its intersection with US 64, then west along US 64 to its junction with NM 325.

YYY. GMU 59:

Beginning at the intersection of NM 39 and US 56 at Abbott, then east along US 56 to the New Mexico-Texas state line, then south along the New Mexico-Texas state line to NM 421 east of Sedan, then west along NM 421 to its intersection with NM 402 north of Stead, then south along NM 402 to its intersection with NM 102 north of Amistad, then west, south and west along NM 102 to its intersection with NM 39 east of Mosquero, then north along NM 39 to its intersection with US 56 at Abbott. [19.30.4.8 NMAC - Rp, 19.30.4.8 NMAC, 8/25/2020]

19.30.4.9 OTHER DESIGNATED AREAS

A. GMU 23 (Burro mountain hunt area): That portion of GMU 23 comprised of the Big Burro mountains portion of the Gila national forest and shall include all private land lying within the national forest boundary.

B. GMU 24 (Fort Bayard management area): That portion of GMU 24 beginning at

the NW corner of section 22, T17S, R13W south along the west section line of sections 22, 27 and 34 to the north right-of-way fence of US 180, thence easterly along the north right-of-way fence of US 180 through sections 34 and 35 to the east right-of-way fence of the road entering Fort Bayard medical center, thence northwesterly along this east right-of-way fence through sections 35 and 26 for approximately one and one-quarter miles to the forest boundary fence, thence northeasterly along the forest boundary fence for approximately five-eighths mile, thence easterly along the forest boundary fence through sections 26 and 25 for approximately three-quarters mile, thence southerly along the forest boundary fence for approximately one-half mile, thence easterly along the forest boundary fence for approximately five-eighths mile to the west right-of-way fence of NM 90, thence northeasterly along the right-of-way fence for about one-half mile to the intersection with the forest boundary fence, thence northerly along the forest boundary fence through sections 30, 19, 18 and 7 for about three and three-quarters miles, thence westerly along the forest boundary fence for approximately one-quarter mile to the southeastern corner of the Pear Tree pasture fence, thence northerly along the eastern boundary of the Pear Tree pasture fence for approximately one mile, thence westerly along the northern fenced boundary through sections 1, 2 and 3 of T17S, R13W of the Pear Tree, Castle Knob, Twin Sisters and Enclosure pasture fences for approximately three and a half miles to the corner of west section line of section 3, thence southerly along the west section lines of sections 3, 10 and 15 for approximately two and three-quarters miles to the point of origin.

C. GMU 25 (Florida mountains): That portion of GMU 25 comprised of the main Florida mountain range and Little Floridas, bounded by I-10 on the north, the Luna-Dona Ana county line on the east, the Mexico-New Mexico

boundary line on the south, and NM 11 on the west.

D. GMU 32 (Roswell hunt area): That portion of GMU 32 beginning at the intersection of US 285 and NM 557, then east along NM 557 to its junction with NM 2, then north along NM 2 to its junction with NM 249, then east along NM 249 to the Pecos river, then north along the Pecos river to the north section line of section 2 of T9S, R25E, then west along the north township lines of T9S, R25E and T9S, R24E to US 285, then south along US 285 to the northeast corner of section 32 of T9S, R24E, then west along the north section lines of sections 32 and 31 of T9S, R24E, then sections 36, 35, 34, 33, 32 and 31 of T9S, R23E, and then sections 36, 35, 34 and 33 of T9S, R22E, then south along the west section lines of section 33 of T9S, R22E, then sections 4, 9, 16, 21, 28 and 33 of T10S, R22E, then sections 4, 9, 16, 21, 28 and 33 of T11S, R22E, then sections 4, 9, 16, 21, 28 and 33 of T12S, R22E, then east along the south section lines of sections 33 and 34 of T12S, R22E to the northwest corner of section 1 of T13S, R22E, then south along the west section lines of sections 1, 12 and 13 of T13S, R22E, then east along the south section lines of section 13 of T13S, R22E, then sections 18, 17, 16, 15, 14 and 13 of T13S, R23E and then section 18 of T13S, R24E to Old YO Crossing road, then south and west along Old YO Crossing road to its junction with NM 13, then east along NM 13 to its junction with US 285, then south along US 285 to its junction with NM 557.

E. GMU 36 (Fort Stanton hunt area): That portion of GMU 36 comprised of those lands owned and administered by the bureau of land management within the historic Fort Stanton military reservation.

F. GMU 53 (Cerro portion): That portion of GMU 53 beginning at the intersection of NM 522 and NM 378, then north on NM 522 approximately three point one miles to its intersection with Taos CR B-041 (Buena Vista road), then west

on Taos CR B-041 1 mile to the dirt road on the boundary of townships T30N and T29N, then west on that dirt road two miles to its intersection with Taos CR B-048 (Sunshine-Jarosa road), then south on Taos CR B-048 approximately one point three miles to its intersection with NM 378, then southeasterly on NM 378 approximately three point five miles to its intersection with NM 522.

[19.30.4.10 NMAC - Rp, 19.30.4.9 NMAC, 8/25/2020]

History of 19.30.4 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: Regulation No. 482, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, And Barbary Sheep, filed 5/31/1967; Regulation No. 487, Establishing 1967 Seasons On Javelina And Barbary Sheep, filed 12/15/1967; Regulation No. 489, Establishing Turkey Seasons For The Spring of 1968, filed 3/1/1968; Regulation No. 491, Establishing Big Game Seasons For 1968 For Jicarilla Reservation, filed 3/1/1968; Regulation No. 492, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, And Barbary Sheep, filed 6/6/1968; Regulation No. 495, Establishing A Season On Bighorn Sheep, filed 10/2/1968; Regulation No. 496, Establishing An Elk Season In The Tres Piedras Area, Elk Area P-6, filed 12/11/1968; Regulation No. 502, Establishing Turkey Seasons For The Spring Of 1969, filed 3/5/1969; Regulation No. 503, Establishing 1969 Deer Seasons For Bowhunting Only And Big Game Seasons For The Jicarilla Indian Reservation, filed 3/5/1969; Regulation 504, Establishing Seasons on Deer, Bear, Turkey, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, And Barbary Sheep, filed 6/4/1969; Regulation No. 507, Establishing A Season On Bighorn Sheep, filed 8/26/1969;

Regulation No. 512, Establishing Turkey Season For The Spring Of 1970, filed 2/20/1970; Regulation No. 513, Establishing Deer Season For Bowhunting Only In Sandia State Game Refuge, filed 2/20/1970; Regulation No. 514, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Barbary Sheep And Bighorn Sheep, filed 6/9/1970; Regulation No 520, Establishing Turkey Seasons For The Spring Of 1971, filed 3/9/1971; Regulation No. 522, Establishing 1971 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/9/1971; Regulation No. 523, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, filed 6/9/1971; Regulation No. 531, Establishing A Season On Javelina, filed 12/17/1971; Regulation No. 532, Establishing Turkey Seasons For The Spring Of 1972, filed 3/20/1972; Regulation No. 534, Establishing 1972 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/20/1972; Regulation No. 536, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, filed 6/26/1972; Regulation No. 542, Establishing A Season On Javelina, filed 12/1/1972; Regulation No. 545, Establishing Turkey Seasons For The Spring Of 1973, filed 2/26/1973; Regulation No. 546, Establishing 1973 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 2/26/1973; Regulation No. 547, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, And Javelina, filed 5/31/1973; Regulation No. 554, Establishing

Special Turkey Seasons For The Spring of 1974, filed 3/4/1974; Regulation No. 556, Establishing 1974 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/14/1974; Regulation No. 558, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex, filed 5/29/1974; Regulation No. 565, Establishing Special Turkey Seasons For The Spring Of 1975, filed 3/24/1975; Regulation No. 567, Establishing 1975 Seasons On Deer, Bear, And Turkey On The Jicarilla Apache And Navajo Indian Reservations And On Elk On The Jicarilla Apache Indian Reservation, filed 3/24/1975; Regulation No. 568, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 6/25/1975; Regulation No. 573, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/23/1976; Regulation No. 583, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/11/1977; Regulation No. 590, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/15/1978; Regulation No. 596, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/23/1979; Regulation No. 603, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1980 through March 31, 1981, filed 2/22/1980;

Regulation No. 609, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1981 through March 31, 1982, filed 3/17/1981;

Regulation No. 614, Establishing Open Seasons On Deer, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1982 through March 31, 1983, filed 3/10/1982;

Regulation No. 622, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1983 through March 31, 1984, filed 3/9/1983;

Regulation No. 628, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1984 through March 31, 1985, filed 4/2/1984;

Regulation No. 634, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1985 Through March 31, 1986, filed 4/18/1985;

Regulation No. 640, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1986 through March 31, 1987, filed 3/25/1986;

Regulation No. 645, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1987 through March 31, 1988, filed 2/12/1987;

Regulation No. 653, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1988 through March 31, 1989, filed 12/18/1987;

Regulation No. 663, Establishing Opening Spring Turkey For The

Period April 1, 1989 through March 31, 1990, filed 3/28/1989;

Regulation No. 664, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1989 through March 31, 1990, filed 3/20/1989;

Regulation No. 674, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1990 through March 31, 1991, filed 11/21/1989;

Regulation No. 683, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1991 through March 31, 1992, filed 2/8/1991;

Regulation No. 689, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1992 through March 31, 1993, filed 3/4/1992;

Regulation No. 700, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1993 through March 31, 1995, filed 3/11/1993.

History of Repealed Material:

19.30.4 NMAC, Boundary Descriptions for Wildlife Management Areas, filed 10/8/2009 – Repealed effective 7/15/2013.

19.30.4 NMAC, Boundary Descriptions for Wildlife Management Areas, filed 6/27/2013 – Repealed effective 8/25/2020.

GAME AND FISH DEPARTMENT

**TITLE 19 NATURAL
RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND
FISHING
PART 6 MIGRATORY
GAME BIRD**

19.31.6.1 ISSUING

AGENCY: New Mexico department of game and fish.
[19.31.6.1 NMAC - Rp, 19.31.6.1 NMAC, 9/1/2020]

19.31.6.2 SCOPE:

Sportspersons interested in migratory game bird management and hunting. Additional requirements may be found in Chapter 17 NMSA 1978 and Title 19 NMAC.
[19.31.6.2 NMAC - Rp, 19.31.6.2 NMAC, 9/1/2020]

19.31.6.3 STATUTORY

AUTHORITY: Section 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds and fish.
[19.31.6.3 NMAC - Rp, 19.31.6.3 NMAC, 9/1/2020]

19.31.6.4 DURATION:

September 1, 2020 - March 31, 2021.
[19.31.6.4 NMAC - Rp, 19.31.6.4 NMAC, 9/1/2020]

19.31.6.5 EFFECTIVE

DATE: September 1, 2020, unless a later date is cited at the end of a section.
[19.31.6.5 NMAC - Rp, 19.31.6.5 NMAC, 9/1/2020]

19.31.6.6 OBJECTIVE:

Establishing open hunting seasons, regulations, rules and procedures governing the issuance of migratory game bird licenses and permits by the department.
[19.31.6.6 NMAC - Rp, 19.31.6.6 NMAC, 9/1/2020]

19.31.6.7 DEFINITIONS:

A. “Bernardo pond unit” shall mean that portion of Bernardo wildlife management area 600 feet south of U.S. 60 and west of the unit 7 drain.

B. “Bernardo youth unit” shall mean that portion of Bernardo wildlife management area

immediately south of the Quagmire and east of the unit 7 drain.

C. “Central flyway” shall mean that portion of New Mexico east of the continental divide.

D. “Dark goose” shall mean Canada goose or white-fronted goose.

E. “Department” shall mean the New Mexico department of game and fish.

F. “Director” shall mean the director of the New Mexico department of game and fish.

G. “Dove north zone” or “north zone” shall mean that portion of New Mexico north of Interstate 40 from the Arizona-New Mexico border to Tuumcari and U.S. 54 at its junction with Interstate 40 at Tuumcari to the New Mexico-Texas border.

H. “Dove south zone” or “south zone” shall mean that portion of New Mexico south of Interstate 40 from the Arizona-New Mexico border to Tuumcari and U.S. 54 at its junction with Interstate 40 at Tuumcari to the New Mexico-Texas border.

I. “Eastern New Mexico sandhill crane hunt area” or “eastern” shall mean that area in the following counties: Chaves, Curry, De Baca, Eddy, Lea, Quay and Roosevelt.

J. “Estancia valley sandhill crane hunt area” or “EV” shall mean that area beginning at Mountainair bounded on the west by N.M. highway 55 north to N.M. 337, north to N.M. 14, and north to Interstate 25; on the north by Interstate 25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to N.M. 55 in Mountainair.

K. “Falconry” shall mean hunting migratory game birds using raptors.

L. “Federal youth waterfowl hunting days” shall mean the special seasons where only those 17 years of age and younger may hunt ducks and geese. A supervising adult at least 18 years of age must accompany the youth hunter. The adult may not hunt ducks, but may

participate in other seasons that are open on the special youth days.

M. “Light geese” shall mean snow geese, blue phase snow geese and Ross’s geese.

N. “Light goose conservation order” shall mean those methods, bag and possession limits, and dates approved by the U.S. fish and wildlife service towards reducing over-abundant light goose populations.

O. “Middle Rio Grande valley (MRGV) dark goose hunt area” shall mean Sierra, Socorro and Valencia counties.

P. “Middle Rio Grande valley (MRGV) sandhill crane hunt area” shall mean Valencia and Socorro counties.

Q. “Migratory game bird” shall mean band-tailed pigeon, mourning dove, white-winged dove, sandhill crane, American coot, common moorhen/gallinule, snipe, ducks, geese, sora, purple gallinule and Virginia rail.

R. “North zone” shall mean that portion of the Pacific flyway north of Interstate 40, and that portion of the central flyway north of Interstate 40 from the continental divide to Tuumcari and U.S. 54 at its junction with Interstate 40 at Tuumcari to the New Mexico-Texas border.

S. “Pacific flyway” shall mean that portion of New Mexico west of the continental divide.

T. “Possession limit” shall mean the number of birds in a person’s possession regardless of the location stored.

U. “Quagmire” shall mean that portion of Bernardo wildlife management area 600 feet south of U.S. 60 and east of the unit 7 drain.

V. “South zone” shall mean that portion of the Pacific flyway south of Interstate 40, and that portion of the central flyway south of Interstate 40 from the continental divide to Tuumcari and U.S. 54 at its junction with Interstate 40 at Tuumcari to the New Mexico-Texas border.

W. “Southwest band-tailed pigeon hunting area” or “southwest BPHA” shall mean that portion of New Mexico both south of U.S. 60 and west of Interstate 25.

X. “Southwest New Mexico sandhill crane hunt area” or “SW” shall mean that area bounded on the south by the New Mexico-Mexico border; on the west by the New Mexico-Arizona border north to Interstate 10; on the north by Interstate 10 east to U.S. 180, north to N.M. 26, east to N.M. 27, north to N.M. 152, and east to Interstate 25; on the east by Interstate 25 south to Interstate 10, west to the Luna county line, and south to the New Mexico-Mexico border.

Y. “Wildlife management areas” or “WMAs” shall mean those areas as described in 19.34.5 NMAC, Wildlife Management Areas. [19.31.6.7 NMAC - Rp, 19.31.6.7 NMAC, 9/1/2020]

19.31.6.8 ADJUSTMENT OF SANDHILL CRANE

PERMITS: The director, with verbal concurrence of the chairperson or their designee, may adjust the number of permits to address significant changes in harvest levels. This adjustment may be applied to any or all of the entry hunt codes. [19.31.6.8 NMAC - Rp, 19.31.6.8 NMAC, 9/1/2020]

19.31.6.9 LICENSE AND APPLICATION REQUIREMENTS:

A. License: A Harvest Information Program (HIP) number shall be required. Waterfowl hunters 16 years of age and older are required to have in their possession a federal migratory bird hunting and conservation stamp (duck stamp). It shall be unlawful to take or attempt to take migratory birds without a HIP number, or duck stamp if required.

(1) Any person taking or attempting to take sandhill cranes in the eastern hunt area must have a valid license and a free sandhill crane hunting permit obtained from department offices or website.

(2) For EV sandhill crane, MRGV sandhill crane, MRGV youth-only sandhill crane and SW sandhill crane: in addition to a valid license, a special permit obtained by drawing shall be required.

(3) For the light goose conservation order: in addition to a valid license, a free light goose conservation order permit obtained from department offices or website shall be required.

(4) For band-tailed pigeon hunting: in addition to a valid license, a free band-tailed pigeon permit obtained from department offices or website shall be required.

B. Valid dates of license or permit: All permits and licenses shall be valid only for the dates, legal sporting arms, bag limit and area printed on the permit or license.

C. Applications: Applications for EV sandhill crane, MRGV sandhill crane, SW sandhill crane and MRGV youth-only sandhill crane hunt permits shall be submitted via the department website.

(1) No more than four persons may apply per application. For the MRGV youth-only sandhill crane hunt, no more than two persons may apply per application.

(2) Applicants may apply for a first, second and third choice of seasons, if applicable. A maximum of one permit per species hunt code will be awarded to successful applicants unless otherwise specifically allowed by rule.

(3) The application deadline date for the EV, MRGV, MRGV youth-only and SW sandhill crane hunt permits shall be on date(s) set by the state game commission. If any permits are available after the drawing, those permits may be sold online via a secondary sale.

D. Youth hunts: Only applicants who have not reached their 18th birthday by the opening day of the hunt are eligible to apply for or participate in a youth-only hunt. [19.31.6.9 NMAC - Rp, 19.31.6.9 NMAC, 9/1/2020]

19.31.6.10 MANNER AND METHODS FOR MIGRATORY GAME BIRDS:

A. Hours: Migratory game birds may be hunted or taken only during the period from one-half hour before sunrise to sunset, unless otherwise specifically allowed or restricted by rule.

(1) On the Bottomless lakes overflow, and Bernardo, Casa Colorada, Jackson lake, La Joya and W.S. Huey WMAs, hunting hours shall mean from one-half hour before sunrise to 1:00 p.m. unless otherwise stated in rule. For hunting September teal on Bernardo and La Joya WMAs, hunting hours are from one-half hour before sunrise to sunset.

(2) During the light goose conservation order hunt dates, hunting hours shall mean from one-half hour before sunrise to one-half hour after sunset, excluding the WMAs listed in Paragraph (1) above.

B. Seizure: Any officer authorized to enforce Chapter 17 NMSA 1978 and state game commission rules shall seize any migratory game birds or parts that are illegally obtained or possessed.

C. Lands and waters owned, administered, controlled, or managed by the state game commission:

(1) State wildlife management areas open, species that can be hunted, and days open for hunting (use of vehicles will be restricted to designated areas):

(a) Bernardo WMA:

(i) That portion of the Bernardo WMA south of U.S. 60 is open to teal hunting each day of the September teal season and the federal youth waterfowl days. That portion of the Bernardo WMA north of U.S. 60 is closed except during the light goose conservation order.

(ii) The Quagmire shall be open only on Tuesday, Thursday and Sunday to hunt ducks, geese, Virginia rail, sora, common moorhen/gallinule, American coot and snipe during

established seasons, unless otherwise specifically allowed by rule.

(iii) The Bernardo pond unit shall be open for general waterfowl hunting on Monday, Wednesday and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen/gallinule, American coot and snipe during established seasons, unless otherwise specifically allowed by rule.

(iv) The Bernardo youth unit shall be open for youth waterfowl hunting on Monday, Wednesday and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen/gallinule, American coot and snipe during established seasons, unless otherwise specifically allowed by rule.

(b) The Edward Sargent, W. A. Humphries, Rio Chama, Urraca, Colin Neblett, Water canyon, Marquez and Elliot S. Barker WMAs shall be open for hunting dove and band-tailed pigeon during established seasons.

(c) The portion of Jackson lake WMA west of N.M. 170 shall be open on Mondays, Wednesdays and Saturdays to hunt ducks, geese, Virginia rail, sora, common moorhen/gallinule, American coot and snipe. The portion of Jackson lake WMA east of N.M. 170 shall be open to falconry-only migratory game bird hunting during established seasons.

(d) The lesser prairie-chicken management areas shall be open to hunt dove during established seasons.

(e) La Joya WMA:

(i) the entire La Joya WMA shall be open to teal hunting each day of the September teal season and each day of the federal youth waterfowl days;

(ii) that portion of La Joya WMA north of the main east/west entrance road and west of the railroad tracks shall be open on Saturdays, Mondays and Wednesdays to hunt ducks, geese, Virginia rail, sora, common moorhen/gallinule, American coot and snipe during established seasons, unless

otherwise specifically allowed by rule;

(iii) that portion of La Joya WMA south of the main east/west entrance road and west of the railroad tracks shall be open on Sunday, Tuesday and Thursday to hunt ducks, geese, Virginia rail, sora, common moorhen/gallinule, American coot and snipe during established seasons, unless otherwise specifically allowed by rule;

(iv) that portion of La Joya WMA east of the railroad tracks shall be open to hunt dove, ducks, geese, Virginia rail, sora, common moorhen/gallinule, American coot and snipe during established seasons.

(f) The Charette lake, McAllister lake, Wagon Mound, Tucumcari and Socorro-Escondida WMAs shall be open for all migratory game bird hunting during established seasons.

(g) The William S. Huey WMA shall be open for dove hunting on Monday, Wednesday and Saturday during established seasons.

(2) The Hammond tract and Retherford tract WMAs shall be open for waterfowl hunting during established seasons.

(3) All WMAs shall be open to falconry waterfowl hunting each day of the established falconry season, unless otherwise restricted by rule.

[19.31.6.10 NMAC - Rp, 19.31.6.10 NMAC, 9/1/2020]

19.31.6.11 SPECIES, OPEN AREAS, SEASON DATES AND DAILY BAG LIMITS: 2020-2021 season, all dates are 2020 unless otherwise specified. Possession limits are three times the daily bag limit unless otherwise specified.

species	open areas	season dates	daily bag limit
mourning and white-winged dove	north zone	Sept. 1 - Nov. 29	15 (singly or in aggregate)
	south zone	Sept. 1 - Oct. 28 and Dec. 1 - Jan. 1, 2021	
band-tailed pigeon	southwest BPHA	Oct. 1 - 14	2
	statewide except southwest BPHA	Sept. 1 - 14	
regular season sandhill crane (free permit required)	eastern	Oct. 24 - Jan. 24, 2021	3 (6 in possession)

CENTRAL FLYWAY: possession limits are three times the daily bag limit unless otherwise specified.

species	season dates	daily bag limit
September teal: blue-winged teal, green-winged teal, and cinnamon teal	Sept. 12 - 20	6 (singly or in the aggregate)
ducks	north zone: Oct. 10 - Jan. 13, 2021	6 (singly or in the aggregate); that consists of no more than 5 mallard of which only 2 may be female mallard, (Mexican-like ducks are included towards the mallard bag limit), 3 wood duck, 3 scaup, 2 redhead, 2 hooded merganser, 1 pintail and 2 canvasback
	south zone: Oct. 28 - Jan. 31, 2021	
youth waterfowl days	north zone: Sept. 26 - 27	15
	south zone: Oct. 3 - 4	
American coot	north zone: Oct. 10 - Jan. 13, 2021	15
	south zone: Oct. 28 - Jan. 31, 2021	
common moorhen/gallinule and purple gallinule	Sept. 12 - Nov. 20	1
snipe	Oct. 10 - Jan. 24, 2021	8
Virginia rail & sora	Sept. 12 - Nov. 20	10 (singly or in the aggregate); 20 in possession
dark goose: Canada & white-fronted geese (regular season closed in Sierra, Socorro and Valencia counties)	Oct. 17 - Jan. 31, 2021	5

dark goose: special MRGV season	Dec. 19 - Jan. 31, 2021	2 (2 per season)
light goose: Ross's & snow geese	Oct. 17 - Jan. 31, 2021	50 (no possession limit)
light goose conservation order	Feb. 1 - Mar. 10, 2021	no bag or possession limit
PACIFIC FLYWAY: possession limits are three times the daily bag limit unless otherwise specified.		
species	season dates	daily bag limit
youth waterfowl days	Oct. 3 - 4	7 (singly or in the aggregate); that consists of no more than 2 female mallard, 2 redhead, 1 pintail and 2 canvasback
ducks	Oct. 19 - Jan. 31, 2021	
scaup	Oct. 17 - Jan. 10, 2021	2 (as part of the aggregate duck bag)
American coot and common moorhen/gallinule	Oct. 19 - Jan. 31, 2021	25 daily (singly or in the aggregate)
snipe	Oct. 17 - Jan. 31, 2021	8
Virginia rail & sora	Sept. 12 - Nov. 20	25 daily (singly or in the aggregate)
goose	north zone: Sept. 26 - Oct. 11 and Nov. 2 - Jan. 31, 2021	4 Canada geese, 10 white-fronted geese and 20 light geese
	south zone: Oct. 17 - Jan. 31, 2021	

[19.31.6.11 NMAC - Rp, 19.31.6.11 NMAC, 9/1/2020]

19.31.6.12 FALCONRY SEASONS: 2020-2021 season, all dates are 2020 unless otherwise specified. Bag limits are three singly or in the aggregate and nine in possession unless otherwise specified.

CENTRAL FLYWAY		
species	open areas	season dates
mourning and white-winged dove	north	Sept. 1 - Dec. 4 and Dec. 21 - Jan. 1, 2021
	south	Sept. 1 - Nov. 5 and Nov. 22 - Jan. 1, 2021
band-tailed pigeon	southwest BPHA	Oct. 1 - 14
	statewide except southwest BPHA	Sept. 1 - 14
sora and Virginia rail	all	Sept. 12 - Dec. 27
snipe	all	Oct. 10 - Jan. 24, 2021
common moorhen/gallinule and purple gallinule	all	Sept. 12 - Dec. 27
ducks	north	Sept. 12 - 20 and Oct. 10 - Jan 13, 2021
	south	Sept. 12 - 20 and Oct. 28 - Jan 31, 2021
goose (light and dark)	all	Oct. 17 - Jan. 31, 2021
goose (dark)	MRGV	Dec. 19 - Jan. 31, 2021
sandhill crane	regular (eastern)	Oct. 10 - Jan. 24, 2021; 3 (6 in possession)
	Estancia valley	Oct. 24 - Dec. 22; 3 (6 in possession)
PACIFIC FLYWAY		
species	open areas	season dates
mourning and white-winged dove	north	Sept. 1 - Dec. 4 and Dec. 21 - Jan. 1, 2021
	south	Sept. 1 - Nov. 5 and Nov. 22 - Jan. 1, 2021
band-tailed pigeon	southwest BPHA	Oct. 1 - 14
	statewide except southwest BPHA	Sept. 1 - 14
ducks	all	Oct. 19 - Jan. 31, 2021
scaup	all	Oct. 17 - Jan. 10, 2021
goose (all)	north	Sept. 26 - Oct. 11 and Nov. 2 - Jan. 31, 2021
	south	Oct. 17 - Jan. 31, 2021
snipe	all	Oct. 17 - Jan. 31, 2021

coots and common moorhen/gallinule	all	Oct. 19 - Jan. 31, 2021
sora and Virginia rail	all	Sept. 12 - Nov. 20

[19.31.6.12 NMAC - Rp, 19.31.6.12 NMAC, 9/1/2020]

19.31.6.13 FEDERAL YOUTH WATERFOWL HUNTING DAYS: Requirements for youth hunters to participate in this hunt are as follows:

A. An adult, 18 years of age or older, must accompany the youth hunter in the field (the adult may not hunt ducks but may participate in other seasons that are open on the special youth days).

B. Only ducks, coots, and common moorhens/gallinules may be taken by the youth hunter (sandhill cranes, geese or any other migratory game bird species may not be taken unless the season is open).

[19.31.6.13 NMAC - Rp, 19.31.6.13 NMAC, 9/1/2020]

19.31.6.14 REQUIREMENTS FOR THE SPECIAL BERNARDO YOUTH WATERFOWL UNIT: Blind selection will be available on a first-come, first-serve basis from one-half hour before sunrise to 1:00 p.m. Youth hunters must be accompanied by a supervising adult who may not hunt. A maximum of four people is allowed per blind, at least half of which must be youth hunters.

[19.31.6.14 NMAC - Rp, 19.31.6.14 NMAC, 9/1/2020]

19.31.6.15 SEASON DATES, OPEN AREAS, BAG LIMITS, HUNT CODES AND PERMIT NUMBERS FOR THE SPECIAL ESTANCIA VALLEY, MIDDLE RIO GRANDE VALLEY AND SOUTHWEST NEW MEXICO SANDHILL CRANE SEASONS:

A. The daily bag limit is 3. The possession limit is twice the daily bag limit, except for the MRGV youth-only hunt where the bag and possession limits are 3. The hunting seasons for 2020-2021 are:

hunt location	hunt dates	hunt code	permits
EV	Oct 24 - Oct 27 and Oct. 29 - Nov. 1	SCR-0-101	65
MRGV	Nov. 7 - 8	SCR-0-102	60
MRGV	Nov. 28 - Nov. 29	SCR-0-103	55
MRGV	Dec. 5 - 6	SCR-0-104	55
MRGV	Jan. 2 - 3, 2021	SCR-0-105	50
MRGV	Jan. 9 - 10, 2021	SCR-0-106	50
MRGV, youth-only	Nov. 21	SCR-0-107	24
SW	Oct. 24 - Nov. 1	SCR-0-108	70
SW	Jan. 2 - 3, 2021	SCR-0-109	60

B. Hunters who participate in the MRGV season shall be required to check-out at designated check stations when they harvest any sandhill cranes.

C. The department may cancel one or more EV, MRGV or SW sandhill crane hunts if harvest is expected to exceed our federal allocation of greater sandhill cranes.

[19.31.6.15 NMAC - Rp, 19.31.6.15 NMAC, 9/1/2020]

HISTORY OF 19.31.6 NMAC:

Pre-NMAC Filing History: The material in this part was derived from that previously filed with the State Records Center & Archives under: Regulation No. 486, Establishing 1967 Seasons On Quail, Pheasants, Prairie Chickens, and Lesser Sandhill (Little Brown) Crane And Additional Seasons On Migratory Waterfowl, filed 9/22/67; Regulation No. 494, Establishing 1968 Seasons On Migratory Waterfowl, Common Snipe, Lesser Sandhill Crane, Scaled, Gambel's, And Bobwhite Quail, Pheasants, And Prairie Chickens, filed 10/2/68; Regulation No. 508, Establishing 1969 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Scaled, Gambel's And Bobwhite Quail, Pheasants, And Prairie Chickens, filed 9/19/69; Regulation No. 527, Establishing 1971 Seasons On Migratory Waterfowl And Lesser Sandhill Cranes, filed 9/10/71; Regulation No. 540, Establishing 1972 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, And Wilson's Swiipe, filed 9/26/72; Regulation No. 551, Establishing 1973 Seasons On Migratory Waterfowl And Lesser Sandhill

Crane, filed 8/20/73; Regulation No. 560, Establishing 1974 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 8/21/74; Regulation No. 570, Establishing 1975 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Common Snipe, Quail, Pheasants, And Prairie Chickens, filed 9/5/75; Regulation No. 578, Establishing 1976 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Common Snipe, Quail, Pheasants, And Prairie Chickens, filed 8/31/1976; Regulation No. 588, Establishing 1977 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Common Snipe, Quail, Pheasants, And Prairie Chickens, filed 9/6/1977; Regulation No. 594, Establishing 1978 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 9/11/1978; Regulation No. 601, Establishing 1979 Seasons on Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 8/30/1979; Regulation No. 606, Establishing 1980 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 9/3/80; Regulation No. 611, Establishing 1981 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 9/4/1981; Regulation No. 616, Establishing 1982 Seasons On Migratory Waterfowl, Quail, Pheasants, And Prairie Chickens, filed 9/3/1982; Regulation No. 626, Establishing 1983 Seasons On Migratory Waterfowl, Quail, Pheasants, And Prairie Chickens, filed 9/7/1983; Regulation No. 631, Establishing 1984 Seasons On Migratory Waterfowl, filed 8/31/1984; Regulation No. 638, Establishing 1985 Seasons On Migratory Waterfowl, filed 9/11/1985; Regulation No. 643, Establishing 1986-1987 Seasons On Migratory Birds, filed 8/24/1987; Regulation No. 660, Establishing 1988-1989 Seasons On Migratory Birds, filed 6/28/1988; Regulation No. 669, Establishing 1989-1990 Seasons On Ducks, Geese, Virginia Rail, Sora,

Common Moorhen, American Coot, Sandhill Crane, Band-tailed Pigeon, Dove, And Setting Falconry Seasons, filed 10/5/1989; Regulation No. 680, Establishing 1990-1991 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry Seasons, filed 9/28/1990; Regulation No. 687, Establishing 1991-1992 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry Seasons, filed 8/6/1991; Regulation No. 698, Establishing 1991-92 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry Seasons, filed 8/6/1991; Regulation No. 698, Establishing 1992-1993 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry seasons, filed 9/15/1992; Regulation No. 704, Establishing 1993-1994 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry Seasons, filed 3/11/1993; Regulation No. 707, Establishing The 1994-1995, 1995-1996, 1996-1997 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe, And Setting Falconry Seasons, filed 7/28/1994; Regulation No. 708, Establishing The 1994-1995, 1995-1996, And 1996-1997 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe, And Setting Falconry Seasons, filed 9/7/1994.

NMAC History:

19 NMAC 31.6, Waterfowl, filed 8/31/1995
 19.31.6 NMAC, Waterfowl, filed 8/15/2000
 19.31.6 NMAC, Waterfowl, filed 8/26/2002
 19.31.6 NMAC, Waterfowl, filed 8/12/2003
 19.31.6 NMAC, Waterfowl, filed 8/2/2004
 19.31.6 NMAC, Waterfowl, filed 8/8/2005
 19.31.6 NMAC, Waterfowl, filed

8/1/2006
 19.31.6 NMAC, Waterfowl, filed 8/16/2007
 19.31.6 NMAC, Migratory Game Bird, filed 8/13/2008
 19.31.6 NMAC, Migratory Game Bird, filed 8/17/2009
 19.31.6 NMAC, Migratory Game Bird, filed 8/2/2010
 19.31.6 NMAC, Migratory Game Bird, filed 8/1/2011
 19.31.6 NMAC, Migratory Game Bird, filed 8/14/2012
 19.31.6 NMAC, Migratory Game Bird, filed 8/29/2013

History of Repealed Material:

19.31.6 NMAC, Waterfowl, filed 8/15/2000 - duration expired 3/31/2002
 19.31.6 NMAC, Waterfowl, filed 8/26/2002 - duration expired 3/31/2003
 19.31.6 NMAC, Waterfowl, filed 8/12/2003 - duration expired 3/31/2004
 19.31.6 NMAC, Waterfowl, filed 8/2/2004 - duration expired 3/31/2005
 19.31.6 NMAC, Waterfowl, filed 8/8/2005 - duration expired 3/31/2006
 19.31.6 NMAC, Waterfowl, filed 8/1/2006 - duration expired 3/31/2007
 19.31.6 NMAC, Waterfowl, filed 8/16/2007 - duration expired 3/31/2008
 19.31.6 NMAC, Migratory Game Bird, filed 8/13/2008 - duration expired 3/31/2009
 19.31.6 NMAC, Migratory Game Bird, filed 8/17/2009 - duration expired 3/31/2010
 19.31.6 NMAC, Migratory Game Bird, filed 8/2/2010 - duration expired 3/31/2011
 19.31.6 NMAC, Migratory Game Bird, filed 8/1/2011 - duration expired 3/31/2012
 19.31.6 NMAC, Migratory Game Bird, filed 8/14/2012 - duration expired 3/31/2013
 19.31.6 NMAC, Migratory Game Bird, filed 8/29/2013 - duration expired 3/31/2014
 19.31.6 NMAC, Migratory Game Bird, filed 8/31/2014 - duration expired 3/31/2015
 19.31.6 NMAC, Migratory Game Bird, filed 9/1/2015 - duration expired

3/31/2016

19.31.6 NMAC, Migratory Game Bird, filed 6/30/2016 - duration expired 3/31/2017

19.31.6 NMAC, Migratory Game Bird, filed 7/27/2017 - duration expired 3/31/2018

19.31.6 NMAC, Migratory Game Bird, filed 7/2/2018 - duration expired 3/31/2019

19.31.6 NMAC, Migratory Game Bird, filed 8/28/2019 - duration expired 3/31/2020

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

This is an amendment to 8.200.510 NMAC, Sections 11 through 15, effective 8/11/2020.

8.200.510.11 COMMUNITY SPOUSE RESOURCE

ALLOWANCE (CSRA): The CSRA standard varies based on when the applicant or recipient become institutionalized for a continuous period. The CSRA remains constant even if it was calculated prior to submission of a formal MAP application. If institutionalization began:

A. Between September 30, 1989 and December 31, 1989, the state maximum CSRA is \$30,000 and the federal maximum CSRA is \$60,000.

B. On or after January 1, 1990, the state minimum is \$31,290 and the federal maximum CSRA is \$62,580.

C. On or after January 1, 1991, the state minimum is \$31,290 and the federal maximum CSRA is \$66,480.

D. On or before January 1, 1992, the state minimum is \$31,290 and the federal maximum CSRA is \$68,700.

E. On or after January 1, 1993, the state minimum is \$31,290 and the federal maximum CSRA is \$70,740.

F. On or after January 1, 1994, the state minimum is \$31,290

and the federal maximum CSRA is \$72,660.

G. On or after January 1, 1995, the state minimum is \$31,290 and the federal maximum CSRA is \$74,820.

H. On or after January 1, 1996, the state minimum is \$31,290 and the federal maximum CSRA is \$76,740.

I. On or after January 1, 1997, the state minimum is \$31,290 and the federal maximum CSRA is \$79,020.

J. On or after January 1, 1998, the state minimum is \$31,290 and the federal maximum CSRA is \$80,760.

K. On or after January 1, 1999, the state minimum is \$31,290 and the federal maximum CSRA is \$81,960.

L. On or after January 1, 2000, the state minimum is \$31,290 and the federal maximum CSRA is \$84,120.

M. On or after January 1, 2001, the state minimum is \$31,290 and the federal maximum CSRA is \$87,000.

N. On or after January 1, 2002, the state minimum is \$31,290 and the federal maximum CSRA is \$89,280.

O. On or after January 1, 2003, the state minimum is \$31,290 and the federal maximum CSRA is \$90,660.

P. On or after January 1, 2004, the state minimum is \$31,290 and the federal maximum CSRA is \$92,760.

Q. On or after January 1, 2005, the state minimum is \$31,290 and the federal maximum CSRA is \$95,100.

R. On or after January 1, 2006, the state minimum is \$31,290 and the federal maximum CSRA is \$99,540.

S. On or after January 1, 2007, the state minimum is \$31,290 and the federal maximum CSRA is \$101,640.

T. On or after January 1, 2008, the state minimum is \$31,290 and the federal maximum CSRA is \$104,400.

U. On or after January 1, 2009, the state minimum is \$31,290 and the federal maximum CSRA is \$109,560.

V. On or after January 1, 2010, the state minimum is \$31,290 and the federal maximum CSRA remains \$109,560.

W. On or after January 1, 2011, the state minimum is \$31,290 and the federal maximum CSRA remains \$109,560.

X. On or after January 1, 2012, the state minimum is \$31,290 and the federal maximum CSRA is \$113,640.

Y. On or after January 1, 2013, the state minimum is \$31,290 and the federal maximum CSRA is \$115,920.

Z. On or after January 1, 2014, the state minimum is \$31,290 and the federal maximum CSRA is \$117,240.

AA. On or after January 1, 2015, the state minimum is \$31,290 and the federal maximum CSRA is \$119,220.

BB. On or after January 1, 2016, the state minimum is \$31,290 and the federal maximum CSRA is \$119,220.

CC. On or after January 1, 2017, the state minimum is \$31,290 and the federal maximum CSRA is \$120,900.

DD. On or after January 1, 2018, the state minimum is \$31,290 and the federal maximum CSRA is \$123,600.

EE. On or after January 1, 2019, the state minimum is \$31,290 and the federal maximum CSRA is \$126,420.

FF. On or after January 1, 2020, the state minimum is \$31,290 and the federal maximum CSRA is \$128,640.

[8.200.510.11 NMAC - Rp, 8.200.510.11 NMAC, 7/1/2015; A/E, 1/1/2016; A/E, 3/1/2017; A/E, 8/30/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020]

8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT): Apply applicable deductions in the

order listed below when determining the medical care credit for an institutionalized spouse.

DEDUCTION AMOUNT

A. Personal needs allowance for institutionalized spouse: July 1, 2019 \$74

B. Minimum monthly maintenance needs allowance (MMMNA): July 1, 2019 \$2,114

C. The community spouse monthly income allowance (CSMIA) is calculated by subtracting the community spouse's gross income from the MMMNA:

(1) If allowable shelter expenses of the community spouse exceeds the minimum allowance then deduct an excess shelter allowance from community spouse's income that includes: expenses for rent; mortgage (including interest and principal); taxes and insurance; any maintenance charge for a condominium or cooperative; and an amount for utilities (if not part of maintenance charge above); use the standard utility allowance (SUA) deduction used in the food stamp program for the utility allowance.

July 1, 2019 \$635

(2) Excess shelter allowance may not exceed the maximum:

(a) Jan. 1, 2020 \$1,103

(b) July 1, 2019 \$1,047

(c) [July 1, 2018] Jan. 1, 2019 \$1,032 \$1,103

(d) [Jan. 1, 2018] July 1, 2018 \$1,060 \$1,032

(e) July 1, 2017 \$993

D. Any extra maintenance allowance ordered by a court of jurisdiction or a state administrative hearing officer.

E. Dependent family member income allowance (if applicable) calculated as follows: 1/3 X MMMNA - dependent member's income).

F. Non-covered medical expenses.

G. The maximum total of the community spouse monthly income allowance and excess shelter deduction may not exceed [~~\$3,161~~] \$3,217.

[8.200.510.12 NMAC - Rp, 8.200.510.12 NMAC, 7/1/2015; A/E, 3/1/2017; A/E, 8/30/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 1/16/2020; A/E, 8/11/2020]

8.200.510.13 AVERAGE MONTHLY COST OF NURSING FACILITIES FOR PRIVATE PATIENTS USED IN TRANSFER OF ASSET PROVISIONS: Costs of care are based on the date of application registration.

DATE AVERAGE COST PER MONTH

A. July 1, 1988 - Dec. 31, 1989 \$1,726 per month

B. Jan. 1, 1990 - Dec. 31, 1991 \$2,004 per month

C. Jan. 1, 1992 - Dec. 31, 1992 \$2,217 per month

D. Effective July 1, 1993, for application register on or after Jan. 1, 1993

E. Jan. 1, 1994 - Dec. 31, 1994 \$2,513 per month

F. Jan. 1, 1995 - Dec. 31, 1995 \$2,592 per month

G. Jan. 1, 1996 - Dec. 31, 1996 \$2,738 per month

H. Jan. 1, 1997 - Dec. 31, 1997 \$2,889 per month

I. Jan. 1, 1998 - Dec. 31, 1998 \$3,119 per month

J. Jan. 1, 1999 - Dec. 31, 1999 \$3,429 per month

K. Jan. 1, 2000 - Dec. 31, 2000 \$3,494 per month

L. Jan. 1, 2001 - Dec. 31, 2001 \$3,550 per month

M. Jan. 1, 2002 - Dec. 31, 2002 \$3,643 per month

N. Jan. 1, 2003 - Dec. 31, 2003 \$4,188 per month

O. Jan. 1, 2004 - Dec. 31, 2004 \$3,899 per month

P. Jan. 1, 2005 - Dec. 31, 2005 \$4,277 per month

Q. Jan. 1, 2006 - Dec. 31, 2006 \$4,541 per month

R. Jan. 1, 2007 - Dec. 31, 2007 \$4,551 per month

S. Jan. 1, 2008 - Dec. 31, 2008 \$4,821 per month

T. Jan. 1, 2009 - Dec. 31, 2009 \$5,037 per month

U. Jan. 1, 2010 - Dec. 31, 2010 \$5,269 per month

V. Jan. 1, 2011 - Dec. 31, 2011 \$5,774 per month

W. Jan. 1, 2012 - Dec. 31, 2012 \$6,015 per month

X. Jan. 1, 2013 - Dec. 31, 2013 \$6,291 per month

Y. Jan. 1, 2014 - Dec. 31, 2014 \$6,229 per month

Z. Jan. 1, 2015 - Dec. 31, 2015 \$6,659 per month

AA. Jan. 1, 2016 - Dec. 31, 2016 \$7,786 per month

BB. Jan. 1, 2017 - Dec. 31, 2017 \$7,485 per month

CC. Jan. 1, 2018 - Dec. 31, 2018 \$7,025 per month

DD. Jan. 1, 2019 - Dec. 31, 2019 \$7,285 per month

EE. Jan. 1, 2020 \$7,480 per month

[8.200.510.13 NMAC - Rp,
8.200.510.13 NMAC, 7/1/2015;
A/E, 1/1/2016; A/E, 3/1/2017;
A/E, 8/30/2018; A/E, 4/11/2019; A,
7/30/2019; A/E, 8/11/2020]

8.200.510.14 RESOURCE AMOUNTS FOR SUPPLEMENTAL SECURITY INCOME (SSI) RELATED MEDICARE SAVINGS PROGRAMS (QMB, SLIMB/QII AND QD): The following resource standards are inclusive of the \$1,500 per person burial exclusion.

- A. Individual:
[Jan. 1, 2019] Jan. 1, 2020
[~~\$9,230~~] \$9,360
- B. Couple:
[Jan. 1, 2019] Jan. 1, 2020
[~~\$14,600~~] \$14,800
[8.200.510.14 NMAC - Rp,
8.200.510.14 NMAC, 7/1/2015;
A/E, 8/30/2018; A/E, 4/11/2019; A,
7/30/2019; A/E, 8/11/2020]

8.200.510.15 EXCESS HOME EQUITY AMOUNT FOR LONG-TERM CARE SERVICES:

A.	Jan. 2020
<u>\$595,000</u>	
[A.] <u>B.</u>	Jan. 2019
\$585,000	
[B.] <u>C.</u>	Jan. 2018
\$572,000	
[C.] <u>D.</u>	Oct. 2017
\$560,000	
[D.] <u>E.</u>	Jan. 2017
\$840,000	
[E.] <u>F.</u>	Jan. 2016
\$828,000	
[F.] <u>G.</u>	Jan. 2015
\$828,000	
[G.] <u>H.</u>	Jan. 2014
\$814,000	
[H.] <u>I.</u>	Jan. 2013
\$802,000	
[I.] <u>J.</u>	Jan. 2012
\$786,000	
[J.] <u>K.</u>	Jan. 2011
\$758,000	
[K.] <u>L.</u>	Jan. 2010
\$750,000	
[8.200.510.15 NMAC - Rp, 8.200.510.15 NMAC, 7/1/2015; A/E, 1/1/2016; A/E, 3/1/2017; A, 3/1/18;	

A/E, 8/30/2018; A/E, 4/11/2019; A,
7/30/2019; A/E, 8/11/2020]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.520 NMAC, Sections 8, 11-13, 15, 16 & 20, effective 8/11/2020.

8.200.520.8 MISSION STATEMENT: [RESERVED]
To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.
[8.200.520.8 NMAC - Rp,
8.200.520.8 NMAC, 8/28/2015;
Repealed/E, 4/1/2016; A/E,
8/11/2020]

8.200.520.11 FEDERAL POVERTY INCOME GUIDELINES:

A.	One hundred percent federal poverty limits (FPL):
group month	Size of budget FPL per
	1
	[\$1,041] <u>\$1,064</u>
	2
	[\$1,410] <u>\$1,437</u>
	3
	[\$1,778] <u>\$1,810</u>
	4
	[\$2,146] <u>\$2,184</u>
	5
	[\$2,515] <u>\$2,557</u>
	6
	[\$2,883] <u>\$2,930</u>
	7
	[\$3,251] <u>\$3,304</u>
	8
	[\$3,620] <u>\$3,677</u>

Add [~~\$369~~] \$373 for each additional person in the budget group.

*Use

only these two standards for the qualified medicare beneficiary (QMB) program.

B. One hundred twenty percent FPL: This income level is used only in the determination of the maximum income limit for specified low income medicare beneficiaries (SLIMB) applicants or eligible recipients.

Applicant or eligible recipient	Amount
1	
Individual	At least [\$1,041] <u>\$1,064</u> per month but no more than [\$1,249] <u>\$1,276</u> per month.
2	
Couple	At least [\$1,410] <u>\$1,437</u> per month but no more than [\$1,691] <u>\$1,724</u> per month.

For purposes of this eligibility calculation, "couple" means an applicant couple or an applicant with an ineligible spouse when income is deemed.

C. One hundred thirty-three percent FPL:

group month	Size of budget FPL per
1	[\$1,385] <u>\$1,415</u>
2	[\$1,875] <u>\$1,911</u>
3	[\$2,365] <u>\$2,408</u>
4	[\$2,854] <u>\$2,904</u>
5	[\$3,344] <u>\$3,401</u>
6	[\$3,834] <u>\$3,897</u>
7	[\$4,324] <u>\$4,394</u>
8	[\$4,814] <u>\$4,890</u>

<p>Add [<u>\$490</u>] <u>\$496</u> for each additional person in the budget group.</p>	<p>Size of budget group FPL per month</p>	<p>for each additional person in the budget group. H. Two hundred fifty percent FPL:</p>
<p>D. One hundred thirty-five percent FPL: This income level is used only in the determination of the maximum income limit for a qualified individual 1 (QI1) applicant or eligible recipient. For purposes of this eligibility calculation, "couple" means an applicant couple or an applicant with an ineligible spouse when income is deemed. The following income levels apply:</p>	<p>1 [<u>\$2,082</u>] <u>\$2,127</u> 2 [<u>\$2,819</u>] <u>\$2,874</u> 3 [<u>\$3,555</u>] <u>\$3,620</u> 4 [<u>\$4,292</u>] <u>\$4,367</u> 5 [<u>\$5,029</u>] <u>\$5,114</u> 6 [<u>\$5,765</u>] <u>\$5,860</u> 7 [<u>\$6,502</u>] <u>\$6,607</u> 8 [<u>\$7,239</u>] <u>\$7,354</u></p>	<p>Size of budget group FPL per month 1 [<u>\$2,603</u>] <u>\$2,659</u> 2 [<u>\$3,523</u>] <u>\$3,592</u> 3 [<u>\$4,444</u>] <u>\$4,525</u> 4 [<u>\$5,365</u>] <u>\$5,459</u> 5 [<u>\$6,286</u>] <u>\$6,392</u> 6 [<u>\$7,207</u>] <u>\$7,325</u> 7 [<u>\$8,128</u>] <u>\$8,259</u> 8 [<u>\$9,048</u>] <u>\$9,192</u></p>
<p>Applicant or eligible recipient Amount 1 Individual At least [<u>\$1,249</u>] <u>\$1,276</u> per month but no more than [<u>\$1,406</u>] <u>\$1,436</u> per month. 2 Couple At least [<u>\$1,69+</u>] <u>\$1,724</u> per month but no more than [<u>\$1,903</u>] <u>\$1,940</u> per month.</p>	<p>1 [<u>\$5,029</u>] <u>\$5,114</u> 2 [<u>\$5,765</u>] <u>\$5,860</u> 3 [<u>\$6,502</u>] <u>\$6,607</u> 4 [<u>\$7,239</u>] <u>\$7,354</u> 5 [<u>\$8,029</u>] <u>\$8,114</u> 6 [<u>\$8,765</u>] <u>\$8,860</u> 7 [<u>\$9,502</u>] <u>\$9,607</u> 8 [<u>\$10,239</u>] <u>\$10,354</u></p>	<p>Size of budget group FPL per month 1 [<u>\$1,926</u>] <u>\$1,968</u> 2 [<u>\$2,607</u>] <u>\$2,658</u> 3 [<u>\$3,289</u>] <u>\$3,349</u> 4 [<u>\$3,970</u>] <u>\$4,040</u> 5 [<u>\$4,652</u>] <u>\$4,730</u> 6 [<u>\$5,333</u>] <u>\$5,421</u> 7 [<u>\$6,015</u>] <u>\$6,112</u> 8 [<u>\$6,696</u>] <u>\$6,802</u></p>
<p>E. One hundred eighty-five percent FPL:</p>	<p>Size of budget group FPL per month</p>	<p>Add [<u>\$737</u>] <u>\$747</u> for each additional person in the budget group.</p>
<p>Size of budget group FPL per month</p>	<p>1 [<u>\$1,926</u>] <u>\$1,968</u> 2 [<u>\$2,607</u>] <u>\$2,658</u> 3 [<u>\$3,289</u>] <u>\$3,349</u> 4 [<u>\$3,970</u>] <u>\$4,040</u> 5 [<u>\$4,652</u>] <u>\$4,730</u> 6 [<u>\$5,333</u>] <u>\$5,421</u> 7 [<u>\$6,015</u>] <u>\$6,112</u> 8 [<u>\$6,696</u>] <u>\$6,802</u></p>	<p>Size of budget group FPL per month 1 [<u>\$2,446</u>] <u>\$2,499</u> 2 [<u>\$3,312</u>] <u>\$3,377</u> 3 [<u>\$4,178</u>] <u>\$4,254</u> 4 [<u>\$5,043</u>] <u>\$5,131</u> 5 [<u>\$5,909</u>] <u>\$6,009</u> 6 [<u>\$6,774</u>] <u>\$6,886</u> 7 [<u>\$7,640</u>] <u>\$7,763</u> 8 [<u>\$8,506</u>] <u>\$8,641</u></p>
<p>F. Two hundred percent FPL:</p>	<p>Size of budget group FPL per month</p>	<p>Add [<u>\$920</u>] <u>\$933</u> for each additional person in the budget group.</p>
<p>Add [<u>\$68+</u>] <u>\$690</u> for each additional person in the budget group.</p>	<p>1 [<u>\$2,446</u>] <u>\$2,499</u> 2 [<u>\$3,312</u>] <u>\$3,377</u> 3 [<u>\$4,178</u>] <u>\$4,254</u> 4 [<u>\$5,043</u>] <u>\$5,131</u> 5 [<u>\$5,909</u>] <u>\$6,009</u> 6 [<u>\$6,774</u>] <u>\$6,886</u> 7 [<u>\$7,640</u>] <u>\$7,763</u> 8 [<u>\$8,506</u>] <u>\$8,641</u> Add [<u>\$866</u>] <u>\$878</u></p>	<p>for each additional person in the budget group. [8.200.520.11 NMAC - Rp, 8.200.520.11 NMAC, 8/28/2015; A/E, 4/1/2016; A/E, 9/14/2017; A, 2/1/2018; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019, A/E, 8/11/2020] 8.200.520.12 COST OF LIVING ADJUSTMENT (COLA) DISREGARD COMPUTATION: The countable social security benefit without the COLA is calculated using the COLA increase table as follows: A. divide the current gross social security benefit by the COLA increase in the most current year; the result is the social security benefit before the COLA increase; B. divide the result from Subsection A above by the COLA increase from the previous period or year; the result is the social security benefit before the increase for that period or year; and</p>

C. repeat Subsection B above for each year, through the year that the applicant or eligible recipient received both social security benefits and supplemental security income (SSI); the final result is the countable social security benefit.

COLA Increase and disregard table			
	Period and year	COLA increase	= benefit before
<u>1</u>	2020 Jan - Dec	1.6	Jan 20
[1] <u>2</u>	2019 Jan - Dec	2.8	Jan 19
[2] <u>3</u>	2018 Jan - Dec	2.0	Jan 18
[3] <u>4</u>	2017 Jan - Dec	0.3	Jan 17
[4] <u>5</u>	2016 Jan - Dec	0	Jan 16
[5] <u>6</u>	2015 Jan - Dec	1.017	Jan 15
[6] <u>7</u>	2014 Jan - Dec	1.015	Jan 14
[7] <u>8</u>	2013 Jan - Dec	1.017	Jan 13
[8] <u>9</u>	2012 Jan - Dec	1.037	Jan 12
[9] <u>10</u>	2011 Jan - Dec	0	Jan 11
[10] <u>11</u>	2010 Jan - Dec	1	Jan 10
[11] <u>12</u>	2009 Jan - Dec	1	Jan 09
[12] <u>13</u>	2008 Jan - Dec	1.058	Jan 08
[13] <u>14</u>	2007 Jan - Dec	1.023	Jan 07
[14] <u>15</u>	2006 Jan - Dec	1.033	Jan 06
[15] <u>16</u>	2005 Jan - Dec	1.041	Jan 05
[16] <u>17</u>	2004 Jan - Dec	1.027	Jan 04
[17] <u>18</u>	2003 Jan - Dec	1.021	Jan 03
[18] <u>19</u>	2002 Jan - Dec	1.014	Jan 02
[19] <u>20</u>	2001 Jan - Dec	1.026	Jan 01
[20] <u>21</u>	2000 Jan - Dec	1.035	Jan 00
[21] <u>22</u>	1999 Jan - Dec	1.025	Jan 99
[22] <u>23</u>	1998 Jan - Dec	1.013	Jan 98
[23] <u>24</u>	1997 Jan - Dec	1.021	Jan 97
[24] <u>25</u>	1996 Jan - Dec	1.029	Jan 96
[25] <u>26</u>	1995 Jan - Dec	1.026	Jan 95
[26] <u>27</u>	1994 Jan - Dec	1.028	Jan 94
[27] <u>28</u>	1993 Jan - Dec	1.026	Jan 93
[28] <u>29</u>	1992 Jan - Dec	1.03	Jan 92
[29] <u>30</u>	1991 Jan - Dec	1.037	Jan 91
[30] <u>31</u>	1990 Jan - Dec	1.054	Jan 90
[31] <u>32</u>	1989 Jan - Dec	1.047	Jan 89
[32] <u>33</u>	1988 Jan - Dec	1.04	Jan 88
[33] <u>34</u>	1987 Jan - Dec	1.042	Jan 87
[34] <u>35</u>	1986 Jan - Dec	1.013	Jan 86
[35] <u>36</u>	1985 Jan - Dec	1.031	Jan 85
[36] <u>37</u>	1984 Jan - Dec	1.035	Jan 84
[37] <u>38</u>	1982 Jul - 1983 Dec	1.035	Jul 82
[38] <u>39</u>	1981 Jul - 1982 Jun	1.074	Jul 81
[39] <u>40</u>	1980 Jul - 1981 Jun	1.112	Jul 80
[40] <u>41</u>	1979 Jul - 1980 Jun	1.143	Jul 79
[41] <u>42</u>	1978 Jul - 1979 Jun	1.099	Jul 78

[42] 43	1977 Jul - 1978 Jun	1.065	Jul 77
[43] 44	1977 Apr - 1977 Jun	1.059	Apr 77

[8.200.520.12 NMAC - Rp, 8.200.520.12 NMAC, 8/28/2015; A/E, 1/1/2016; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020]

8.200.520.13 FEDERAL BENEFIT RATES (FBR) AND VALUE OF ONE-THIRD REDUCTION (VTR):

Year	Individual	Institution	Individual	Couple	Institution	Couple
	FBR	FBR	VTR	FBR	FBR	VTR
1/89 to 1/90	\$368	\$30	\$122.66	\$553	\$60	\$184.33
1/90 to 1/91	\$386	\$30	\$128.66	\$579	\$60	\$193.00
1/91 to 1/92	\$407	\$30	\$135.66	\$610	\$60	\$203.33
1/92 to 1/93	\$422	\$30	\$140.66	\$633	\$60	\$211.00
1/93 to 1/94	\$434	\$30	\$144.66	\$652	\$60	\$217.33
1/94 to 1/95	\$446	\$30	\$148.66	\$669	\$60	\$223.00
1/95 to 1/96	\$458	\$30	\$152.66	\$687	\$60	\$229.00
1/96 to 1/97	\$470	\$30	\$156.66	\$705	\$60	\$235.00
1/97 to 1/98	\$484	\$30	\$161.33	\$726	\$60	\$242.00
1/98 to 1/99	\$494	\$30	\$164.66	\$741	\$60	\$247.00
1/99 to 1/00	\$500	\$30	\$166.66	\$751	\$60	\$250.33
1/00 to 1/01	\$512	\$30	\$170.66	\$769	\$60	\$256.33
1/01 to 1/02	\$530	\$30	\$176.66	\$796	\$60	\$265.33
1/02 to 1/03	\$545	\$30	\$181.66	\$817	\$60	\$272.33
1/03 to 1/04	\$552	\$30	\$184.00	\$829	\$60	\$276.33
1/04 to 1/05	\$564	\$30	\$188	\$846	\$60	\$282.00
1/05 to 1/06	\$579	\$30	\$193	\$869	\$60	\$289.66
1/06 to 1/07	\$603	\$30	\$201	\$904	\$60	\$301.33
1/07 to 1/08	\$623	\$30	\$207.66	\$934	\$60	\$311.33
1/08 to 1/09	\$637	\$30	\$212.33	\$956	\$60	\$318.66
1/09 to 1/10	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/10 to 1/11	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/11 to 1/12	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/12 to 1/13	\$698	\$30	\$232.66	\$1,048	\$60	\$349.33
1/13 to 1/14	\$710	\$30	\$237	\$1,066	\$60	\$355
1/14 to 1/15	\$721	\$30	\$240	\$1,082	\$60	\$361
1/15 to 12/15	\$733	\$30	\$244	\$1,100	\$60	\$367
1/16 to 12/16	\$733	\$30	\$244	\$1,100	\$60	\$367
1/17 to 12/17	\$735	\$30	\$245	\$1,103	\$60	\$368
1/18 to 12/18	\$750	\$30	\$250	\$1,125	\$60	\$375
1/19 to 12/19	\$771	\$30	\$257	\$1,157	\$60	\$386
1/20 to 12/20	<u>\$783</u>	<u>\$30</u>	<u>\$261</u>	<u>\$1,175</u>	<u>\$60</u>	<u>\$392</u>

- A.** Ineligible child deeming allocation is [~~\$386~~] \$392.
- B.** Part B premium is [~~\$135.50~~] \$144.60 per month.
- C.** VTR (value of one third reduction) is used when an individual or a couple lives in the household of another and receives food and shelter from the household or when the individual or the couple is living on his or her own household but receiving support and maintenance from others.

D. The SSI resource standard is \$2000 for an individual and \$3000 for a couple.

[8.200.520.13 NMAC - Rp, 8.200.520.13 NMAC, 8/28/2015; A/E, 1/1/2016; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020]

8.200.520.15 SUPPLEMENTAL SECURITY INCOME (SSI) LIVING ARRANGEMENTS:

A. Individual living in his or her own household who own or rent:

Payment amount: ~~[\$771]~~ \$783 Individual
~~[\$1,157]~~ \$1,175 Couple

B. Individual receiving support and maintenance payments: For an individual or couple living in his or her own household, but receiving support and maintenance from others (such as food, shelter or clothing), subtract the value of one third reduction (VTR).

Payment amount: ~~[\$771]~~ \$783 - ~~[\$257]~~ \$261 = ~~[\$514]~~ \$522 Individual
~~[\$1,157]~~ \$1,175 - ~~[\$386]~~ \$392 = ~~[\$771]~~ \$783 Couple

C. Individual or couple living household of another: For an individual or couple living in another person's household and not contributing his or her pro-rata share of household expenses, subtract the VTR.

Payment amount: ~~[\$771]~~ \$783 - ~~[\$257]~~ \$261 = ~~[\$514]~~ \$522 Individual
~~[\$1,157]~~ \$1,175 - ~~[\$386]~~ \$392 = ~~[\$771]~~ \$783 Couple

D. Child living in home with his or her parent:

Payment amount: ~~[\$771]~~ \$783

E. Individual in institution:

Payment amount: \$30.00

[8.200.520.15 NMAC - Rp, 8.200.520.15 NMAC, 8/28/2015; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020]

8.200.520.16 MAXIMUM COUNTABLE INCOME FOR INSTITUTIONAL CARE MEDICAID AND HOME AND COMMUNITY BASED WAIVER SERVICES (HCBS) CATEGORIES: Effective [~~January 1, 2019~~] January 1, 2020, the maximum countable monthly income standard for institutional care medicaid and the home and community based waiver categories is [~~\$2,343~~] \$2,349.

[8.200.520.16 NMAC - Rp, 8.200.520.16 NMAC, 8/28/2015; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020]

8.200.520.20 COVERED QUARTER INCOME STANDARD:

Date	Calendar Quarter Amount
<u>Jan. 2020 - Dec. 2020</u>	<u>\$1,410 per calendar quarter</u>
Jan. 2019 - Dec. 2019	\$1,360 per calendar quarter
Jan. 2018 - Dec. 2018	\$1,320 per calendar quarter
Jan. 2017 - Dec. 2017	\$1,300 per calendar quarter
Jan. 2016 - Dec. 2016	\$1,260 per calendar quarter
Jan. 2015 - Dec. 2015	\$1,220 per calendar quarter
Jan. 2014 - Dec. 2014	\$1,200 per calendar quarter
Jan. 2013 - Dec. 2013	\$1,160 per calendar quarter
Jan. 2012 - Dec. 2012	\$1,130 per calendar quarter
Jan. 2011 - Dec. 2011	\$1,120 per calendar quarter
Jan. 2010 - Dec. 2010	\$1,120 per calendar quarter
Jan. 2009 - Dec. 2009	\$1,090 per calendar quarter
Jan. 2008 - Dec. 2008	\$1,050 per calendar quarter
Jan. 2007 - Dec. 2007	\$1,000 per calendar quarter
Jan. 2006 - Dec. 2006	\$970 per calendar quarter
Jan. 2005 - Dec. 2005	\$920 per calendar quarter
Jan. 2004 - Dec. 2004	\$900 per calendar quarter
Jan. 2003 - Dec. 2003	\$890 per calendar quarter
Jan. 2002 - Dec. 2002	\$870 per calendar quarter

[8.200.520.20 NMAC - Rp, 8.200.520.20 NMAC, 8/28/2015; A/E, 1/1/2016; A/E, 03/01/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020]

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PUBLIC EDUCATION DEPARTMENT

The New Mexico Public Education Department approved at its 7/10/2020 hearing, to repeal and replace 6.11.2 NMAC, Rights and Responsibilities of the Public Schools and Public School Students, filed 8/15/1997, with 6.11.2 NMAC, Rights and Responsibilities of the Public Schools and Public School Students, adopted on 8/13/2020 and effective 8/25/2020.

PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 11 PUBLIC SCHOOL ADMINISTRATION - STUDENT RIGHTS AND RESPONSIBILITIES
PART 2 RIGHTS AND RESPONSIBILITIES OF THE PUBLIC SCHOOLS AND PUBLIC SCHOOL STUDENTS**

6.11.2.1 ISSUING

AGENCY: Public Education Department, hereinafter the department.

[6.11.2.1 NMAC – Rp, 6.11.2.7 NMAC, 8/25/2020]

6.11.2.2 SCOPE: This rule applies to public schools and public school students.

[6.11.2.2 NMAC – Rp, 6.11.2.7 NMAC, 8/25/2020]

6.11.2.3 STATUTORY AUTHORITY:

This rule is being promulgated pursuant to Sections 22-2-1, 22-2-2, and 22-5-4.12 NMSA 1978 and 42 U.S.C. 11431 et seq., the McKinney-Vento Homelessness Assistance Act.

[6.11.2.3 NMAC – Rp, 6.11.2.7 NMAC, 8/25/2020]

6.11.2.4 DURATION:

Permanent.

[6.11.2.4 NMAC – Rp, 6.11.2.7 NMAC, 8/25/2020]

6.11.2.5 EFFECTIVE DATE:

August 25, 2020, unless a later date is cited at the end of a section.

[6.11.2.5 NMAC – Rp, 6.11.2.7 NMAC, 8/25/2020]

6.11.2.6 OBJECTIVE:

To provide a comprehensive framework within which school districts, local school boards, locally chartered charter schools, state-chartered charter schools, and governing bodies of charter schools may carry out their educational mission and exercise their authority and responsibility to provide a safe environment for student learning and provide students and parents with an understanding of the basic rights and requirements necessary to effectively function in the educational community.

[6.11.2.6 NMAC – Rp, 6.11.2.7 NMAC, 8/25/2020]

6.11.2.7 DEFINITIONS:

A. “Administrative authority” means the school district superintendent, the head administrator of a state-chartered charter school, a principal, or their delegate to act officially in a matter involving school discipline or the maintenance of order. The term may include school security officers, but only to the extent of their authority as established under written local school board policies.

B. “Child with a disability” or “student with a disability” means a child who meets all requirements of 34 CFR Sec. 300.8 and:

(1) is age three through 21 or who will turn age three at any time during the school year;

(2) has been evaluated in accordance with 34 CFR Secs. 300.304 through 300.311 and any additional requirements of these or other department rules and standards as having one or more of the disabilities specified in 34 CFR Sec. 300.8, including an intellectual disability; a hearing impairment, including deafness, speech or language impairment; a visual impairment, including blindness; emotional disturbance; orthopedic

impairment; autism; traumatic brain injury; other health impairment; a specific learning disability; deaf-blindness; or being developmentally delayed as defined in Paragraph (4) of Subsection B of 6.31.2.7 NMAC; and who has not received a high school diploma; and

(3) at the discretion of each local educational agency and subject to the additional requirements of Paragraph (2) of Subsection F of 6.31.2.10 NMAC, may include a child age three through nine who is evaluated as being developmentally delayed and who, because of that condition, needs special education and related services.

C. “Criminal acts”

means acts defined as criminal under federal and state law, and any applicable municipal or county criminal ordinances.

D. “Delinquent acts”

means acts as defined in Subsection A of Section 32A-2-3 NMSA 1978, the Delinquency Act.

E. “Detention”

means requiring a student to remain in a designated area in the student’s school outside of instructional time, such as before school, during recess, during lunch, or after school. No detained student shall be denied an opportunity to eat lunch or reasonable opportunities to go to the restroom.

F. “Disciplinarian”

means a person or group authorized to impose consequence(s) after the facts of a case have been determined by a hearing authority.

G. “Disruptive conduct”

means willful conduct that is unruly, disruptive, or abusive and interferes with a school teacher’s or school administrator’s ability to communicate with the students in a classroom, with a student’s ability to learn, or with the operation of a school or a school-sponsored activity.

H. “Expulsion”

means the removal of a student from school either permanently or for an indefinite time exceeding 10 school days or a locally established shorter period.

I. “Hearing authority”

means a person or group designated to hear evidence and

determine the facts of a case at a required formal hearing.

J. “Immediate removal” means the removal of a student from school for one school day or less under emergency conditions and without a prior hearing.

K. “In-school suspension” means requiring a student to spend time in a designated area at the same school or in an environment where the student is allowed to continue with their academic learning.

L. “Legal limits” include the requirements of the federal and state constitutions and governing statutes, standards, and regulations, and include the fundamental common-law requirement that rules of student conduct be reasonable exercises of the schools’ authority in pursuance of legitimate educational and related functions. There are special limitations arising from constitutional guarantees of protected free speech and expression which shall be balanced against the schools need to foster an educational atmosphere free from undue disruptions to appropriate discipline.

M. “Local school board” includes the governing body of a charter school.

N. “Local school district” or “school district” includes a state-chartered charter school.

O. “Long-term suspension” means the removal of a student from school for a specified time exceeding either 10 school days or a locally established shorter period.

P. “Mechanical restraint” means the use of any device or material attached or adjacent to the student’s body that restricts freedom of movement or normal access to any portion of the student’s body and that the student cannot easily remove, but “mechanical restraint” does not include mechanical supports or protective devices.

Q. “Parent” means the natural parent, legal guardian, or other

person having custody and control of a student who is subject to Section 22-12A-1 et seq. NMSA 1978, the Attendance for Success Act, or the student if the student is not subject to compulsory attendance.

R. “Physical restraint” means the use of physical force without the use of any device or material that restricts the free movement of all or a portion of a student’s body, but “physical restraint” does not include physical escort.

S. “Public school” means the campus and any building, facility, vehicle, or other item of property owned, operated, controlled by or in the possession of a local school district. For purposes of student discipline, the term also includes any non-school premises being used for school-sponsored activities.

T. “Refusal to cooperate with school personnel” means a student’s willful refusal to obey the lawful instructions or orders of school personnel whose responsibilities include supervision of students.

U. “Refusal to identify self” means a person’s willful refusal, upon request from school personnel known or identified as such to the person, to identify themselves accurately.

V. “Restraint” when not otherwise modified means mechanical or physical restraint.

W. “Review authority” means a person or group authorized by the local school board to review a disciplinarian’s final decision to impose a long-term suspension or expulsion.

X. “Seclusion” means the involuntary confinement of a student alone in a room from which egress is prevented. “Seclusion” does not mean the use of a voluntary behavior management technique, including a timeout location, as part of a student’s education plan, individual safety plan, behavioral plan or individualized education program that involves the student’s separation from a larger group for purposes of calming.

Y. “Sexual harassment,” regarding students, means unwelcome or unwanted conduct of a sexual nature (verbal, non-verbal or physical) when:

(1) submission to such conduct is made either explicitly or implicitly a term or condition of the advancement of a student in school programs or activities;

(2) submission to or rejection of such conduct by a student is used as the basis for decisions or opportunities affecting the student; or

(3) such conduct substantially interferes with a student’s learning or creates an intimidating, hostile, or offensive learning environment.

Z. “School personnel” means all members of the staff, faculty, and administration employed by the local school board. The term includes school security officers, school bus drivers, and their aides, and also authorized agents of the schools, such as volunteers or chaperones, whose responsibilities include supervision of students.

AA. “Student” means a person who is enrolled in one or more classes at a public school.

BB. “Student experiencing homelessness” means children and youth as defined by Section 725(2) of the federal McKinney-Vento Homeless Assistance Act.

CC. “Superintendent of a school district” includes the head administrator of a state-chartered charter school.

DD. “Temporary suspension” means the removal of a student from school for a specified period of 10 or fewer school days after a rudimentary hearing.

EE. “Weapon,” as set forth in Section 22-5-4.7 NMSA 1978, means:

(1) any firearm that is designed to, may readily be converted to, or will expel a projectile by the action of an explosion; and

(2) any destructive device that is an explosive

or incendiary device, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter-ounce, mine or similar device.

[6.11.2.7 NMAC – Rp, 6.11.2.7 NMAC, 8/25/2020]

6.11.2.8 GENERAL PROVISIONS:

A. Jurisdiction over students. Public school authorities, which include all officials, employees and authorized agents of public schools, whose responsibilities include supervision of students shall have comprehensive authority within constitutional bounds to maintain order and discipline in school. In exercising this authority, such officials, employees, and authorized agents of public schools may exercise such powers of control, supervision, and correction over students as may be reasonably necessary to enable them to properly perform their duties and accomplish the purposes of education. This authority applies whenever students are lawfully subject to the schools' control, regardless of place. During such periods, public school authorities shall have the right to supervise and control the conduct of students, and students shall have the duty to submit to the schools' authority. The foregoing is intended to reflect the common law regarding the rights, duties, and liabilities of public school authorities in supervising, controlling and disciplining students. Nothing herein shall be construed as enlarging the liability of public school authorities beyond that imposed by statute, common law, or department rule.

B. School authority over non-students. In furtherance of the state's compelling interest in the orderly operation of public schools and school activities, school officials have the following forms of authority over non-students whose actions adversely affect school operations or activities.

(1) On school property: Local school boards may prohibit entry to and

provide for the removal from any public school building or grounds any person who refuses to identify themselves and state a lawful purpose for entering. Any person who refuses to identify themselves may be removed by school authorities, who may use reasonable physical force to accomplish the removal.

Alternately, a person who refuses to identify themselves and who refuses a lawful request to leave school premises may be subject to arrest by law enforcement officers for criminal offenses including but not limited to criminal trespass, interference with the educational process, or disorderly conduct. A person who identifies themselves and states a lawful purpose may nevertheless be subject to removal by school officials for engaging in activities prohibited by this rule. The person may also be subject to arrest by law enforcement officers if the person is committing any crime.

(2) Off school property: Public school authorities have indirect and limited authority over the activities of non-students off school property. To the extent that non-students' conduct at or near schools or school-sponsored activities may constitute a criminal offense, including the crimes of interference with the educational process, disorderly conduct or criminal trespass after refusing a lawful request to leave, school authorities may request law enforcement agencies to arrest the offenders.

C. Statement of policy. A primary responsibility of New Mexico public schools and their professional staff shall be to instill in students an appreciation of our representative form of government, the rights and responsibilities of the individual or group, and the legal processes whereby necessary changes are effected.

(1) The school is a community and the rules of a school are the laws of that community. All persons enjoying the rights of citizenship are subject to the laws of their community. Each right carries with it a corresponding obligation.

(2) The right to attend public school is not absolute. It is conditioned on each student's acceptance of the obligation to abide by the lawful rules of the school community until and unless the rules are changed through lawful processes.

(3) Teachers, administrators, and other school employees also have rights and duties. Teachers are required by law to maintain a suitable environment for learning in their classes and to assist in maintaining school order and discipline. Administrators are responsible for maintaining and facilitating the educational program by ensuring an orderly and safe environment in public schools. In discharging their duties, all school employees have the right to be free from intimidation or abuse and to have their lawful requests and instructions followed.

(4) Nothing in this rule shall be held to affect the due process rights of school employees or their use of any local school district grievance procedure. This rule does not address employment disputes.

D. Local school board authority: Local school boards have the authority and responsibility to ensure that suitable rules of student conduct and appropriate disciplinary processes are established within their school districts. Within legal limits as defined in Subsection L. of 6.11.2.7 NMAC, and subject to the minimums prescribed in this rule, local school boards have discretion to develop such rules, policies, and procedures as they deem appropriate to local conditions, including policies which afford students more protection than the minimums established here. Local school boards and administrative authorities which deem it appropriate may provide for student, community or appropriate state and local agency participation in the formulation and enforcement of school rules.

E. Severability. Any part of this rule found by adjudication before a competent tribunal to be contrary to law shall be stricken without effect to the remainder. [6.11.2.8 NMAC – Rp, 6.11.2.7 NMAC, 8/25/2020]

6.11.2.9 RULES OF CONDUCT FOR NEW MEXICO PUBLIC SCHOOLS: The acts specified in Subsection A of 6.11.2.9 NMAC are prohibited in all public schools in New Mexico. Within legal limits as defined in Subsection L of 6.11.2.7 NMAC, local school boards have discretion to develop rules of conduct governing all others area of student and school activity.

A. Prohibited activities: The commission of or participation in the activities designated below is prohibited in all public schools and is prohibited for students whenever they are subject to school control. The following acts are prohibited by this rule:

- (1) criminal or delinquent acts;
- (2) committing, threatening to commit, or inciting others to commit or threaten to commit any act of violence, directly or indirectly, in person or through electronic means, against a public school, student, or school personnel or official;
- (3) sexual harassment;
- (4) disruptive conduct;
- (5) refusal to identify self; and
- (6) refusal to cooperate with school personnel.

B. Regulated activities: Beyond those activities designated as prohibited in Subsection A of 6.11.2.9 NMAC, all other areas of student conduct may be regulated within legal limits by local school boards as they deem appropriate to local conditions. Conduct by non-students which affects school operations may be regulated within legal limits pursuant to any of the forms of authority described in Subsection B. of 6.11.2.8 NMAC. Activities subject to local school board regulation within legal limits include:

- (1) school attendance;
- (2) use of and access to public schools, including:
 - (a) restrictions on vehicular traffic on school property;

(b) prohibition of, or conditions on, the presence of non-school persons on school grounds or in school buildings while school is in session; and

(c) reasonable standards of conduct for all persons attending school-sponsored activities or other activities on school property;

(3) students' dress and personal appearance;

(4) use of controlled substances, alcohol and tobacco in public schools;

(5) speech and assembly within public schools;

(6) publications distributed in public schools;

(7) the existence, scope, and conditions of availability of student privileges, including extracurricular activities and rules governing participation;

(8) per Section 22-5-4.7 NMSA 1978, each school district is required to adopt a policy providing for the expulsion from school, for a period of not less than one year, any student who is determined to have knowingly brought a weapon to a public school under the jurisdiction of the local school board. The local school board or the superintendent of the school district may modify the expulsion requirement on a case-by-case basis; the special rule provisions of Subsection D of 6.11.2.11 NMAC, apply to students with disabilities; and

(9) the discipline of students for out-of-school conduct having a direct and immediate effect on school discipline or the general safety and welfare of the school.

[6.11.2.9 NMAC – Rp, 6.11.2.7 NMAC, 8/25/2020]

6.11.2.10 ENFORCING RULES OF CONDUCT:

A. Enforcing attendance requirements. Local school districts and public schools shall establish, maintain, and enforce attendance policies and requirements set forth in Section 22-12A-1 et seq.

NMSA 1978, the Attendance for Success Act, and Section 32A-3A-1 et seq. NMSA 1978, the Family Services Act.

B. Search and seizure. School property assigned to a student and a student's person or property while under the authority of a public school are subject to search, and items found are subject to seizure, in accordance with the following requirements:

(1) Notice of search policy. Students shall be given reasonable notice, through distribution of written policies or otherwise, of each school's policy on searches at the beginning of each school year or upon admission for students entering during the school year.

(2) Who may search. Certified school personnel, school security personnel and school bus drivers are "authorized persons" to conduct searches when a search is permissible as set forth in Subsection B of 6.11.2.10 NMAC. An authorized person who is conducting a search may request the assistance of one or more people, who upon consent become authorized to search for the purpose of that search only.

(3) When a search is permissible. Unless local school board policy provides otherwise, an authorized person may conduct a search when the authorized person has a reasonable suspicion that a crime or other breach of disciplinary rules is occurring or has occurred. An administrative authority may direct or conduct a search under the same conditions and also when the administrative authority has reasonable cause to believe that a search is necessary to help maintain school discipline.

(4) Conduct of searches and witnesses. The following requirements govern the conduct of permissible searches by authorized persons.

(a) School property, including lockers and school buses, may be searched with or without students present unless a local school board or administrative authority provides

otherwise. When students are not present for locker searches, another authorized person shall serve as a witness whenever possible. Locks furnished by students should not be destroyed unless a student refuses to open one or circumstances otherwise render such action necessary in the judgment of the administrative authority.

(b)

Student vehicles when on campus or otherwise under school control and students' personal effects, which are not within their immediate physical possession, may be searched in accordance with the requirements for locker searches in Subparagraph (a) of Paragraph (4) of Subsection B of 6.11.2.10 NMAC.

(c)

Physical searches of a student's person may be conducted only by an authorized person of the same sex as the student and, except when circumstances render it impossible, may be conducted only in the presence of another authorized person of the same sex. The extent of the search must be reasonably related to the infraction, and the search shall not be excessively intrusive in light of the student's age and sex, and the nature of the infraction.

(5) Seizure

of items. Illegal items, legal items which threaten the safety or security of others and items which are used to disrupt or interfere with the educational process may be seized by authorized persons. Seized items shall be released to appropriate authorities or a student's parent or returned to the student when and if the administrative authority deems appropriate.

(6)

Notification of law enforcement authorities. Unless a local school board policy provides otherwise, an administrative authority shall have discretion to notify the local children's court attorney, district attorney, or other law enforcement officers when a search discloses illegally possessed contraband material or evidence of some other crime or delinquent act.

C. Basis for disciplinary action. A student may appropriately be disciplined by administrative authorities in the following circumstances:

(1) for

committing any act that endangers the health or safety of students, school personnel, or others for whose safety the public school is responsible, or for conduct that reasonably appears to threaten such dangers if not stopped, regardless of whether an established rule of conduct has been violated;

(2) for

violating valid rules of student conduct established by the local school board or by an administrative authority to whom the local school board has delegated rulemaking authority, when the student knew or should have known of the rule in question or that the conduct was prohibited; or

(3) for

committing acts prohibited by this rule, when the student knew or should have known that the conduct was prohibited.

D. Selection of disciplinary sanctions. Within legal limits as defined in Subsection L of 6.11.2.7 NMAC, local school boards have discretion to determine the appropriate sanction(s) to be imposed for violations of rules of student conduct or to authorize appropriate administrative authorities to make such determinations.

(1) School

discipline and criminal charges. Appropriate disciplinary actions may be taken against students regardless of whether criminal charges are also filed in connection with an incident.

(2)

Nondiscriminatory enforcement. Local school boards and administrative authorities shall not enforce school rules or impose disciplinary punishments in a manner which discriminates against any student on the basis of race, religion, color, national origin, ancestry, sex (including sexual orientation and transgender status), or disability, except to the extent otherwise permitted or required by law or

regulation. This statement shall not be construed as requiring identical treatment of students for violation of the same rule; it shall be read as prohibiting differential treatment which is based on race, religion, color, national origin, ancestry, sex (including sexual orientation and transgender status), or disability rather than on other differences in individual cases or students.

E. Restraint or

seclusion. In accordance with Section 22-5-4.12 NMSA 1978, each school shall establish requirements for the use of restraint and seclusion techniques.

(1)

Schools shall establish policies and procedures, as approved by the local school board or governing body, for the use of restraint and seclusion techniques. Schools shall review such policies and procedures on a triennial basis, before submitting the school safety plan.

(a) A

school may permit the use of restraint or seclusion techniques on any student only if the student's behavior presents an imminent danger of serious physical harm to the student or others and only if less restrictive interventions appear insufficient to mitigate the imminent danger of serious physical harm. Less restrictive interventions include de-escalation strategies, positive behavioral intervention supports, or other comparable behavior management techniques.

(b)

The restraint or seclusion techniques shall be used only by school employees who are trained in de-escalation strategies, positive behavioral intervention supports, and the safe and effective use of restraint and seclusion techniques, unless an emergency does not allow sufficient time to summon those trained school employees.

(c)

The restraint or seclusion techniques shall not impede the student's ability to breathe or speak, shall be in proportion to a student's age and physical condition, and shall end

when the student's behavior no longer presents an imminent danger of serious physical harm to the student or others.

(d)

If a restraint or seclusion technique is used on a student, trained and authorized school employees shall maintain continuous visual observation and monitoring of the student while the restraint or seclusion technique is in use.

(2) In

accordance with Section 22-5-4.12 NMSA 1978, schools shall establish policies and procedures for the use of restraint and seclusion techniques in a school safety plan.

(a)

A school safety plan, pursuant to requirements of Paragraph (7) of Subsection D of 6.12.6.8 NMAC, shall include the following minimum requirements:

(i)

The school safety plan shall not be specific to any individual student; and

(ii)

The school safety planning team shall include at least one administrator, one educator, and one special education expert and may include a counselor or social worker, nurse, and school resource officer or security staff. The school safety planning team shall include personnel who are trained as designated school personnel restraint and seclusion.

(b)

A school safety plan, pursuant to requirements of Paragraph (7) of Subsection D of 6.12.6.8 NMAC, shall be submitted to the department on a triennial basis, on a schedule determined by the department. The department will provide local education agencies notice of a deadline to submit a school safety plan 90 days prior to the due date.

(3) Policies

and procedures for the use of restraint and seclusion techniques shall require and describe appropriate training for designated school personnel.

(a)

School districts and charter schools shall provide training for designated school personnel regarding de-

escalation strategies, positive behavioral intervention supports, or other comparable behavior management techniques and the use of restraint or seclusion techniques.

Designated school personnel shall attend training at least every two years or complete a certification course, exam, or other comparable demonstration of competency that provides evidence that the individual has up-to-date knowledge of proper restraint and seclusion techniques.

(b)

In the event that new designated school personnel are identified within the school after the provision of the training, certification course, exam, or other comparable demonstration of competency, the school district or charter school shall ensure that a training or other competency demonstration is provided to new designated school personnel within 60 days of being designated.

(4) Policies

regarding restraint or seclusion shall consider school district support and strategies for school employees to successfully reintegrate a student who has been restrained or secluded back into the school or classroom environment.

(5) Schools

shall implement the following review procedures for incidents in which restraint or seclusion techniques are used.

(a)

If a student has been restrained or secluded two or more times within 30 calendar days, the school shall review strategies used to address the student's behavior and determine whether the student needs a functional behavior assessment or referral to a student assistance team, behavioral intervention plan team, or, if a student has an individualized education program, a referral to the student's individualized education program team.

(b)

If a student has been restrained or secluded two or more times within 30 calendar days, the student's individualized education program team, behavioral intervention plan

team, or student assistance team shall meet within two weeks of each subsequent use to provide recommendations for avoiding future incidents requiring the use of restraint or seclusion.

(c)

The review shall include whether school personnel involved in the incidents were trained in the use of de-escalation strategies, positive behavioral intervention supports, or restraint and seclusion techniques. Additionally, the review shall consider whether the individual who restrained or secluded a student needs additional training.

(d)

To improve internal practices relative to incidents of restraint or seclusion, schools shall conduct an annual review and analysis of all incidents in which restraint or seclusion techniques were used, including the number of incidents, the type of incident, personnel involved, the need for additional training, and student demographics.

(6) Schools

shall establish documentation and reporting procedures pursuant to the requirements listed in Section 22-5-4.12 NMSA 1978. In addition, schools shall provide written or oral assurance of secure storage and access to written documentation in accordance with this rule, 20 USC. Section 1232(g), 34 CFR Part 99, the Family Educational Rights and Privacy Act, and any other applicable federal or state laws or rules governing the privacy of such documents.

(a)

A school employee shall provide the student's parent with written or oral notice on the same day the incident occurred, unless circumstances prevent same-day notification. If notice is not provided on the same day of the incident, notice shall be given within 24 hours after the incident.

(b)

Within a reasonable time following the incident, no longer than two school days, a school employee shall provide the student's parent with written documentation that includes

information about any persons, locations, or activities that may have triggered the behavior, if known, and specific information about the behavior and its precursors, the type of restraint or seclusion technique used, and the duration of its use.

(c)

Schools shall report to the department, through the department’s data collection and reporting system, the following information on a timeline and reporting frequency established by the department:

- (i)** all instances in which a restraint or seclusion technique is used;
- (ii)** all instances in which law enforcement is summoned instead of using a restraint or seclusion technique;
- (iii)** the names of the students and school personnel involved in an incident in which restraint or seclusion was used; and
- (iv)** if a student was restrained, the type of restraint, including mechanical restraint or physical restraint, that was used.

(d)

If a school summons law enforcement instead of using a restraint or seclusion technique on a student, the school shall comply with the reporting, documentation, and review procedures established pursuant to this rule and Section 22-5-4.12 NMSA 1978.

F. Corporal

punishment. Corporal punishment shall be prohibited by each local school board pursuant to Subsection B of Section 22-5-4.3 NMSA 1978. Restraint or seclusion techniques used in compliance with Subsection E of 6.11.2.10 NMAC shall not be deemed to be corporal punishment.

G. Detention,

suspension and expulsion. Where detention, suspension, or expulsion is determined to be the appropriate penalty, it may be imposed only in accordance with procedures that provide at least the minimum safeguards prescribed in 6.11.2.12

NMAC. Suspensions or expulsions of students with disabilities shall be subject to the further requirements of Subsection I of 6.11.2.10 NMAC and 6.11.2.11 NMAC.

H. Discipline of

students experiencing homelessness. Removing students experiencing homelessness from school shall be used only as a last resort, pursuant to the requirements in 42 USC Sec. 11431 et seq., the McKinney-Vento Homelessness Assistance Act.

(1) Public

schools shall develop discipline policies and procedures that are reviewed at least annually and align with local school board policies. Policies and procedures shall:

(a)

through professional development activities, create an awareness among educators and administrators of the types of behaviors that students experiencing homelessness may exhibit due to homelessness and provide strategies and supports to address the behaviors through the student assistance team process in accordance with Subsection D of 6.29.1.9 NMAC;

(b)

take into account the issues related to a student’s homelessness by talking with the student and applicable staff and families prior to taking disciplinary action;

(c)

consult with school behavior response teams or other applicable personnel to assign appropriate discipline related to the behavior;

(d)

implement discipline alternatives to temporary or long-term suspensions or expulsions or classroom removals, if possible; and

(e)

connect students with mental health services as needed.

(2) Public

schools shall review school discipline records and data of students experiencing homelessness in order to identify any patterns in disciplinary actions that indicate an unfair bias against the students. The collection and review of such records shall

be in compliance with the Family Educational Rights and Privacy Act, as well as any other applicable federal or state laws or rules governing the privacy of such documents.

I. Discipline of

students with disabilities. Students with disabilities are not immune from school disciplinary processes, nor are they entitled to remain in a particular educational program when their behavior substantially impairs the education of other children in the program. However, public schools are required by state law and rule to meet the individual educational needs of students with disabilities to the extent that current educational expertise permits. Public school personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, consistent with the other requirements of 6.11.2.11 NMAC, is appropriate for a student with a disability who violates a code of conduct as provided in 34 CFR Sec. 300.530.

(1) Long-term

suspensions or expulsions of students with disabilities shall be governed by the procedures set forth in 6.11.2.11 NMAC.

(2)

Temporary suspensions of students with disabilities may be imposed in accordance with the normal procedures prescribed in Subsection D of 6.11.2.12 NMAC, provided that the student is returned to the same educational placement after the temporary suspension and unless a temporary suspension is prohibited under the provisions of Paragraph (3) of Subsection I of 6.11.2.10 NMAC.

(3) Program

prescriptions. A student with a disability’s individualized education program (IEP), under the Individuals with Disabilities Education Improvement Act (IDEA), need not affirmatively authorize disciplinary actions which are not otherwise in conflict with this rule. However, the IEP team may prescribe or prohibit specified disciplinary measures for an individual student with a disability by including appropriate provisions

in the student's IEP. Administrative authorities shall adhere to any such provisions contained in a student with a disability's IEP, except that an IEP team may not prohibit the initiation of proceedings for long-term suspension or expulsion which are conducted in accordance with this rule.

(4) Immediate removal. Immediate removal of students with disabilities may be done in accordance with the procedures of Subsection C of 6.11.2.12 NMAC.

(5) A student who has not been determined to be eligible for special education and related services under 6.31.2 NMAC and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in this subsection if the conditions set forth in 34 CFR Sec. 300.534 have been met.

(6) Referral to and action by law enforcement and judicial authorities.

(a) Nothing in these rules of conduct prohibits an administrative authority from reporting a crime committed by a student with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

(b) Transmittal of records.

(i) An administrative authority reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted, for consideration by the appropriate authorities, to whom the administrative authority reports the crime.

(ii) An administrative authority reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and

Privacy Act.

[6.11.2.10 NMAC – Rp, 6.11.2.7 NMAC, 8/25/2020]

6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

A. General. The following rules shall apply when a student with a disability under IDEA violates a rule of conduct as set forth in this rule which may result in:

(1) long-term suspension or expulsion; or

(2) any other disciplinary change of the student's current educational placement as specified in the federal regulations implementing IDEA at 34 CFR Secs. 300.530 through 300.536 and these or other department rules and standards.

B. Manifestation determination.

(1) For disciplinary removals of students with disabilities that exceed 10 consecutive school days or result in a disciplinary change of placement as defined by 34 CFR 300.536, the administrative authority must conduct a manifestation determination to determine whether the conduct was a manifestation of the child's disability pursuant to this Subsection.

(2) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a rule of student conduct, the administrative authority, the parent, and relevant members of the child's IEP team (as determined by the parent and the administrative authority) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(a) if the conduct in question was caused by or had a direct and substantial relationship to, the child's disability; or

(b) if the conduct in question was the direct result of the administrative authority's failure to implement the IEP.

(3) If the administrative authority, the parent, and relevant members of the child's IEP team determine the condition in either Subparagraph (a) or (b) of Paragraph (2) of Subsection B of 6.11.2.11 NMAC is met, the conduct must be determined to be a manifestation of the child's disability.

C. Determination that behavior is a manifestation of disability. If the administrative authority, the parent, and relevant members of the IEP team determine the conduct was a manifestation of the child's disability, the IEP team must take immediate steps to comply with 34 CFR Sec. 300.530(f) and remedy any deficiencies.

D. Determination that behavior is not a manifestation of disability. If the administrative authority, the parent, and relevant members of the IEP team determine the conduct was not a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures to a child with a disability in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in Subsection I of this section.

E. Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child's behavior involves one of the special circumstances listed in 34 CFR Sec. 300.530(g). For purposes of this subsection, the definitions provided in 34 CFR Sec. 300.530(i) shall apply.

F. Determination of setting. The student's IEP team determines the interim alternative educational setting for service under Subsections D and E of this section.

G. Change of placement because of disciplinary removals. For purposes of removals of a student with a disability from the child's current educational placement under 6.11.2.11 NMAC and 6.11.2.12

NMAC, a change of placement occurs if the conditions provided in 34 CFR Sec. 300.536 are met.

H. Parental notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the administrative authority must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR Sec. 300.504.

I. Services. A student with a disability who is removed from the student's current placement for 10 school days in the same school year must continue to receive special education and related services as provided in 34 CFR Sec. 300.530(b) and 34 CFR Sec. 300.530(d).

J. Appeal.
(1) The parent of a student with a disability who disagrees with any decision regarding the placement or the manifestation determination under this section, or an administrative authority that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to Subsection I of 6.11.2.13 NMAC.

(2) A hearing officer who hears a matter under Paragraph (1) of Subsection J of 6.11.2.11 NMAC, has the authority provided in 34 CFR Sec. 300.532(b).

(3) When an appeal under this subsection has been made by the parent or the administrative authority, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in Subsections D or E of this section, whichever occurs first, unless the parent and the administrative authority agree otherwise.

[6.11.2.11 NMAC – Rp, 6.11.2.7 NMAC, 8/25/2020]

6.11.2.12 PROCEDURE FOR DETENTIONS, SUSPENSIONS, AND EXPULSIONS:

The authority of the state and of local school boards to prescribe and enforce standards of conduct for public school students must be exercised consistently with constitutional safeguards of individual student rights. The right to a public education is not absolute; it may be taken away, temporarily or permanently, for violations of school rules. The right to a public education is a property right which may only be denied where school authorities have adhered to the minimum procedural safeguards required to afford the student due process of law. This section prescribes minimum requirements for detention, in-school suspension, and temporary, long-term or permanent removal of students from public schools. Local school boards may adopt procedures which afford students more protection than this rule requires. The procedures in this section apply only to disciplinary detentions, suspensions, and expulsions. They do not apply to disenrollment of students who fail to meet immunization, age, residence, or other requirements for valid enrollment, nor to the removal from school membership reports of students who have been absent from school for 10 consecutive school days in accordance with Subsection B of Section 22-8-2 NMSA 1978. Nothing in this section shall be construed as prohibiting school boards or administrative authorities from involving other school staff, students, and members of the community in the enforcement of rules of student conduct to the extent they believe is appropriate.

A. Post-suspension placement of students. Any student suspended from school shall be delivered directly by a school official to the student's parent(s) or an adult designated by the parent(s) or kept on school grounds until the usual end of the school day.

B. Students with disabilities. This section does not apply to long-term suspension or

expulsion of students with disabilities pursuant to the IDEA or Section 504. The procedures for long-term suspension or expulsion of students with disabilities are set forth in Section 6.11.2.11 NMAC. School personnel under this section may remove a student with a disability who violates a rule of student conduct from the student's current placement to an appropriate interim alternative educational setting, another setting, or suspension, for no more than 10 consecutive school days to the extent those alternatives are applied to students without disabilities, and for additional removals of no more than 10 consecutive school days in the same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under Subsection G of 6.11.2.11 NMAC.

C. Immediate removal. Students whose presence poses a continuing danger to persons or property or an ongoing threat of interfering with the educational process may be immediately removed from school, subject to the following rules:

(1) A rudimentary hearing, as required for temporary suspensions, shall follow as soon as possible;

(2) Students shall be reinstated after no more than one school day unless within that time a temporary suspension is also imposed after the required rudimentary hearing. In such circumstances, a single hearing will support both the immediate removal and a temporary suspension imposed in connection with the same incident(s); and

(3) The school shall exert reasonable efforts to inform the student's parent of the charges against the student and the action taken as soon as practicable. If the school has not communicated with the parent by telephone or in person by the end of the school day following the immediate removal, the school shall on that day mail a written notice with the required information to the parent's address of record.

D. Temporary suspension.

(1) A local school board may limit temporary suspensions to periods shorter than 10 school days.

(2) A student facing temporary suspension shall be granted a rudimentary hearing in which the student shall first be informed of the charges against the student and, if the student denies them, shall be told what evidence supports the charge(s) and be given an opportunity to present the student's version of the facts. The following rules apply:

(a) the hearing may be an informal discussion and may follow immediately after the notice of the charges is given;

(b) unless the administrative authority decides a delay is essential to permit a fuller exploration of the facts, informal discussion may take place and a temporary suspension may be imposed within minutes after the alleged misconduct has occurred;

(c) a student who denies a charge of misconduct shall be told what act(s) the student is accused of committing, shall be given an explanation of the evidence supporting the accusation(s), and shall be given the opportunity to explain the student's version of the facts. The administrative authority is not required to divulge the identity of informants, although the administrative authority should not withhold such information without good cause. The administrative authority is required to disclose the substance of all evidence on which the administrative authority proposes to base a decision in the matter;

(d) the administrative authority is not required to allow the student to secure counsel, to confront or cross-examine witnesses supporting the charge(s), or to call witnesses to verify the student's version of the incident, but none of these is prohibited; and

(e) the school shall exert reasonable

efforts to inform the student's parent(s) of the charges against the student and the possible or actual consequence as soon as practicable. If the school has not communicated with the parent(s) by telephone or in person by the end of the first full day of suspension, the school shall on that day mail a written notice with the required information to the parent's address of record.

E. In-school suspension.

(1) In-school suspension may be imposed with or without further restriction of student privileges. Any student who is placed in in-school suspension which exceeds 10 school days must be provided with an instructional program that meets state and local educational requirements. Student privileges, however, may be restricted for longer than 10 school days.

(2) In-school suspensions of any length shall be accomplished according to the procedures for a temporary suspension as set forth in Subsection D of 6.11.2.12 NMAC. A local school board may limit the length of in-school suspensions which may be accomplished under temporary suspension procedures. No student in in-school suspension shall be denied an opportunity to eat lunch or reasonable opportunities to go to the restroom.

F. Detention.

(1) Detention may be imposed in connection with in-school suspension, but is distinct from in-school suspension in that detention does not entail removing the student from any of the student's regular classes.

(2) The authority of the schools to supervise and control the conduct of students includes the authority to impose reasonable periods of detention during the day or outside normal school hours as a disciplinary measure. Reasonable periods of detention may be imposed in accordance with the procedures for temporary suspension.

G. Long-term suspension and expulsion.

(1) Each local school board shall authorize appropriate administrative authorities to initiate procedures leading to long-term suspension or expulsion. Where prompt action to suspend a student long-term is deemed appropriate, a temporary suspension may be imposed while the procedures for long-term suspension or expulsion are activated. However, where a decision following the required formal hearing is delayed beyond the end of the temporary suspension, the student shall be returned to school pending the final outcome unless the provisions of Subparagraphs (j) and (k) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC apply.

(2) A student who has been validly expelled or suspended is not entitled to receive any educational services from the local school district during the period of the exclusion from school. A local school board may provide alternative arrangements, including correspondence courses at the expense of the student or parent(s) pursuant to department requirements, if the local school board deems such arrangements appropriate.

(3) Each local school board shall establish, or shall authorize appropriate administrative authorities to establish, appropriate processes for handling long-term suspensions and expulsions. Unless the terms expressly indicate otherwise, nothing in Paragraph (4) of Subsection G of 6.11.2.12 NMAC shall be construed as directing that any required decision be made by any particular person or body or at any particular level of administrative organization.

(4) The following rules shall govern the imposition of long-term suspensions or expulsions:

(a) Hearing authority and disciplinarian. The same person or group may perform the functions of hearing authority and disciplinarian. Where the functions are divided, the hearing authority's determination of the facts shall be conclusive to the

disciplinarian, but the disciplinarian may reject any consequence(s) recommended by the hearing authority.

(b)

Review authority. Unless the local school board provides otherwise, a review authority shall have discretion to modify or overrule the disciplinarian’s decision, but may not impose harsher consequences. A review authority shall be bound by a hearing authority’s factual determinations except as provided in Subparagraph (o) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC.

(c)

Disqualification. No person shall act as hearing authority, disciplinarian, or review authority in a case where the person was directly involved in or witnessed the incident(s) in question, or if the person has prejudged disputed facts or is biased for or against any person who will actively participate in the proceedings.

(d)

Local school board participation. A local school board may act as hearing authority, disciplinarian, or review authority for any cases involving proposed long-term suspensions or expulsions. However, whenever a quorum of the local school board acts in any such capacity, Section 10-15-1 et seq., NMSA 1978, the Open Meetings Act, requires a public meeting.

(e)

Initiation of procedures. An authorized administrative authority shall initiate procedures for long-term suspension or expulsion of a student by designating a hearing authority and disciplinarian in accordance with local school board policies, scheduling a formal hearing in consultation with the hearing authority, and preparing and serving a written notice meeting the requirements of Subparagraph (h) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC.

(f)

Service of notice. The written notice shall be addressed to the student, through the student’s parent(s), and shall be served upon the parent(s) personally or by mail.

(g)

Timing of hearing. The hearing shall be scheduled no sooner than five nor later than 10 school days from the date of receipt of the notice by the parent(s). The hearing authority may grant or deny a request to delay the hearing in accordance with the provisions of Subparagraph (i) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC.

(h)

Contents of notice. The written notice must contain all of the following information, parts of which may be covered by appropriate reference to copies of any policies or regulations furnished with the notice:

(i)

the school rule(s) alleged to have been violated, a concise statement of the alleged act(s) of the student on which the charge(s) are based, and a statement of the possible penalty;

(ii)

the date, time, and place of the hearing, and a statement that both the student and parent(s) are entitled and urged to be present;

(iii)

a clear statement that the hearing will take place as scheduled unless the hearing authority grants a delay or the student and parent(s) agree to waive the hearing and comply voluntarily with the proposed disciplinary action or with a negotiated penalty, and a clear and conspicuous warning that a failure to appear will not delay the hearing and may lead to the imposition of the proposed penalty by default;

(iv)

a statement that the student has the right to be represented at the hearing by legal counsel, a parent or some other representative designated in a written notice filed at least 72 hours before the hearing with the contact person named pursuant to Item (vi) of Subparagraph (h) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC;

(v)

a description of the procedures governing the hearing;

(vi)

the name, business address, and telephone number of a contact

person through whom the student, parent(s), or designated representative may request a delay or seek further information, including access to any documentary evidence or exhibits which the school proposes to introduce at the hearing; and

(vii)

any other information, materials or instructions deemed appropriate by the administrative authority who prepares the notice.

(i)

Delay of hearing. The hearing authority shall have discretion to grant or deny a request by the student or the appropriate administrative authority to postpone the hearing. Such discretion may be limited or guided by local school board policies not otherwise inconsistent with this rule.

(j)

Student status pending hearing. Where a student has been suspended temporarily and a formal hearing on long-term suspension or expulsion will not occur until after the temporary suspension has expired, the student shall be returned to school at the end of the temporary suspension unless:

(i)

the provisions of Subparagraph (k) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC apply, or

(ii)

the student and parent(s) have knowingly and voluntarily waived the student’s right to return to school pending the outcome of the formal proceedings; or

(iii)

the appropriate administrative authority has conducted an interim hearing pursuant to a written local school board policy made available to the student which affords further due process protection sufficient to support the student’s continued exclusion pending the outcome of the formal procedures.

(k)

Waiver of hearing, voluntary compliance, or negotiated penalty. A student and the student’s parent(s) may elect to waive the formal hearing and review procedures and comply voluntarily with the proposed penalty,

or may waive the hearing and review and negotiate a mutually acceptable penalty with the designated disciplinarian. Such a waiver and compliance agreement shall be made voluntarily, with knowledge of the rights being relinquished, and shall be evidenced by a written document signed by the student, the parent(s), and the appropriate school official.

(l)

Procedure for hearing and decision. The formal hearing is not a trial. The formal hearing is an administrative hearing designed to ensure a calm and orderly determination by an impartial hearing authority of the facts of a case of alleged serious misconduct. Technical rules of evidence and procedure do not apply. The following rules govern the conduct of the hearing and the ultimate decision:

(i)

The school shall have the burden of proof of misconduct.

(ii)

The student and the student's parent(s) shall have the following rights: The right to be represented by legal counsel or other designated representative, however, the school is not required to provide representation; the right to present evidence, subject to reasonable requirements of substantiation at the discretion of the hearing authority and subject to exclusion of evidence deemed irrelevant or redundant; the right to confront and cross-examine adverse witnesses, subject to reasonable limitation by the hearing authority; the right to have a decision based solely on the evidence presented at the hearing and the applicable legal rules, including the governing rules of student conduct.

(iii)

The hearing authority shall determine whether the alleged act(s) of misconduct have been proved by a preponderance of the evidence presented at a hearing at which the student or a designated representative have appeared.

(iv)

If no one has appeared on the student's behalf within a reasonable time after the announced time for

the hearing, the hearing authority shall determine whether the student, through the parent(s), received notice of the hearing. If so, the hearing authority shall review the schools' evidence to determine whether it is sufficient to support the charge(s) of misconduct.

(v)

A hearing authority who is also a disciplinarian shall impose an appropriate sanction if the hearing authority finds that the allegations of misconduct have been proved under the standards of either Item (iii) or (iv) of Subparagraph (l) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC. A hearing authority who is not a disciplinarian shall report the findings, together with any recommended sanction, to the disciplinarian promptly after the hearing.

(vi)

Arrangements to make a tape recording or keep minutes of the proceedings shall be made by the administrative authority who scheduled the hearing and prepared the written notice. A verbatim written transcript is not required, but any minutes or other written record shall fairly reflect the substance of the evidence presented.

(vii)

The hearing authority may announce a decision on the question of whether the allegation(s) of misconduct have been proved at the close of the hearing. A hearing authority who is also a disciplinarian may also impose a penalty at the close of the hearing.

(viii)

In any event, the hearing authority shall prepare and mail or deliver to the student, through the parent(s), a written decision within five working days after the hearing. The decision shall include a concise summary of the evidence upon which the hearing authority based its factual determinations. A hearing authority who is also a disciplinarian shall include in the report a statement of the penalty, if any, to be imposed, and shall state reasons for the chosen penalty. A hearing authority who is not a disciplinarian shall forward

a copy of the hearing authority's written decision to the disciplinarian forthwith. The disciplinarian shall prepare a written decision, including reasons for choosing any penalty imposed, and mail or deliver it to the student, through the parent(s), within five working days of receipt of the hearing authority's report.

(ix)

A disciplinarian who is not a hearing authority may observe but not participate in the proceedings at a formal hearing. If the disciplinarian is present at the formal hearing and if the hearing authority announces a decision at the close of the hearing, the disciplinarian may also announce the disciplinarian's decision at that time.

(x)

The disciplinarian's decision shall take effect immediately upon initial notification to the parent(s), either at the close of the hearing or upon receipt of the written decision. If initial notification is by mail, the parent(s) shall be presumed to have received the notice on the fifth calendar day after the date of mailing unless a receipt for certified mail, if used, indicates a different date of receipt.

(m)

Effect of decision. If the hearing authority decides that no allegation(s) of misconduct have been proved, or if the disciplinarian declines to impose a penalty despite a finding that an act or acts of misconduct have been proved, the matter shall be closed. If the disciplinarian imposes any sanction on the student, the decision shall take effect immediately upon notification to the parent and shall continue in force during any subsequent review.

(n)

Right of review. Unless the local school board was the disciplinarian, a student aggrieved by a disciplinarian's decision after a formal hearing shall have the right to have the decision reviewed if the penalty imposed was at least as severe as a long-term suspension or expulsion, an in-school suspension exceeding one school semester, or a denial or restriction of student privileges for one semester

or longer. A local school board may grant a right of review for less severe penalties. Local school boards shall establish appropriate mechanisms for review except where the local board was the disciplinarian, in which case the local school board decision is final and not reviewable administratively. A student request for review must be submitted to the review authority within 10 school days after the student is informed of the disciplinarian's decision.

(o)

Conduct of review. Unless the local school board provides otherwise, a review authority shall have discretion to modify the disciplinarian's decision, including imposing any lesser sanction deemed appropriate. A review authority shall be bound by the hearing authority's factual determinations unless the student persuades the review authority that a finding of fact was arbitrary, capricious, or unsupported by substantial evidence or that new evidence, which has come to light since the hearing and which could not with reasonable diligence have been discovered in time for the hearing, would manifestly change the factual determination. Upon any such finding, the review authority shall have discretion to receive new evidence, reconsider evidence introduced at the hearing, or conduct a de novo hearing. In the absence of any such finding, the review shall be limited to an inquiry into the appropriateness of the penalty imposed.

(p)

Form of review. Unless the local school board provides otherwise, a review authority shall have discretion to conduct a review on the written record of the hearing and decision in the case, to limit new submissions by the aggrieved student and school authorities to written materials, or to grant a conference or hearing at which the student and the student's representative and school authorities may present their respective views in person. Where a conference or hearing is granted, the record-keeping requirements of Item (vi) of

Subparagraph (l) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC apply.

(q)

Timing of review. Except in extraordinary circumstances, a review shall be concluded no later than 15 working days after a student's written request for review is received by the appropriate administrative authority.

(r)

Decision. A review authority may announce a decision at the close of any conference or hearing held on review. In any event, the review authority shall prepare a written decision, including concise reasons, and mail or deliver it to the disciplinarian, the hearing authority and the student, through the parent(s), within 10 working days after the review is concluded.

(s)

Effect of decision. Unless the local school board provides otherwise, a review authority's decision shall be the final administrative action to which a student is entitled. [6.11.2.12 NMAC – Rp, 6.11.2.7 NMAC, 8/25/2020]

HISTORY OF 6.11.2 NMAC:

6.11.2 NMAC, Rights and Responsibilities of the Public Schools and Public School Students, filed 8/15/1997, was repealed and replaced by 6.11.2 NMAC, Rights and Responsibilities of the Public Schools and Public School Students, effective 8/25/2020.

REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

The New Mexico Construction Industries Commission approved for adoption by the Construction Industries Division of the Regulation and Licensing Department at its August 7, 2020, meeting, the decision to repeal its rule 14.7.6 NMAC, 2009 New Mexico Energy Conservation Code and replace it with 14.7.6 NMAC, 2018 New Mexico Residential Energy Conservation

Code, adopted on August 11, 2020, effective September 25, 2020.

REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

**TITLE 14 HOUSING AND CONSTRUCTION
CHAPTER 7 BUILDING CODES GENERAL
PART 6 2018 NEW MEXICO RESIDENTIAL ENERGY CONSERVATION CODE**

14.7.6.1 ISSUING

AGENCY: Construction Industries Division (CID) of the Regulation and Licensing Department.

[14.7.6.1 NMAC - Rp, 14.7.6.1 NMAC, 9/25/2020]

14.7.6.2 SCOPE:

This rule applies to all residential contracting work performed in New Mexico on or after September 25, 2020, that is subject to the jurisdiction of CID, unless performed pursuant to a permit for which an application was received by CID before that date.

[14.7.6.2 NMAC - Rp, 14.7.6.2 NMAC, 9/25/2020]

14.7.6.3 STATUTORY

AUTHORITY: Sections 60-13-9 and 60-13-44 NMSA 1978.

[14.7.6.3 NMAC - Rp, 14.7.6.3 NMAC, 9/25/2020]

14.7.6.4 DURATION:

Permanent.

[14.7.6.4 NMAC - Rp, 14.7.6.4 NMAC, 9/25/2020]

14.7.6.5 EFFECTIVE

DATE: September 25, 2020 unless a later date is cited at the end of a section.

[14.7.6.5 NMAC - Rp, 14.7.6.5 NMAC, 9/25/2020]

[From the date of publication of this rule in the New Mexico register, until month 3/2021, permits may be issued under either the previously-adopted rule, or this rule. After month 3/2021,

permits may be issued only under this rule.]

14.7.6.6 OBJECTIVE:

The purpose of this rule is to establish minimum standards for energy conservation for residential construction in New Mexico.

[14.7.6.6 NMAC - Rp, 14.7.6.6 NMAC, 9/25/2020]

14.7.6.7 DEFINITIONS:

See 14.5.1 NMAC, General Provisions and Chapter 2 of the IECC as amended in 14.7.6.10 NMAC.

[14.7.6.7 NMAC - Rp, 14.7.6.7 NMAC, 9/25/2020]

14.7.6.8 ADOPTION OF THE 2018 NEW MEXICO RESIDENTIAL ENERGY CONSERVATION CODE:

A. This rule adopts by reference the 2018 international energy conservation code (IECC), as amended by this rule.

B. In this rule, each provision is numbered to correspond with the numbering of the 2018 international residential energy conservation code.

C. This rule is to be applied to each of the following New Mexico building codes, including the NMRBC, NMPC, NMMC and the NMEC.

[14.7.6.8 NMAC - Rp, 14.7.6.8 NMAC, 9/25/2020]

14.7.6.9 CHAPTER 1 - ADMINISTRATION:

A. Section R101 - General.

(1) R101.1

Title. Delete this section of the IECC and substitute: this rule shall be known as 14.7.6 NMAC, the 2018 New Mexico Residential Energy Conservation Code (NMRECC).

(2) R101.2

Scope. Delete this section of the IECC and see 14.7.6.2 NMAC, Scope.

(3) R101.3

Intent. Delete this section of the IECC and see 14.7.6.6 NMAC, Objective.

(4) R101.5.1

Compliance materials. Delete this section of the IECC and substitute the following: the code official shall be permitted to approve specific computer software, worksheets, compliance manuals and other similar materials that meet the intent of this code, including but not limited to ComCheck, ResCheck, and worksheet or trade-off sheets from the New Mexico energy conservation code residential applications manual, issued by the New Mexico department of energy.

B. Section R102

Alternate Materials-Method of Construction, Design for Insulating Systems. See this section of the IECC.

C. Section R103

Construction Documents. Delete this section of the IECC and see 14.5.2 NMAC, Permits except retain Section R103.2 as amended.

D. Section R103.2

Information on construction documents. Delete section and substitute the following: Ducts shall be installed in accordance with Chapter 6 and Chapter 17 of the New Mexico Mechanical Code and current applicable standards.

E. Section R104 Fees.

Delete this section of the IECC and see 14.5.5 NMAC, Fees.

F. Section R105

Inspections. Delete this section of the IECC and see. 14.5.3 NMAC, General Provisions.

G. Section R106

Validity. Delete this section of the IECC and see. 14.5.2.12 NMAC Permits.

H. Section R107

Referenced Standards. All references to the international residential code shall be deemed references to 14.7.3 NMAC, the New Mexico Residential Building Code (NMRBC). All references to the international plumbing code shall be deemed references to 14.8.2 NMAC, the New Mexico Plumbing Code (NMPC). All references to the international mechanical code shall be deemed references to 14.9.2 NMAC, the New Mexico Mechanical Code

(NMMC). All references to the ICC or International Electrical Code shall be deemed references to 14.10.4 NMAC, the New Mexico Electrical Code (NMEC). All references to the international energy conservation code shall be deemed references to 14.7.6 NMAC, the New Mexico Residential Energy Conservation Code (NMRECC). All references to the international fuel gas code in the 2018 IECC are deemed references to the NMMC or the LP gas standards found at 19.15.40 NMAC, and Sections 70-5-1 through 70-5-23 NMSA 1978.

I. Section R108 Stop

Work Order. Delete this section of the IECC and see 14.5.3 NMAC, Inspections.

J. Section R109

Board of Appeals. Delete this section of the IECC and See 14.5.1 NMAC, General Provisions.

[14.7.6.9 NMAC - Rp, 14.7.6.9 NMAC, 9/25/2020]

14.7.6.10 CHAPTER 2 -

DEFINITIONS: See this chapter of the IECC residential provisions, adding the following definitions.

A. Section R201.1

Scope. See this section of the IECC and add the following: If the same term is defined in the New Mexico construction codes and in the IECC, the term shall have the meaning given it in the New Mexico construction codes.

B. Section R201.3

Terms defined in other codes.

Delete this section of the IECC and substitute with the following: Terms defined in the New Mexico Residential Construction Code.

C. Section R201.4

Terms not defined in other codes.

See this chapter of the IECC.

D. Section R202

General Definitions. See this section of the IECC except as provided below.

(1)

Unconditioned space. Add the following definition: Space within a building that is not mechanically heated or cooled and is outside the building thermal envelope.

(2) **Vapor retarder class.** Add the following definition: a measure of a material or assembly’s ability to limit the amount of moisture that passes through that material or assembly. Vapor retarder class shall be defined using the desiccant method of ASTM E96 as follows:

- (a) **class I:** 0.1 perm or less;
- (b) **class II:** > 0.1 perm □ 1.0 perm;
- (c) **class III:** > 1.0 perm < 10 perm.

(3) **NMRECC** means 2018 New Mexico Residential Energy Conservation Code.

(4) **NMRBC** means 14.7.3 NMAC, 2015 New Mexico Residential Building Code, which adopts by reference and amends the 2015 International Residential code.

(5) **NMPC** means 2015 New Mexico Plumbing Code, which adopts by reference and amends the 2015 Uniform Plumbing Code.

(6) **NMMC** means 14.9.2 NMAC, NMMC 2015 New Mexico Mechanical Code, which adopts by reference and amends the 2015 Uniform Mechanical Code.

(7) **NMEC** means 14.10.4 NMAC, NMEC 2017 New Mexico Electrical Code, which adopts by reference and amends the 2017 National Electrical Code.

(8) **RESNET Software.** Is an approved software program to meet the performance requirements of the IECC.

(9) **COMCHECK.** Is the residential energy compliance tool designed by the U.S. department of energy (DOE) to clarify residential energy code compliance providing a user information whether building meets the requirements of the International Energy Conservation Code (IECC) and ASHRAE 90.1, as well as state-specific codes.

(10) **RESCHECK.** A document describing the overall efficiency of the insulation of a building which works by performing a simple U-factor x Area (UA) calculation for each building assembly to determine the overall UA of a building. The UA of the proposed project building is compared to the code requirements.

(11) **ASTM.** Means the American society for testing and materials, an international standards organization that develops and publishes voluntary consensus building technical standards for a wide range of materials utilized in construction.

(12) **HERS.** Means the home energy rating system index and is the industry standard by which a home’s energy efficiency is measured. It is also the nationally recognized system for inspecting and calculating a home’s energy performance.

[14.7.6.10 NMAC - Rp, 14.7.6.10 NMAC, 9/25/2020]

14.7.6.11 CHAPTER R301 - CLIMATE ZONES: See this Chapter of the IECC except delete the text of section 301.1 General and replace with the following: the table below in conjunction with Table 301.3(2) shall be used to determine the applicable requirements for Chapters 4. Locations not listed in the table below shall use either Table 301.1, Section 301.3, or the building official may designate a climate zone consistent with the elevation, HDD & CDD from the table below.

City	County	Elev. (feet)	Heating Degree Days (HDD) 65°F	Cooling Degree Days (CDD) 50°F day	Climate Zone
Abiquiu Dam	Rio Arriba	6380	5872		5B
Angel Fire	Colfax	8406	9769	195	7B
Alamogordo	Otero	4350	3053	5309	3B
Albuquerque	Bernalillo	5312	4332	4462	4B
Artesia	Eddy	3380	3366	5374	3B
Aztec Ruins	San Juan	5644	5757		5B
Belen	Valencia	4800	4432	5012	3B
Bernalillo	Sandoval	5052	4782	4138	4B
Bloomfield	San Juan	5456	5490		5B
Bosque del Apache	Socorro	4520	3916	5012	3B
Carlsbad	Eddy	3295	2813	5997	3B
Carrizozo	Lincoln	5438	4234	3631	4B
Cedar Crest	Bernalillo	6581	5703		5B

Chaco Canyon	San Juan	6200	6137		5B
Chama	Rio Arriba	7871	8254		6B
Clayton	Union	5056	5150	3170	4B
Cloudcroft	Otero	8801	7205		6B
Clovis	Curry	4268	4033	4252	4B
Corona	Valencia	6690	5389	3631	4B
Cuba	Sandoval	7035	7122		5B
Deming	Luna	4305	3347	5292	3B
Dulce	Rio Arriba	6793	7979		6B
Eagle Nest	Colfax	8262	9254		7B
Edgewood	Santa Fe	6649	6146		5B
Espanola	Rio Arriba	5643	5641		5B
Farmington	San Juan	5395	5747		5B
Fence Lake	Cibola	7055	6396		5B
Fort Sumner	De Baca	4032	3799	4616	3B
Gallup	McKinley	6465	6207		5B
Glenwood	Catron	4725	3632	4427	4B
Grants	Cibola	6460	6143		5B
Hatch	Dona Ana	4052	3270	5904	3B
Hobbs	Lea	3622	2954	5181	3B
Jemez Springs	Sandoval	6198	5260	2059	4B
Las Cruces	Dona Ana	4000	3223	5904	3B
Las Vegas	San Miguel	6424	5738		5B
Lordsburg	Hidalgo	4250	3213	5210	3B
Los Alamos	Los Alamos	7320	6381		5B
Los Lunas	Valencia	4856	4725	4462	4B
Magdalena	Socorro	6572	5074	2093	4B
Mescalero	Otero	6611	5540		5B
Moriarty	Torrance	6220	4735	3786	4B
Mosquero	Harding	5485	5209	3631	4B
Mountainair	Torrance	6520	5558		5B
Organ	Dona Ana	5245	3215	4919	3B
Placitas	Sandoval	5955	4917	3701	4B
Portales	Roosevelt	4006	3845	4347	4B
Raton	Colfax	6680	6001		5B
Red River	Taos	8671	8742	179	7B
Reserve	Catron	5847	5483		5B
Rio Rancho	Sandoval	5282	4880	3949	4B
Roswell	Chaves	3573	3565	5505	3B
Ruidoso	Lincoln	6920	6309		5B
Sandia Crest	Bernalillo	10680	10034		7B
Sandia Park	Bernalillo	7077	7510		6B
Santa Fe	Santa Fe	7260	6001		5B
Santa Rosa	Guadalupe	4620	3749	4714	3B
Shiprock	San Juan	4892	5475		5B
Silver City	Grant	5895	4438	3975	4B
Socorro	Socorro	4603	3984	5147	3B
Springer	Colfax	5797	5653		5B
Taos	Taos	6967	6827		5B
Taos Ski Valley	Taos	9321	9769		7B

Tatum	Lea	3999	3680	4721	3B
Thoreau	McKinley	7200	5789		5B
Tierra Amarilla	Rio Arriba	7425	7901		6B
Tijeras	Bernalillo	6322	6338		5B
Tohatchi	McKinley	6447	5418		5B
Truth or Consequences	Sierra	4245	3394	5103	3B
Tucumcari	Quay	4096	3767	4429	4B
Tularosa	Otero	4508	3056	5130	3B
Zuni	McKinley	6293	5742		5B

[14.7.6.11 NMAC - Rp, 14.7.6.11 NMAC, 9/25/2020]

14.7.6.12 CHAPTER 4 - RESIDENTIAL ENERGY EFFICIENCY:

See this Chapter of the IECC except for the following:

A. R401.2

Compliance. Delete the text of this section and replace with the following: projects shall comply with 401 through 404, which are mandatory provisions, and additionally comply with one of the following:

(1)

Documents showing 2018 IECC Code Compliance, residential provisions approved by CID or worksheet trade-off sheets from the New Mexico energy conservation code residential applications manual; or

(2) Section

R405.

(3) The

energy rating index (ERI) approach in Section R406.

(4) The

approved sampling protocols included in Chapter 6 of the National Standard for Home Energy Ratings.

(5) Code

programs recognized by the state of New Mexico such as Build Green New Mexico or LEED-H, approved under IECC section 102.1.1, except strike the last sentence that reads: The requirements identified as “mandatory” in Chapter 4 shall be met.

B. R402.2.8 Floors.

Delete the text of this section and replace with the following: Floor framing-cavity insulation when separating conditioned and non-conditioned space shall be installed to maintain permanent contact with the underside of the subfloor decking.

Exception: As an alternative, the floor framing-cavity insulation shall be in contact with the topside of sheathing or continuous insulation installed on the bottom side of floor framing where combined with insulation that meets or exceeds the minimum wood frame wall R-value in Table R402.1.2 and that extends from the bottom to the top of all perimeter floor-framing members.

C. R402.4.1 Building thermal envelope.

Amending to read as follows: The building thermal envelope shall comply with Sections R402.4.1.1 and R402.4.1.3 with optional compliance of R402.4.1.2 by all counties not mentioned in subsection F below.

D. R402.4.1.2

Testing. Amend to read as follows: The building or dwelling unit shall be tested and verified as having an air leakage rate not exceeding four air changes per hour in Climate Zones 1 thru 8. Testing shall be conducted in accordance with RESNET/ICC 380, ASTM E779 or ASTM E1827 and reported at a pressure of 0.2 inch w.g. (50 Pascals).

E. R402.4.1.3

Visual Inspection Option. Add the following section: Building envelope tightness, and insulation installation shall be considered acceptable with the items listed in Table 402.1.2 applicable to the method of construction, if field verified by either the builder, a code official, or an energy rater using the state of New Mexico acceptable processes. Acceptable processes include a thermal bypass visual inspection checklist, a thermal bypass certification or checklist from a HERS rater, a Build green

NM checklist, or an energy star program checklist from the New Mexico Energy, Minerals and Natural Resources Department.

F. R402.4.1.4 Based on census.

Add new section to read as follows: Based on census rural urban mapping the following areas will be required to comply with R402.4.1, R402.4.1.2 Testing and R403.3.3 Duct testing: San Juan County, Sandoval County, Santa Fe County, Bernalillo County, Torrance County, and Dona County.

G. R402.4.1.5 State of New Mexico Thermal Bypass Inspection Checklist and Duct Sealing Visual Inspection Checklist.

Add new section to read as follows: In accordance with section R402.4.1, R402.4.1.2 and R403.3.3 thermal bypass inspection checklist and Duct Sealing Visual Inspection Checklist will be provided at the time of issuance of building permit or can also be accessed at www.rld.State.nm.us/construction under forms and applications.

H. R403.1.1

Programmable thermostat. The thermostat controlling the primary heating or cooling system of the dwelling unit shall be capable of controlling the heating and cooling system on a daily schedule to maintain different temperature setpoints at different times of the day. This thermostat shall include the capability to set back or temporarily operate the system to maintain zone temperatures of not less than 55°F (13°C) to not greater than 85°F (29°C). The thermostat shall be programmed initially by the manufacturer with a heating temperature setpoint of not greater than 70°F (21°C) and a cooling

temperature setpoint of not less than 78°F.

Exceptions:

(1) When a water circulation system is utilized to heat and/or cool the residence, no programmable set back thermostat is required.

(2) Where the home is registered in a performance-based certification program, the requirements for a programmable thermostat shall be waived.

(3) Where approved alternative methods of construction and/or materials are being used, programmable thermostats may be omitted.

I. R403.3.3 Duct testing (Mandatory). Add the following Exception: (3.) Duct sealing shall be considered in compliance with R403.3.3 when field, verified by either the builder, a code official, or an energy rater using the state of New Mexico duct sealing visual inspection checklist.

J. R403.4 Mechanical system piping insulation (Mandatory). Add the following Exception: In-floor radiant heating or cooling systems do not require insulation.

[14.7.6.12 NMAC - Rp, 14.7.6.12 NMAC, 9/25/2020]

14.7.6.13 CHAPTER 5 - BUILDINGS: See this Chapter of the IECC.

[14.7.6.13 NMAC - Rp 14.7.6.13 NMAC, 9/25/2020]

14.7.6.14 CHAPTER 6 - REFERENCED STANDARDS:

See this Chapter of the IECC.
[14.7.6.14 NMAC - Rp 14.7.6.14 NMAC, 9/25/2020]

HISTORY OF 14.7.6 NMAC:
Pre NMAC History: None.

History of Repealed Material:

14.7.6 NMAC, 2003 New Mexico Energy Conservation Code (filed 5/27/2004) repealed 1/7/2004.

14.7.6 NMAC, 2006 New Mexico Energy Conservation Code (filed 8/16/2007) repealed 1/28/2011.

14.7.6 NMAC, 2009 New Mexico Energy Conservation Code (filed 12/28/2010) repealed 8/1/2011.

14.7.6 NMAC, 2009 New Mexico Energy Conservation Code (filed 6/15/2011) repealed 6/28/2013.

14.7.6 NMAC, 2009 New Mexico Energy Conservation Code (filed 6/28/2013) repealed 9/25/2020.

NMAC History:

14.7.6 NMAC, 2003 New Mexico Energy Conservation Code (filed 5/27/2004) replaced by 14.7.6

NMAC, 2006 New Mexico Energy Conservation Code, effective 1/1/2008.

14.7.6 NMAC, 2006 New Mexico Energy Conservation Code (filed 8/16/2007) replaced by 14.7.6

NMAC, 2009 New Mexico New Mexico Energy Conservation Code, effective 1/28/2011.

14.7.6 NMAC, 2009 New Mexico Energy Conservation Code (filed 12/28/2010) replaced by 14.7.6

NMAC, 2009 New Mexico Energy Conservation Code, effective 8/1/2011.

14.7.6 NMAC, 2009 New Mexico Energy Conservation Code (filed 6/15/2011) replaced by 14.7.6

NMAC, 2009 New Mexico Energy Conservation Code, effective 6/28/2013.

14.7.6 NMAC, 2009 New Mexico Energy Conservation Code (filed 6/28/2013) replaced by 14.7.6

NMAC, 2018 New Mexico Energy Conservation Code, effective 9/25/2020.

**REGULATION AND LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES DIVISION**

TITLE 14 HOUSING AND CONSTRUCTION

CHAPTER 7 BUILDING CODES GENERAL

PART 9 2018 NEW MEXICO COMMERCIAL ENERGY CONSERVATION CODE

14.7.9.1 ISSUING

AGENCY: Construction Industries Division (CID) of the Regulation and Licensing Department.
[14.7.9.1 NMAC – N, 9/25/2020]

14.7.9.2 SCOPE: This rule applies to all commercial contracting work performed in New Mexico on or after 9/25/2020, that is subject to the jurisdiction of CID, unless performed pursuant to a permit for which an application was received by CID before that date.

[14.7.9.2 NMAC – N, 9/25/2020]

14.7.9.3 STATUTORY

AUTHORITY: Sections 60-13-9 and 60-13-44 NMSA 1978.

[14.7.9.3 NMAC – N, 9/25/2020]

14.7.9.4 DURATION:

Permanent.

[14.7.9.4 NMAC, 9/25/2020]

14.7.9.5 EFFECTIVE

DATE: September 25, 2020 unless a later date is cited at the end of a section.

[14.7.9.5 NMAC – N, 9/25/2020]

[From the date of publication of this rule in the New Mexico register, until month 3/2021 permits may be issued under either the previously-adopted rule, or this rule. After month 3/2021, permits may be issued only under this rule.]

14.7.9.6 OBJECTIVE:

The purpose of this rule is to establish minimum standards for energy conservation for commercial construction in New Mexico.

[14.7.9.6 NMAC – N, 9/25/2020]

14.7.9.7 DEFINITIONS:

See 14.5.1 NMAC, General Provisions and Chapter 2 of the IECC as amended in 14.7.6.10 NMAC.

[14.7.9.7 NMAC - N, 9/25/2020]

14.7.9.8 ADOPTION OF THE 2018 NEW MEXICO COMMERCIAL ENERGY CONSERVATION CODE:

A. This rule adopts by reference the 2018 international energy conservation code (IECC)

commercial provisions, as amended by this rule.

B. In this rule, each provision is numbered to correspond with the numbering of the 2018 international commercial energy conservation code.

C. This rule is to be applied where appropriate to each of the following New Mexico building codes, including the NMCBC, NMEBC, NMPC, NMMC and the NMEC.

[14.7.9.8 NMAC - N, 9/25/2020]

14.7.9.9 CHAPTER 1 - ADMINISTRATION:

A. Section C101 - General.

(1) C101.1

Title. Delete this section of the IECC and substitute: this rule shall be known as 14.7.6 NMAC, the 2018 New Mexico Commercial Energy Conservation Code (MCECC).

(2) C101.2

Scope. Delete this section of the IECC and see 14.7.9.2 NMAC, Scope.

(3) C101.3

Intent. Delete this section of the IECC and see 14.7.9.6 NMAC, Objective.

(4) C101.5.1

Compliance materials. Delete this section of the IECC and substitute the following: the code official shall be permitted to approve specific computer software, worksheets, compliance manuals and other similar materials that meet the intent of this code, including but not limited to ComCheck, ResCheck, and worksheet or trade-off sheets from the New Mexico energy conservation code commercial applications manual issued by the New Mexico department of energy.

B. Section C102 Alternate Materials-Method of Construction, Design for Insulating Systems. See this section of the IECC.

C. Section C103 - Construction Documents. Delete this section of the IECC and see 14.5.2 NMAC, Permits except retain Section C103.2 and C103.6 to read as follows:

D. Section C103.2

Information on construction documents. Delete section and substitute the following: Ducts shall be installed in accordance with Chapter 6 and Chapter 17 of the New Mexico Mechanical Code and current applicable standards.

E. Section C103.6

Building documentation and closeout submittal requirements. Delete section and substitute the following: The construction documents shall specify that the documents described in this section be provided to the building owner or owner’s authorized agent.

F. Section C104 Fees.

Delete this section of the IECC and see 14.5.5 NMAC, Fees.

G. Section C105

Inspections. Delete this section of the IECC and see. 14.5.3 NMAC, General Provisions.

H. Section C106

Validity. Delete this section of the IECC and see. 14.5.2.12 NMAC, Permits.

I. Section C107

Referenced Standards. All references in the IECC to the international building code shall be deemed references to 14.7.2 NMAC, the New Mexico Commercial Building Code (NMCBC). All references to the international plumbing code shall be deemed references to 14.8.2 NMAC, the New Mexico Plumbing Code (NMPC). All references to the international mechanical code shall be deemed references to 14.9.2 NMAC, the New Mexico Mechanical Code (NMMC). All references to the ICC or international electrical code shall be deemed references to 14.10.4 NMAC, the New Mexico Electrical Code (NMEC). All references to the international energy conservation code shall be deemed references to 14.7.9 NMAC, the New Mexico Commercial Energy Conservation Code (NMCECC). All references to the international fuel gas code are deemed references to the NMMC or the LP gas standards found at 19.15.40 NMAC, and Sections 70-5-1 through 70-5-23 NMSA 1978.

J. Section C108 Stop

Work Order. Delete this section of the IECC and see 14.5.3 NMAC, Inspections.

K. Section C109

Board of Appeals. Delete this section of the IECC and See 14.5.1 NMAC, General Provisions. [14.7.9.9 NMAC – N, 9/25/2020]

14.7.9.10 CHAPTER 2 - DEFINITIONS: See this chapter of the IECC substituting the definition for residential building and adding the other definitions.

A. Section C201.1

Scope. See this section of the IECC and add the following: If the same term is defined in the New Mexico construction codes and in the IECC, the term shall have the meaning given it in the New Mexico construction codes.

B. Section C201.3

Terms defined in other codes. Delete this section of the IECC and substitute with the following: Terms defined in the New Mexico Commercial Construction Code and the New Mexico Existing Building Code.

C. Section C202

General Definitions. See this section of the IECC and additionally the following:

(1)

Unconditioned space. Add the following definition: Space within a building that is not mechanically heated or cooled and is outside the building thermal envelope.

(2) Vapor

retarder class. Add the following definition: a measure of a material or assembly’s ability to limit the amount of moisture that passes through that material or assembly. Vapor retarder class shall be defined using the desiccant method of ASTM E96 as follows:

(a)

class I: 0.1 perm or less;

(b)

class II: > 0.1 perm
□ 1.0 perm;

(c)

class III: > 1.0 perm
<10 perm.

(3) **NMCECC** means 2018 New Mexico Commercial Energy Conservation Code, which adopts by reference and amends the 2009 International Energy Conservation Code.

(4) **NMCBC** 14.7.3 NMAC, 2015 New Mexico Commercial Building Code, which adopts by reference and amends the 2015 International Commercial Code.

(5) **NMEBC** means the 2015 New Mexico Existing Building Code, which adopts by reference and amends the 2015 International Existing Building Code.

(6) **NMPC** means 2015 New Mexico Plumbing Code, which adopts by reference and amends the 2012 Uniform Plumbing Code.

(7) **NMMC** means 14.9.2 NMAC, NMMC 2015 New Mexico Mechanical Code, which adopts by reference and amends the 2012 Uniform Mechanical Code.

(8) **NMEC** means 14.10.4 NMAC, NMEC 2017 New Mexico Electrical Code, which adopts by reference and amends the 2017 National Electrical Code.

(9) **RESNET Software** is an approved software program to meet the performance requirements of the IECC.

(10) **COMCHECK** is the commercial energy compliance tool of the U.S. Department of Energy designed to clarify commercial energy code compliance providing a user information whether or not a building meets the requirements of the International Energy Conservation Code (IECC) and ASHRAE 90.1, as well as state-specific codes.

(11) **RESCHECK** is a document describing the overall efficiency of the insulation of a building which works by performing a simple U-factor x Area (UA) calculation for each building assembly to determine the overall UA of a building. The UA of the proposed project building is compared to the code requirements.

(12) **ASTM** means the American society for testing and materials, is an international standards organization that develops and publishes voluntary consensus technical standards for a wide range of materials utilized in construction.

(13) **HERS** means the home energy rating system index and is the industry standard by which a home's energy efficiency is measured. It's also the nationally recognized system for inspecting and calculating a home's energy performance.

[14.7.9.10 NMAC, N, 9/25/2020]

14.7.9.11 CHAPTER C301 - CLIMATE ZONES: See this Chapter of the IECC except delete the text of section 301.1 General and replace with the following: the table below in conjunction with Table 301.3(2) shall be used to determine the applicable requirements for Chapter 4. Locations not listed in the table below shall use either Table 301.1, Section 301.3 or the building official may designate a climate zone consistent with the elevation, HDD & CDD from the table below.

City	County	Elev. (feet)	Heating Degree Days (HDD) 65°F	Cooling Degree Days (CDD) 50°F day	Climate Zone
Abiquiu Dam	Rio Arriba	6380	5872		5B
Angel Fire	Colfax	8406	9769	195	7B
Alamogordo	Otero	4350	3053	5309	3B
Albuquerque	Bernalillo	5312	4332	4462	4B
Artesia	Eddy	3380	3366	5374	3B
Aztec Ruins	San Juan	5644	5757		5B
Belen	Valencia	4800	4432	5012	3B
Bernalillo	Sandoval	5052	4782	4138	4B
Bloomfield	San Juan	5456	5490		5B
Bosque del Apache	Socorro	4520	3916	5012	3B
Carlsbad	Eddy	3295	2813	5997	3B
Carrizozo	Lincoln	5438	4234	3631	4B
Cedar Crest	Bernalillo	6581	5703		5B
Chaco Canyon	San Juan	6200	6137		5B
Chama	Rio Arriba	7871	8254		6B
Clayton	Union	5056	5150	3170	4B

Cloudcroft	Otero	8801	7205		6B
Clovis	Curry	4268	4033	4252	4B
Corona	Valencia	6690	5389	3631	4B
Cuba	Sandoval	7035	7122		5B
Deming	Luna	4305	3347	5292	3B
Dulce	Rio Arriba	6793	7979		6B
Eagle Nest	Colfax	8262	9254		7B
Edgewood	Santa Fe	6649	6146		5B
Espanola	Rio Arriba	5643	5641		5B
Farmington	San Juan	5395	5747		5B
Fence Lake	Cibola	7055	6396		5B
Fort Sumner	De Baca	4032	3799	4616	3B
Gallup	McKinley	6465	6207		5B
Glenwood	Catron	4725	3632	4427	4B
Grants	Cibola	6460	6143		5B
Hatch	Dona Ana	4052	3270	5904	3B
Hobbs	Lea	3622	2954	5181	3B
Jemez Springs	Sandoval	6198	5260	2059	4B
Las Cruces	Dona Ana	4000	3223	5904	3B
Las Vegas	San Miguel	6424	5738		5B
Lordsburg	Hidalgo	4250	3213	5210	3B
Los Alamos	Los Alamos	7320	6381		5B
Los Lunas	Valencia	4856	4725	4462	4B
Magdalena	Socorro	6572	5074	2093	4B
Mescalero	Otero	6611	5540		5B
Moriarty	Torrance	6220	4735	3786	4B
Mosquero	Harding	5485	5209	3631	4B
Mountainair	Torrance	6520	5558		5B
Organ	Dona Ana	5245	3215	4919	3B
Placitas	Sandoval	5955	4917	3701	4B
Portales	Roosevelt	4006	3845	4347	4B
Raton	Colfax	6680	6001		5B
Red River	Taos	8671	8742	179	7B
Reserve	Catron	5847	5483		5B
Rio Rancho	Sandoval	5282	4880	3949	4B
Roswell	Chaves	3573	3565	5505	3B
Ruidoso	Lincoln	6920	6309		5B
Sandia Crest	Bernalillo	10680	10034		7B
Sandia Park	Bernalillo	7077	7510		6B
Santa Fe	Santa Fe	7260	6001		5B
Santa Rosa	Guadalupe	4620	3749	4714	3B
Shiprock	San Juan	4892	5475		5B
Silver City	Grant	5895	4438	3975	4B
Socorro	Socorro	4603	3984	5147	3B
Springer	Colfax	5797	5653		5B
Taos	Taos	6967	6827		5B
Taos Ski Valley	Taos	9321	9769		7B
Tatum	Lea	3999	3680	4721	3B
Thoreau	McKinley	7200	5789		5B
Tierra Amarilla	Rio Arriba	7425	7901		6B

Tijeras	Bernalillo	6322	6338		5B
Tohatchi	McKinley	6447	5418		5B
Truth or Consequences	Sierra	4245	3394	5103	3B
Tucumcari	Quay	4096	3767	4429	4B
Tularosa	Otero	4508	3056	5130	3B
Zuni	McKinley	6293	5742		5B

[14.7.9.11 NMAC – N, 9/25/2020]

14.7.9.12 CHAPTER 4 - COMMERCIAL ENERGY EFFICIENCY: See this Chapter of the IECC except for the following:

A. Section C402.4.2.1 Lighting controls in toplit daylight zones. Delete section without substitution.
B. Section C405.2.3.3 Toplit zone. Delete section without substitution.
C. Section C405.5 Dwelling electrical meter (Mandatory). Amend to read as follows: Each dwelling unit located in a Group R-2 building shall have a separate electrical meter. Dormitories, fraternities, sororities, monasteries, and convents shall be exempt from the requirements of this section.

D. Section C405.9 Voltage drop in branch circuits supplying motors or motor driven mechanical equipment with a rating of 50 HP and higher. Amending to read as follows: The total voltage drop across branch circuits supplying motors or motor driven mechanical equipment with rating of 50 HP and higher shall not exceed 5 percent.

E. C408.2 Mechanical systems and service water-heating systems commissioning and completion requirements. Amending to read as follows: Prior to the final mechanical and plumbing inspections, the registered design professional or approved agency, shall provide evidence of mechanical systems commissioning and completion in accordance with the provisions of this section. Construction document notes shall clearly indicate provisions for commissioning requirements in accordance with this section and are permitted to refer to specifications for further requirements. Copies of all documentation shall be given to the building owner or owner's authorized agent.

Exceptions: The following systems are exempt:

(1) Mechanical systems and service water heater systems in buildings where the total mechanical equipment capacity is less than 480,000 Btu/h (140.7 kW) cooling capacity and 600,000 Btu/h (175.8 kW) combined service water-heating and space-heating capacity.

(2) Systems included in Section C403.5 that serve individual dwelling units and sleeping units.

F. C408.2.4.1 Acceptance of report. Delete section without substitution.

G. C408.2.4.2 Copy of report. Delete section without substitution.

H. C408.2.5 Documentation requirements. Change section to read as follows. The construction documents shall specify that the documents described in this section be provided to the building owner or owner's authorized agent.

I. C408.3.2 Documentation Requirements. Change section to read as follows: The construction documents shall specify that the documents described in this section be provided to the building owner or owner's authorized agent.

FIGURE C408.2.4 COMMISSIONING COMPLIANCE CHECKLIST

Project Information: _____ Project Name: _____

Project Address: _____

Commissioning Authority: _____

Commissioning Plan (Section C408.2.1)

Commissioning Plan was used during construction and includes all items required by Section C408.2.1

Systems Adjusting and Balancing shall be completed per plans and specifications.

- HVAC Equipment Functional Testing shall be completed per plans and specifications.
- HVAC Controls Functional Testing shall be completed per plans and specifications.
- Economizer Functional Testing shall be completed per plans and specifications.
- Lighting Controls Functional Testing shall be completed per plans and specifications.
- Service Water Heating System Functional Testing shall be completed per plans and specifications.
- Manual, record documents and training shall be completed per plans and specifications.
- Preliminary Commissioning Report shall be submitted to owner and includes all items required by Section C408.2.4.
- The above-referenced items are scheduled to be provided on:

I, the commissioning provider, do hereby certify that I am providing the owner or owner’s representative with documentation as to the mechanical, service water heating and lighting systems commissioning in accordance with the 2018 IECC.

Signature of Commissioning Provider

Date

Signature of Building Owner/Owner’s Representative

Date

[14.7.6.12 NMAC – N, 9/25/2020]

14.7.9.13 CHAPTER 5 - EXISTING BUILDINGS: See this Chapter of the IECC.
[14.7.9.13 NMAC - N, 9/25/2020]

14.7.9.14 CHAPTER 6 - REFERENCED STANDARDS: See this Chapter of the IECC.
[14.7.9.14 NMAC – N, 9/25/2020]

HISTORY OF 14.7.9 NMAC: [RESERVED]

**Adopted Rules Continued
Next Page**

**SUPERINTENDENT OF
INSURANCE,
OFFICE OF**

This is an amendment to 13.10.10 NMAC, Sections 1, 8 through 14, 17, 19, 23, & 25 effective 9/1/2020.

13.10.10.1 ISSUING

AGENCY: [New Mexico Public Regulation Commission, Insurance Division] Office of Superintendent of Insurance.

[11/30/1998; 13.10.10.1 NMAC - Rn & A, 13 NMAC 10.10.1, 4/13/2001; A, 9/01/2020]

13.10.10.8 MEMBERSHIP:

A. All insurers admitted in New Mexico as of June 19, 1987 shall be members of this pool. Each insurer admitted after June 19, 1987 shall automatically become a member of the pool on the date of its admission. An insurer which ceases to be admitted after June 19, 1987 shall automatically cease to be a member effective on the day following the termination or expiration of its certificate of authority to transact health insurance; provided, however, that such insurer shall remain liable for any assessment based on net losses sustained by the pool prior to the cessation of its status as a member in the pool.

B. The board shall make all determinations regarding the eligibility of insurers as pool members. If [a member] an insurer is aggrieved by a final action or decision of the board, or if the board does not act on such complaint within 60 days, the [member] insurer may appeal to the superintendent within 60 days after the action or decision of the board or the board's failure to act on such complaint.

C. Any member who is determined by the board to have failed to pay, in a timely fashion, any assessment or penalty due to the pool shall cease to be a member. The superintendent shall be advised of any insurer failing to continue its membership.

[11/30/1998; 13.10.10.8 NMAC - Rn,

13 NMAC 10.10.8, 4/13/2001; A, 9/01/2020]

13.10.10.9 BOARD OF DIRECTORS:

A. Appointed members. The superintendent shall announce his appointments to the board at the annual membership meeting.

B. Elected members.

(1) Prior to the annual membership meeting, [~~the board or its nominating committee shall select a nominee]~~ members shall be contacted by mail by the administrator, or as otherwise directed by the board, to solicit nominations to succeed each board director who was elected by the general membership of the pool and whose term is scheduled to expire on June 30 of that year. If applicable, such nominee will ensure the required representation as set forth in Subsection C of Section 59A-54-4 NMSA 1978. Such nominees shall be made known to the members of the pool at least 30 days prior to the annual membership meeting.

(2) The board shall compile a list of all members of the pool. At least 30 days prior to the annual membership meeting, a notice and proxy shall be sent to all members of the pool soliciting votes for membership on the board.

(3) At the annual membership meeting, the pool administrator shall tabulate the results and prepare a list of the nominees who have received the most votes for election to the board. Each pool member shall be entitled to cast one vote in electing a member to the board and shall be permitted to cast such vote in person or by proxy.

(4) In order to achieve consistent participation and representation, each elected member of the pool shall designate a person to serve on the board as its representative, with the ability to reappoint a person in the case of a permanent vacancy, with the provision for one identified alternate person.

C. Succession. The appointed members of the board

of directors shall serve until their successors have been duly appointed to serve. The previously elected members of the board of directors shall serve until the end of their term, until they resign, or until they are no longer eligible under the law to be a member of the board of directors, whichever occurs first.

[11/30/1998; 13.10.10.9 NMAC - Rn, 13 NMAC 10.10.9, 4/13/2001; A, 8/31/2006; A, 12/31/09; A, 9/01/2020]

13.10.10.10 ANNUAL

MEMBERSHIP MEETING: An annual meeting of the board shall be held no later than March 31 of each year, at such time and place as the board may determine. At each annual meeting, the board shall:

A. review the plan and submit to the superintendent any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the pool; review each outstanding contract or agreement, if any, and make necessary or desirable corrections, improvements, or additions;

B. review operating expenses and outstanding contractual obligations and determine if an assessment is necessary for the proper administration of the pool and, if so, the amount; if such assessment is deemed to be necessary, the board shall levy such assessment based on the criteria set forth in Section 59A-54-10 NMSA 1978; the board may adopt other or additional methods of adjusting the formula to achieve equity of assessments among pool members; the board may abate or defer in any part the assessment of a member, if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations; the assessment shall be imposed annually as provided by Subsection F of Section 59A-54-5 NMSA 1978 by the pool administrator; any assessment of less than \$50 may be deferred by the board;

C. review [~~underwriting~~] operating policies and

practices, policy forms, and rates for coverage issued by the pool;

D. review, consider, and act on any other matters deemed by it to be necessary and proper for the administration of the pool;

E. review and evaluate the performance of the pool administrator.

[11/30/1998; 13.10.10.10 NMAC - Rn, 13 NMAC 10.10.10, 4/13/2001; A, 9/01/2020]

13.10.10.11 MEETING PROCEDURES:

A. Special meetings. Special meetings of the board may be called by a majority of the directors or the chairman of the board, and will be held at the time and place fixed by the person calling the special meeting.

B. Notice. Written notice stating the time, place and, if a special meeting, the purpose, will be delivered either personally [~~by mail~~] or by [~~telegram~~] email at the direction of the person calling the meeting, to each director at least 24 hours before the scheduled date of the meeting. If mailed [~~or telegraphed~~], a notice is deemed delivered when deposited, postage or charges prepaid, [~~with the transmitting agency~~] addressed to the director. If emailed, a notice is deemed delivered when sent addressed to the director. The board may establish dates and times for regularly scheduled meetings.

C. Quorum. A majority of the current members of the board in attendance either in person or by telephone will constitute a quorum at board meetings. The act of a majority of directors voting in person or by written proxy at a meeting at which a quorum is present will be the act of the board, except a two-thirds majority of the entire board is required for actions dealing with the levy of assessments, approval and discharge of the pool administrator, removal of officers, or for the pool to borrow money or to encumber assets of the pool. The directors may act only as a board with each director having one vote.

D. Proxy. A written proxy may be given only to other

board members and shall be submitted to the chair at the time the vote is taken. No director shall be allowed to cast more than one proxy vote.

Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if a consent in writing setting forth the action so taken is signed, either wet-ink or electronically, by all of the directors.

E. Waiver of notice. Whenever any notice is required to be given to any director, a waiver thereof in writing signed or emailed by the person entitled to the notice is equivalent to the giving of timely notice. The attendance of a director at a meeting constitutes a waiver of notice of the meeting except when attendance is for the sole purpose of objecting because the meeting is not lawfully called or convened.

F. Record of meetings. A written record of the proceedings of each board meeting shall be made. The original of this record shall be retained by the [~~secretary of the board~~] administrator, or as otherwise directed by the board, and a copy shall be forwarded to [~~the superintendent~~] all members of the board for approval at a subsequent board meeting. Copies shall be available upon request.

G. Participation methods. Members of the board, or any committee designated by the board, may participate in a meeting of the board, or of any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

H. Consent required for action without meeting. Any action required by the act or this plan to be taken at a meeting of the board, or any action which may be taken at a meeting of the board or of a committee of the board, may be taken without a meeting if a consent in writing, setting forth the actions so taken, [~~shall be~~] is signed, either wet-ink or electronically, by all of

the directors, or all of the members of the committee, as the case may be. The consent to action without a meeting shall have the same effect as a unanimous vote of the board or of the committee taking the action. [11/30/1998; 13.10.10.11 NMAC -Rn & A, 13 NMAC 10.10.11, 4/13/2001; A, 8/31/2006; A, 12/31/2009; A, 9/01/2020]

13.10.10.12 OFFICERS:

A. The officers of the board will be the chairman of the board, a vice-chairman, a secretary and treasurer, and such other officers as the board may decide, who will be elected annually by the board at its annual meeting to serve until their successors are elected and qualified. An officer, except the chairman, may be removed with or without cause by the board, or may resign. Vacancies and newly created offices will be filled by the board. One person may hold more than one office, but no person may be both chairman of the board and secretary. Officers will perform the duties, and will have the power and authority, assigned by the board, incident to the office, and provided in this plan.

B. The chairman of the board shall preside at meetings of the board and shall assume such duties as shall be designated from time to time by the board. The chairman, when authorized by the board, will execute and deliver documents in the name of the pool.

C. The vice-chairman of the board shall function in the absence of the chairman.

D. The secretary will [~~keep and have custody of~~] review the records of the pool and the minutes of the proceedings of the directors; will give all notices required; and when authorized will execute, attest, seal, and deliver documents of the board.

E. The treasurer [~~will be custodian of the property of, and~~] will be responsible [~~for keeping correct and complete books and records of account~~] for reviewing financial records and accounts for the pool.

[11/30/1998; 13.10.10.12 NMAC -

Rn, 13 NMAC 10.10.12, 4/13/2001; A, 9/01/2020]

13.10.10.13 COMMITTEES:

A. Appointment. The board shall appoint such committees as it may from time to time deem necessary. Such committees may include, but are not limited to, an executive, finance, policy, procurement and legal committees.

B. Delegation of authority. The board may authorize a committee to take any action that the board has the power to take except for action on assessments, premiums, changes in policy benefits, and changes in the plan of operation as long as the motion to delegate the authority passes by a vote sufficient to fulfill the vote requirements for the board itself to take the delegated action.

C. Expenses. Members of special or standing committees may be allowed expenses for attending committee meetings as determined by the board subject to the Per Diem and Mileage Act. [11/30/1998; 13.10.10.13 NMAC - Rn, 13 NMAC 10.10.13, 4/13/2001; A, 12/31/2009; A, 9/01/2020]

13.10.10.14 OPERATIONS:

In addition to the powers granted in Section 59A-54-7 NMSA 1978:

A. The board may employ such persons, firms, or corporations to perform such executive and administrative functions as are necessary for the board's performance of the duties imposed on the pool. The board may use the mailing address of the pool administrator or as otherwise directed by the board. Such persons, firms, or corporations shall keep such records of its activities as may be required by the board. The pool administrator ~~[may]~~ shall maintain the financial records of the pool. Board records and documents may be maintained by the administrator or as otherwise directed by the board.

B. The board may hire or contract with such persons or organizations as attorneys at law, actuaries, accountants, claims

personnel, and such other specialists or persons or organizations with expertise in such areas and whose advice or assistance is deemed by the board to be necessary to the discharge of its duties imposed by law. The board may agree to compensate such persons or organizations so as to best serve the interest of the pool and the public.

C. The board may open one or more bank accounts for use in pool business. The board may make reasonable delegations of deposit and withdrawal authority to such accounts consistent with prudent fiscal policy. The board may borrow money from any person or organization, including a member or from a contracting firm or entity as the board may deem advantageous for the pool and the public. The pool administrator is responsible for handling, safeguarding, and disbursing the funds of the pool subject and responsible to the board.

D. The board may review the act and other appropriate insurance laws and regulations in order to make recommendations to the superintendent for the improved operation of the pool.

E. The board shall promptly inform the superintendent of the failure of any member to pay an assessment after 30 days' written notice to the member that payment is due. If a member fails to pay its assessment and penalty within 30 days' written notice of the penalty, the board may disenroll the member from the pool. The penalty and notice and any notice of disenrollment shall be mailed by registered mail return receipt requested. If a member loses its membership status, the pool administrator shall promptly forward notice of disenrollment to the superintendent. Reinstatement of membership can only occur if all assessments and penalties still owing are paid in full and if the superintendent notifies the pool that the former member has a current certificate of authority to transact insurance business in New Mexico.

F. A penalty of [~~1%~~] one percent of the unpaid assessment

or \$1,000.00, whichever is larger, plus interest on the assessment will be assessed against delinquent members. Interest shall be paid at a rate of prime rate plus [~~2%~~] two percent per annum. The prime rate shall be defined as the prime rate as published in the money rates section of the Wall Street journal on the last day of publication prior to the date the unpaid assessment is paid. If an insurer wishes to contest an assessment but is willing to pay, under protest, the amount of the assessment during the pendency of the adjudication process, no penalty will be assessed. If the member is successful in its protest, then the pool shall refund the amount of the assessment to the member and pay the member interest at the rate earned by the pool in the interim. The fact that a member is paying under protest must be disclosed at the time of payment. [11/30/1998; 13.10.10.14 NMAC - Rn & A, 13 NMAC 10.10.4, 4/13/2001; A, 9/01/2020]

13.10.10.17 RECORDS AND REPORTS:

A. The fiscal year of the pool shall coincide with the calendar year.

B. The board shall make an annual report to the superintendent [~~not later than March 1 of each year~~] as required by the act. The annual report shall include [~~a~~] an audited financial report for the preceding calendar year in a form approved by the superintendent and a review of the activities of the pool during the preceding calendar year. [11/30/1998; 13.10.10.17 NMAC - Rn, 13 NMAC 10.10.17, 4/13/2001; A, 9/01/2020]

13.10.10.19 INDEMNIFICATION:

A. All persons, except the superintendent and his staff, described in the act shall be indemnified by the pool for all expenses incurred in the defense of any action, suit, or proceeding brought against such person on account of any action taken by him in the performance of his powers and duties under the act, unless such

person shall be finally adjudged to have committed a breach of duty involving gross negligence, bad faith, dishonesty, willful misfeasance, or reckless disregard of the responsibilities of his office. In the event of settlement before final adjudication, such indemnity shall be provided only if the pool is advised by independent counsel that such person did not, in such counsel's opinion, commit such a breach of duty. The expense of such indemnification shall be assessed against member insurers in accordance with Section ~~[59A-54-18]~~ 59A-54-10 NMSA 1978. Any reference to persons in this section shall include the board or a committee thereof.

B. The indemnification provided by this section will not be deemed exclusive of any other rights to which those indemnified may be entitled under any other laws, including but not limited to Section 59A-54-18 NMSA 1978, agreements, votes of disinterested directors, or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, and will continue as to a person who has ceased to be a director, employee, or agent and will inure to the benefit of the heirs and personal representative of that person.

C. The pool, upon resolution adopted by the board, may purchase and maintain insurance on behalf of any person who is or was a director, employee, or agent of the pool who, while a director, employee, or agent of the pool, is or was serving at the request of the pool as a director, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise or employee benefit plan, against any liability asserted against and incurred by the person in any such capacity or arising out of the person's status as such, whether or not the pool would have the power to indemnify the person against such liability under the provisions of this section.

[11/30/1998; 13.10.10.19 NMAC - Rn, 13 NMAC 10.10.19, 4/13/2001; A, 9/01/2020]

13.10.10.23 PREMIUM INFORMATION: All reports regarding premium information requested of the members by the pool for purposes of determining assessment amounts must be signed by an officer of the member. No adjustments to that premium information will be accepted from any member after the date for submission of the information has passed, with the exception of errors relating to categories of premiums not allowed to be assessed by the Act or other laws.

[11/30/1998; 13.10.10.23 NMAC - Rn, 13 NMAC 10.10.23, 4/13/2001; A, 9/01/2020]

13.10.10.24 ASSESSMENT POLICY:

A. Interim and final assessments to pool members shall be mailed at least 30 days prior to the due date for payment.

B. To determine the amount of premium upon which a member's final assessment will be based for a particular year, the administrator shall mail the reporting form to each member no later than April 1 of the following year. The reporting form shall be completed, signed by an officer of the member, and returned to the pool. The amount of premium reported shall be reviewed by the pool administrator with the assistance of the ~~[Insurance-Division]~~ Office of Superintendent of Insurance.

C. Any proposed adjustment to the amount of premium reported shall be reviewed for approval by the board. If any adjustment to the amount of premium is made as a result of that review, the member affected by the adjustment will be notified in writing of the adjustment.

D. Any member who wishes to appeal the amount of its interim or final assessment may do so in writing to the board. Any appeal must be submitted to the board within 30 days of notice of the assessment. The submission must include the basis for the appeal and all relevant facts and legal argument the appellants wish the board to have

before it when deciding the appeal. At the discretion of the board, oral presentations to the board may be allowed.

[13.10.10.24 NMAC - N, 4/13/2001; A, 9/01/2020]

13.10.10.25 REFUNDS AND ADJUSTMENTS: After the final assessments for a particular year have been determined and collected, the pool administrator and the board shall determine if any member has overpaid its assessments. If any such overpayment has been made, the pool administrator, upon approval by the board, shall refund to the member the amount of the overpayment. No interest shall be paid by the pool on the overpayment, unless such payment was paid under protest as specified in Subsection F of Section 14 of this rule.

[13.10.10.25 NMAC - N, 4/13/2001; A, 9/01/2020]

End of Adopted Rules

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Other Material Related to Administrative Law

**PUBLIC EDUCATION
DEPARTMENT****NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The New Mexico Public Education Department gives Notice of a Minor, Nonsubstantive Correction to 6.12.12 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

In Sections 9 and 11, renumbered incorrect subparagraph numbering from: (i) through (xi) and (i) through (iii), to: (a) through (k) and (a) through (c), respectively.

A copy of this Notification will be filed with the official version of each of the above rules.

**End of Other Material
Related to Administrative
Law**

2020 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXI, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 6	January 14
Issue 2	January 16	January 28
Issue 3	January 30	February 11
Issue 4	February 13	February 25
Issue 5	February 27	March 10
Issue 6	March 12	March 24
Issue 7	March 26	April 7
Issue 8	April 9	April 21
Issue 9	April 23	May 5
Issue 10	May 7	May 19
Issue 11	May 28	June 9
Issue 12	June 11	June 23
Issue 13	July 6	July 14
Issue 14	July 16	July 28
Issue 15	July 30	August 11
Issue 16	August 13	August 25
Issue 17	August 27	September 15
Issue 18	September 17	September 29
Issue 19	October 1	October 13
Issue 20	October 15	October 27
Issue 21	October 29	November 10
Issue 22	November 13	November 24
Issue 23	December 3	December 15
Issue 24	December 17	December 29

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.srca.nm.gov>. For further information, call 505-476-7941.