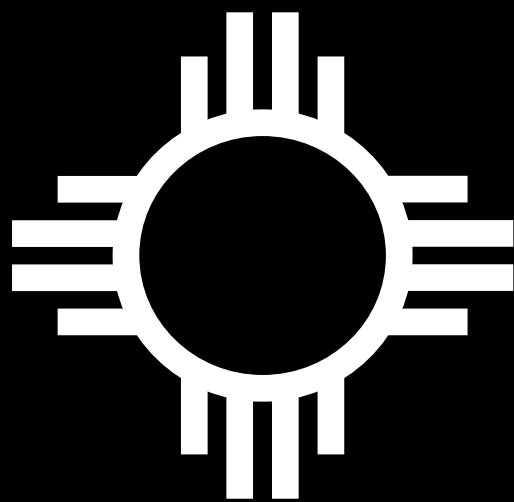


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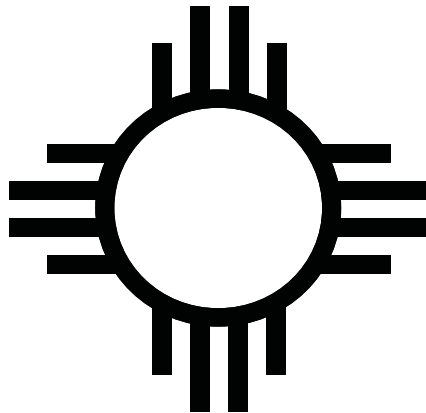


Volume XXII  
Issue Number 16  
August 31, 2011



# **New Mexico Register**

**Volume XXII, Issue Number 16**  
**August 31, 2011**



The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

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# New Mexico Register

Volume XXII, Number 16

August 31, 2011

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### 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 by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register.” Section 14-4-5 NMSA 1978.

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

#### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED REPEAL OF 20.2.300, -301 and -350 NMAC.

The New Mexico Environmental Improvement Board will hold a public hearing beginning at 9:00 a.m. on November 8, 2011 in Apodaca Hall in the old PERA Building, 1120 Paseo de Peralta (at corner of Old Santa Fe Trail), Santa Fe, New Mexico to consider the proposed repeal of the Greenhouse Gas Cap and Trade Program, and the Greenhouse Gas Reporting and Verification Requirements, 20.2.300, -301 and -350 NMAC, in EIB Docket Number 11-15 and 11-17(R).

The petition to repeal 20.2.350 NMAC was filed by Tri-State Generation and Transmission Association, Inc. (Tri-State), New Mexico Oil and Gas Association (NMOGA), Public Service Company of New Mexico, Southwestern Public Service Company, Independent Petroleum Association of New Mexico (IPANM), the City of Farmington and the Farmington Electric Utility System, and El Paso Electric Company. The petition to repeal 20.2.300 and 301 NMAC was filed by Tri-State, NMOGA and IPANM. The proposed repeal petitions may be reviewed during regular business hours at the office of the Environmental Improvement Board located in the Harold Runnels Building, 1190 St. Francis Drive, Room N-2153 Santa Fe, NM, 87505. In addition, the petitions are posted on the New Mexico Environment Department website at <http://www.nmenv.state.nm.us/eib/index.html>.

The hearing will be conducted in accordance with 20.1.1 NMAC, Board Rulemaking Procedures, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, and other applicable procedures. Written comments regarding the proposed repeal may be addressed to Board Administrator Ms. Carmella Casados at the above address; reference docket number EIB 11-15 and 11-17(R).

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Non-technical written comment may be filed until

the close of the evidentiary hearing.

Non-technical oral public comment, not to exceed three minutes per person, will be accepted at 6:30 p.m. each evening that the hearing continues, and at other times designated by the Hearing Officer, Felicia Orth. Contact the Administrator at 505-827-2425 to assure that the hearing is still in process and the schedule has not changed before traveling a long distance.

Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The requirements for a notice of intent in 20.1.1 NMAC have been modified by a procedural order entered in this matter, which may be obtained from the Administrator.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language or other interpreter, to participate in any aspect of this process, please contact the Personnel Services Bureau by October 11, 2011. The Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502-5469, (505) 827-9872. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

The Board may make a decision on the proposed repeal at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

#### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED REPEAL OF 20.2.100 NMAC.

The New Mexico Environmental Improvement Board will hold a public hearing beginning at 9:00 a.m. on December 5, 2011 in Apodaca Hall in the old PERA Building, 1120 Paseo de Peralta (at corner of Old Santa Fe Trail), Santa Fe, New Mexico to consider the proposed repeal of the Greenhouse Gas Reduction Program, 20.2.100 NMAC, in EIB Docket Number 11-16(R).

The petition to repeal 20.2.100 NMAC

was filed by Tri-State Generation and Transmission Association, Inc., New Mexico Oil and Gas Association, Public Service Company of New Mexico, Southwestern Public Service Company, Independent Petroleum Association of New Mexico, the City of Farmington and the Farmington Electric Utility System, and El Paso Electric Company. The proposed repeal petition may be reviewed during regular business hours at the office of the Environmental Improvement Board located in the Harold Runnels Building, 1190 St. Francis Drive, Room N-2153 Santa Fe, NM, 87505. In addition, the petition is posted on the New Mexico Environment Department website at <http://www.nmenv.state.nm.us/eib/index.html>.

The hearing will be conducted in accordance with 20.1.1 NMAC, Board Rulemaking Procedures, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, and other applicable procedures. Written comments regarding the proposed repeal may be addressed to Board Administrator Ms. Carmella Casados at the above address; reference docket number EIB 11-16(R).

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Non-technical written comment may be filed until the close of the evidentiary hearing.

Non-technical oral public comment, not to exceed three minutes per person, will be accepted at 6:30 p.m. each evening that the hearing continues, and at other times designated by the Hearing Officer, Felicia Orth. Contact the Administrator at 505-827-2425 to assure that the hearing is still in process and the schedule has not changed before traveling a long distance.

Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The requirements for a notice of intent in 20.1.1 NMAC have been modified by a procedural order entered in this matter, which may be obtained from the Administrator.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language or other interpreter, to participate in any aspect of this process, please contact the Personnel Services Bureau by November 10, 2011. The Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502-5469, (505)

827-9872. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

The Board may make a decision on the proposed repeal at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

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**End of Notices and Proposed  
Rules Section**

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## Adopted Rules

### NEW MEXICO BOARD OF PHARMACY

**This is an amendment to 16.19.4 NMAC, Section 9, effective 09-16-2011.**

#### 16.19.4.9 D E F I N I N G UNPROFESSIONAL OR DISHONORABLE CONDUCT:

**A.** Preamble: In defining "unprofessional conduct" the definitions of professional conduct and a pharmacist's duty should be considered.

**B.** Professional conduct may be defined as complying with all the laws and regulations that apply to a given professional activity.

**C. D e f i n i t i o n :** Unprofessional or dishonorable conduct by a pharmacist shall mean, among other things, but not be limited to.

(1) Violation of any provision of the Pharmacy Act as determined by the board.

(2) Violation of the board of pharmacy regulations as determined by the board.

(3) Violation of the Drug and Cosmetic Act as determined by the board.

(4) Violation of the Controlled Substances Act as determined by the board.

(5) Failure of the pharmacist to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public, other health professions and fellow pharmacists.

(6) Failure to keep his pharmacy and/or area of professional practice clean, orderly, maintained and secured for the proper performance of his professional duties.

(7) Acquiring prescription stock from unlicensed sources.

(8) Failure to hold on the strictest confidence all knowledge concerning patrons, their prescriptions, and other confidence entrusted or acquired of by him; divulging in the interest of the patron only by proper forms, or where required for proper compliance with legal authorities.

(9) Participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or welfare.

(10) The solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon.

(11) Failure to report a theft or loss of controlled substances in accordance with 16.19.20.36 NMAC.

(12) Failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.19.4.12 NMAC.

(13) Failure to train or supervise adequately supportive personnel or the use of supportive personnel in activities outside the scope of their permitted activities.

(14) Conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substances Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States.

(15) Suspension, revocation, denial, or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States.

(16) Dispensing a prescription for a dangerous drug to a patient without an established practitioner-patient relationship:

(a) except for the provision of treatment of partners of patients with sexually transmitted diseases when this treatment is conducted in accordance with the expedited partner therapy guidelines and protocol published by the New Mexico department of health;

(b) except for on-call practitioners providing services for a patient's established practitioner;

(c) except for delivery of dangerous drug therapies to patients ordered by a New Mexico department of health physician as part of a declared public health emergency;

(d) except for dispensing a [prescription] prescription for the dangerous drug naloxone to a person for administration to another as authorized in public health law 24-23 administration of opioid antagonist;

(e) except for the prescribing or dispensing and administering for immunizations programs.

**(17) Dispensing a prescription order for a dangerous drug to a patient if the pharmacist has knowledge, or reasonably should know under the circumstances, that the prescription order was issued on the basis of an internet-based questionnaire or an internet-based consultation without a valid practitioner-patient relationship.**

[03-01-93; 16.19.4.9 NMAC - Rn, 16 NMAC 19.4.9, 03-30-02; A, 07-15-02; A, 01-15-08; A, 09-16-11]

### NEW MEXICO PUBLIC REGULATION COMMISSION

**This is an amendment to 17.9.592 NMAC, Section 15, effective 08-31-11**

#### **17.9.592.15 SAFE HARBOR:**

**A.** The following shall be considered additions to, or modifications of, an existing plant or transmission line for which, under Section 62-9-3(D) NMSA 1978, no location approval is required:

(1) maintenance, repairs and rebuilding, such as phase raising, installation of clearance improvements, replacement or reframing of structures or line reconductoring within the existing right-of-way;

(2) addition of circuits or placement of additional structures; for transmission lines these shall be within the existing right-of-way or within twelve hundred (1200) feet of the existing right-of-way not adjacent to a developed residential, commercial or industrial area;

(3) voltage upgrades to a transmission line for which location approval at the upgraded voltage level has already been granted; or voltage upgrades to a transmission line for which the commission by written order has determined that location approval is not required;

(4) emergency construction due to facilities being out of service or where a failure of a facility is imminent, so long as construction remains within the existing right-of-way or within twelve hundred (1200) feet of the existing right-of-way not adjacent to a developed residential, commercial or industrial area;

(5) construction of a tap line to a new terminus, both of which are within an existing right-of-way or within twelve hundred (1200) feet of the existing right-of-way not adjacent to a developed residential, commercial or industrial area;

(6) replacements to transmission-related electrical stations located within the existing right-of-way or within twelve hundred (1200) feet of such electrical stations not adjacent to a developed residential, commercial or industrial area; and

(7) erection of temporary facilities for twelve (12) months or less within the existing right-of-way or within twelve hundred (1200) feet of the existing right-of-way not adjacent to a developed residential, commercial or industrial area.

**B.** Notwithstanding the foregoing provisions, if new or replacement conductors, or new or replacement structures will extend for a distance of over one (1) mile in length for a transmission line with a

voltage of two hundred-thirty (230) kilovolts or greater, the following requirements shall apply so long as they can be accomplished at reasonable additional cost:

(1) to the extent commercially available, non-specular conductors shall be used in any developed or trafficked areas, unless they pose a significant threat to avian populations; and

(2) structures shall be consistent with, and minimize visual impacts to, the landscape of the area in which the structure is constructed: rural, urban or industrial.

C. Prior to any person constructing, modifying or adding to plants, facilities or transmission lines that require location control under Section 62-9-3 NMSA 1978 on land owned or controlled by a federally recognized Indian tribe or on land contiguous to such Indian tribal land, that person shall consult with the tribe that owns or controls that land regarding the location of the construction. This required consultation is in addition to meeting the requirements of both Section 62-9-3 NMSA 1978 and this rule.

D. At least one hundred-twenty (120) days before a person commences any activity or installation not listed in Paragraphs (1) - (7) of Subsection A above, that person (the petitioner) shall file with the commission a petition requesting that the commission determine whether location approval is required. The petitioner shall serve a copy of the petition on:

(1) all landowners whose land is adjacent to or encompassed by the location of the proposed activity or installation; and

(2) all parties in the public utility's last rate case if the petitioner is a public utility.

E. Commission staff shall, and any interested party who files a motion to intervene may, file a response to the petition within forty-five (45) days of its filing with the commission. If the commission does not act on the petition within one hundred (100) days from the date the petition was filed with the commission, the facilities that are the subject of the petition shall be deemed to be additions to, or modifications of, an existing plant or transmission line for the purposes of Section 62-9-3(D) NMSA 1978, for which location approval shall not be required under Section 62-9-3 NMSA 1978. The commission's lack of action on a petition within the one hundred (100) day period shall not affect any requirement to obtain a certificate of public convenience pursuant to Section 62-9-1 NMSA 1978.

[17.9.592.15 NMAC - N, 8-31-11]

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### End of Adopted Rules Section

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## Submittal Deadlines and Publication Dates 2011

Volume XXII	Submittal Deadline	Publication Date
Issue Number 18	September 16	September 30
Issue Number 19	October 3	October 17
Issue Number 20	October 18	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

## Submittal Deadlines and Publication Dates 2012

Volume XXIII	Submittal Deadline	Publication Date
Issue Number 1	January 3	January 17
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 15
Issue Number 4	February 16	February 29
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 30
Issue Number 7	April 2	April 16
Issue Number 8	April 17	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 14
Issue Number 12	June 15	June 29
Issue Number 13	July 2	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 30
Issue Number 17	August 31	September 14
Issue Number 18	September 17	September 28
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 3	December 14
Issue Number 24	December 17	December 31

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