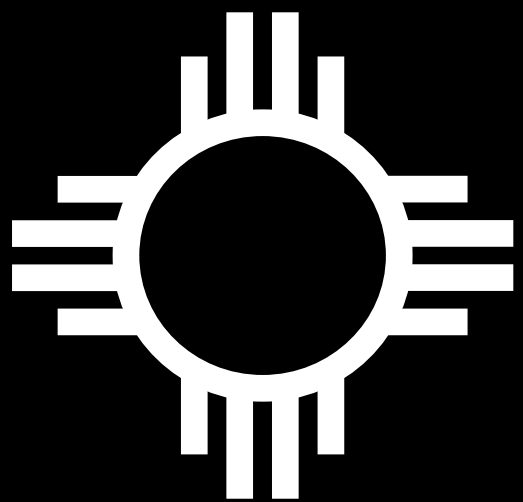


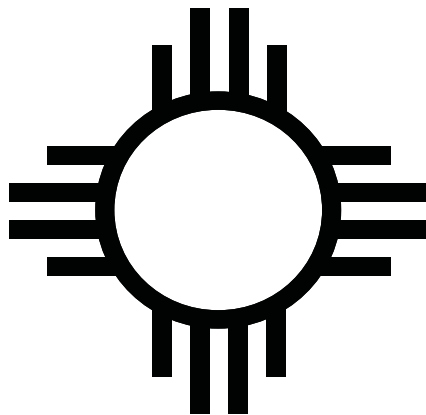
**NEW
MEXICO
REGISTER**



**Volume XXII
Issue Number 18
September 30, 2011**

New Mexico Register

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September 30, 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 18

September 30, 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.

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Notices of Rulemaking and Proposed Rules

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF HEARING

On November 9, 2011, at 5:30 PM, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) is scheduled to hold a public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM. The hearing will address:

* Proposal to amend 20.11.63 NMAC, *New Source Performance Standards For Stationary Sources*, by incorporating by reference new and modified New Source Performance Standards published in 40 CFR 60, *New Source Performance Standards* (NSPS) through August 29, 2011; and

* Proposal to amend 20.11.64 NMAC, *Emission Standards For Hazardous Air Pollutants For Stationary Sources*, by incorporating by reference new and modified standards published in 40 CFR 61, *National Emission Standards For Hazardous Air Pollutants* (NESHAP), and 40 CFR 63, *National Emission Standards For Hazardous Air Pollutants By Source Category* (NESHAP by Source Category) through August 29, 2011.

The Environmental Health Department's Air Quality Division routinely updates these regulations to incorporate federal requirements so that the Division can remain up to date on new and modified standards developed at the federal level. In addition, it is proposed that the EPA delegate to the Department the authority to locally administer and enforce the standards referenced above, throughout Albuquerque and Bernalillo County. Local delegation authorizes the Department to require local air pollution sources to comply with these standards.

Following the hearing, the Air Board will hold its regular monthly meeting during which the Air Board is expected to consider adopting the proposed revisions to 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources*, and proposed revisions to 20.11.64 NMAC, *Emission*

Standards for Hazardous Air Pollutants for Stationary Sources.

The Air Quality Control Board is the federally-delegated air quality authority for Albuquerque and Bernalillo County. Local delegation authorizes the Air Board to administer and enforce the Clean Air Act and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards and regulations.

Hearings and meetings of the Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6, and 20.11.82 NMAC, *Rulemaking Procedures -- Air Quality Control Board*.

Anyone intending to present technical testimony at this hearing is required by 20.11.82.20 NMAC to submit a written Notice Of Intent to testify (NOI) before 5:00pm on October 25, 2011, to: Attn: Neal Butt, Air Quality Division, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or, you may deliver your NOI to the Environmental Health Department, Room 3023, 400 Marquette Avenue NW. The NOI shall: 1. identify the person for whom the witness or witnesses will testify; 2. identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background; 3. summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness; 4. include the text of any recommended modifications to the proposed regulatory change; and 5. list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

In addition, written comments to be incorporated into the public record for this hearing should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on November 2, 2011. Comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to

nbutt@cabq.gov and shall include the required name and address information. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Mr. Neal Butt electronically at nbutt@cabq.gov or by phone (505) 768-2660.

NOTICE FOR PERSON WITH DISABILITIES: If you have a disability and/or require special assistance please call (505) 768-2600 [Voice] and special assistance will be made available to you to review any public meeting documents, including agendas and minutes. TTY users call the New Mexico Relay at 1-800-659-8331 and special assistance will be made available to you to review any public meeting documents, including agendas and minutes

NEW MEXICO BOARD OF DENTAL HEALTH CARE

LEGAL NOTICE

Public Rule Hearing and Regular Board and Committee Meeting

The New Mexico Board of Dental Health Care will hold a Rule Hearing on Friday, November 04, 2011. Following the Rule Hearing the New Mexico Dental Hygienists Committee will convene a regular meeting; following the New Mexico Dental Hygienist Committee meeting the New Mexico Board of Dental Health Care will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Dental Health Care Rule Hearing will begin at 9:00 a.m. and the Regular Board Meetings will convene following the rule hearing. The meetings will be held at the Regulation and Licensing Dept, Toney Anaya Building, West Capitol Complex, 2550 Cerrillos Road, Santa Fe, NM in the Rio Grande Room, 2nd Floor.

The purpose of the rule hearing is to consider adoption of proposed amendments, repeals and additions to the following Board Rules and Regulations in 16.5 NMAC: Part 1 General Provisions, Part 3 Mandatory Reporting Requirements, Part 4 Emergency Licensure Provisions, Part 6 Dentists, Licensure by Examination, Part 7 Dentists, Temporary License, Part 8 Dentists, Licensure by Credentials, Part 9 Non-Dentist Owners, Part 10 Dentists, Continuing Education Requirements, Part 12 Dentists, Retirement, Inactive and Reinstatement, Part 13 Dentists, License Revocation for Non-Renewal, Part 15 Dentists, Anesthesia Administration, Part 16 Dentists

Disciplinary Proceedings, Part 17 Dentists and Dental Hygienists, Collaborative Practice, Part 19 Dental Hygienists, Licensure by Examination, Part 20 Dental Hygienists, Licensure by Credentials, Part 21 Dental Hygienist, Temporary License, Part 23 Dental Hygienists Continuing Education Requirements, Part 25 Dental Hygienists, Retirement, Inactive and Reinstatement, Part 26 Dental Hygienists, License Revocation for Non-Renewal, Part 28 Dental Hygienists, Local Anesthesia Certification, Part 29 Dental Hygienists, Practice, Part 30 Dental Hygienists, Disciplinary Proceedings, Part 33 Dental Assistants, Requirements for Certification, and Part 36 Dental Assistants, Continuing Education Requirements.

NEW PARTS:

Part 41 Expanded Function Dental Auxiliary, Fees, Part 42 Expanded Function Dental Auxiliary, Requirements for Certification, Part 43 Expanded Function Dental Auxiliary, Certificate Expiration and Renewal, Part 44 Expanded Function Dental Auxiliary, Continuing Education Requirements, Part 45 Expanded Function Dental Auxiliary, Certificate Revocation for Non-Renewal, Part 46 Expanded Function Dental Auxiliary, Practice and Supervision, Part 47 Expanded Function Dental Auxiliary, Disciplinary Proceedings, Part 48 Reserved, Part 49 Community Dental Health Coordinator, Fees, Part 50 Community Dental Health Coordinator, Requirements for Certification, Part 51 Community Dental Health Coordinator, Certificate Expiration and Renewal, Part 52 Community Dental Health Coordinator, Continuing Education Requirements, Part 53 Community Dental Health Coordinator, Certificate Revocation for Non-Renewal, Part 54 Community Dental Health Coordinator, Practice and Supervision, Part 55 Community Dental Health Coordinator, Disciplinary Proceedings and Part 56 Reserved.

You can contact the board office at the Toney Anaya Building located at 2550 Cerrillos Road in Santa Fe, New Mexico 87504, call (505) 476-4680 or copies of the proposed rules are available on the Dental board's website: www.RLD.state.nm.us/Dental. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than October 14, 2011. Persons wishing to present their comments at the hearing will need fifteen (15) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need

a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4680 at least two weeks prior to the meeting or as soon as possible.

Kathy Ortiz, Board Administrator
PO Box 25101- Santa Fe, New Mexico 87504

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

ENERGY CONSERVATION AND
MANAGEMENT DIVISION

NOTICE OF PUBLIC HEARING OF THE NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT Certificate for Tax Credit for Agricultural Biomass - Personal and Corporate Income Tax

The New Mexico Energy, Minerals and Natural Resources Department ("Department") will hold a public hearing at 1:00 P.M. Tuesday, October 25, 2011 in Porter Hall, Wendell Chino Building, 1220 S. St. Francis Drive, Santa Fe, New Mexico.

The Department will conduct a public hearing on proposed rules 3.3.33 and 3.4.20 NMAC for administration of the Certification for Tax Credit for Agricultural Biomass, as authorized by Sections 7-2-18.24 and 7-2a-24 of NMSA 1978 and the 2010 House Bill 171 ("Act").

Copies of the proposed rules and the Act are available from the Department's Energy Conservation and Management Division ("ECMD"), 1220 South Saint Francis Drive, Santa Fe, NM 87505, on ECMD's website, <http://www.cleanenergynm.org>, or by contacting Colin Messer at 505-476-3314 or colinj.messer@state.nm.us.

All interested persons may participate in the hearing and will be given an opportunity to submit relevant evidence, data, views and arguments -- orally or in writing.

A person who wishes to submit a written statement, in lieu of providing oral testimony at the hearing, shall submit the written statement prior to the hearing to the address above or submit it at the hearing. No statements will be accepted after the conclusion of the hearing.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any

other form of auxiliary aid or service to attend or participate in the hearing, please contact Colin Messer at least one week prior to the hearing or as soon as possible. Public documents can be provided in various accessible formats. Please contact Colin Messer at 476-3314, through Relay New Mexico at 1-800-489-8536 Voice/ TTY, if a summary or other type of accessible format is needed.

NEW MEXICO OIL CONSERVATION COMMISSION

NOTICE OF RULE MAKING

STATE OF NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION COMMISSION SANTA FE, NEW MEXICO

The State of New Mexico, through its Oil Conservation Commission, hereby gives notice that the Commission will conduct a public hearing on Thursday, **October 20, 2011**, beginning at 9:00 a.m., in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, concerning the repeal, adoption and amendment of rules issued pursuant to the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38. If additional time is needed, the hearing may continue at a later date announced by the Commission.

The hearing concerns the following changes to Title 19, Chapter 15 of the New Mexico Administrative Code: amend Parts 14 and 16. The proposed changes require an operator to obtain mineral owner or lessee consent or a compulsory pooling order prior to obtaining a permit to drill and prior to commencing drilling operations; define terms either not previously included in the rules or redefine terms; revise rules fixing the spacing and allowable production from horizontal wells, and encourage the development of oil and gas reserves in New Mexico with horizontal wells where technically and economically feasible. The proposed rule changes will be effective statewide.

Copies of a summary of the intended effect of the proposed rule changes and of the text of the proposed new rules and amendments are available from commission clerk Florene Davidson at (505) 476-3458 or from the Division's web site at <http://www.emnrd.state.nm.us/ocd> under "Rules/Proposed Rules."

If you are an individual with a disability who is in need of a reader, amplifier, qualified

sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ms. Davidson at (505) 476-3458 or through the New Mexico Relay Network (1-800-659-1779) as soon as possible.

Written comments on the proposed amendments and pre-hearing statements must be received no later than 5:00 p.m. on Thursday, October 13, 2011. Any person may present non-technical testimony or make an un-sworn statement at the hearing. Any person who intends to present technical testimony or cross-examine witnesses at the hearing shall, no later than 5:00 p.m. on Thursday, October 13, 2011, file six sets of a pre-hearing statement with Ms. Davidson. The pre-hearing statement shall include the person's name and the name of the person's attorney; the names of all witnesses the person will call to testify at the hearing; a concise statement of each witness' testimony; all technical witnesses' qualifications including a description of the witnesses' education and experience; and the approximate time needed to present the testimony. The person shall attach to the pre-hearing statement any exhibits he or she plans to offer as evidence at the hearing. Any person recommending modifications to a proposed rule change shall, no later than Thursday, October 6, 2011, file a notice of recommended modifications with Ms. Davidson including the text of the recommended modifications, an explanation of the modifications' impact, and the reasons for adopting the modifications. Written comments, pre-hearing statements and notices of recommended modifications may be hand-delivered or mailed to Ms. Davidson at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at (505) 476-3462. Faxed documents must be entirely received prior to 5:00 p.m., Mountain Time, on the due date.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 15th day of September 2011.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**

**Jami Bailey
Director, Oil Conservation Division**

**NEW MEXICO PUBLIC
EDUCATION DEPARTMENT**

**NEW MEXICO PUBLIC EDUCATION
DEPARTMENT
NOTICE OF PROPOSED RULEMAKING**

The New Mexico Public Education Department ("NMPED") hereby gives notice that it will conduct a public hearing in Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on October 31, 2011, from 9:30 a.m. to 11:30 a.m. The NMPED will conduct a second public hearing at Alamogordo Public Schools, Board of Education Meeting Room, 1211 Hawaii Avenue, Alamogordo, New Mexico, on November 2, 2011, from 1:00 p.m. to 3:00 p.m. The purpose of the public hearing will be to obtain input on the proposed adoption of a new rule to implement the "A-B-C-D-F Schools Rating Act," which requires the establishment of an easily understandable system for grading all public schools based upon criteria stated in the rule and also provides options for students enrolled in schools rated F for two of the last four years. The rule would be codified as 6.19.8 NMAC and entitled, "Grading of Public Schools".

Interested individuals may provide oral or written comments at the public hearing and/or submit written comments to Ms. Mary H. Deets, Administrative Assistant, Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (MaryH.Deets@state.nm.us) (505) 827-6641 fax (505) 827-6681. To be considered, written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department's website (<http://ped.state.nm.us/>) under the "Public Meetings and Hearings" link, or obtained from Ms. Deets at the email address or phone number indicated.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in either of these meetings are asked to contact Ms. Deets as soon as possible. The NMPED requires at least ten (10) days advance notice to provide requested special accommodations.

**NEW MEXICO REAL
ESTATE COMMISSION**

**New Mexico Real Estate Commission
Notice of Public Rule Hearing on
Proposed Amendments
To Real Estate Commission Rules**

The New Mexico Real Estate Commission will hold a public rule hearing on proposed amendments to the Real Estate Commission Rules on Monday, October 31, 2011 beginning at 9:00 a.m. at the offices of the Greater Albuquerque Association of Realtors, 1635 University Boulevard NE, Albuquerque, New Mexico.

The purpose of the rule hearing is to consider changes to Parts 16.61.1.7 through 16.61.36.7 NMAC of the Commission Rules being proposed by the Rules Task Force appointed by the Real Estate Commission.

Copies of the proposed rule changes may be obtained from the Real Estate Commission by contacting Commission Executive Secretary Wayne W. Ciddio at the Commission offices located at 5200 Oakland Avenue NE, Albuquerque, New Mexico, Tel. No. (505) 222-9829, email wayne.ciddio@state.nm.us beginning October 3, 2011.

The rule hearing will be conducted in accordance with 61-29-4 NMSA 1978 Creation of commission, powers and duties, of the New Mexico Real Estate License Law, Chapter 61, Professional and Occupational Licenses, Article 29, Real Estate Brokers and Salesmen; 61-1-29 NMSA 1978, Adoption of regulations; notice and hearing, of the Uniform Licensing Act, and the 2011 Open Meetings Resolution of the New Mexico Real Estate Commission.

All interested persons will be given reasonable opportunity at the rule hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses.

If you are an individual with a disability and you require assistance or an auxiliary aid, such as a sign language or other interpreter, to participate in the rule hearing, please contact Real Estate Commission Executive Secretary Wayne W. Ciddio at the Commission offices located at 5200 Oakland Avenue NE, Albuquerque, New Mexico, Tel. No. (505) 222-9829, email wayne.ciddio@state.nm.us by October 11, 2011.

The Real Estate Commission may make a decision on the proposed rule changes at the conclusion of the rule hearing or convene a subsequent meeting to consider and take action on the proposed rule changes.

**End of Notices and Proposed
Rules Section**

Adopted Rules

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.3 NMAC, Sections 8, 9, and 11 effective 9-30-2011.

19.31.3.8 PUBLIC LICENSES AND PERMITS - APPLICATION FOR:

A. Application form:

Application for all public licenses and permits shall be made on the standard application form provided by the department of game and fish.

B. Application deadline(s): Applications for all population [~~reduction~~] management hunts, turkey, pronghorn antelope, elk, bighorn sheep, bear [~~entry~~], deer [~~entry~~], oryx, javelina, and ibex hunts must be received, in the Santa Fe office only, by 5:00 p.m. on dates set by the state game commission.

C. Mailed application deadline: Mailed applications postmarked, but not delivered by the deadline date, will be accepted by the Santa Fe office up to five working days after that deadline.

D. One applicant per application: No more than one person may apply under each application number for bighorn sheep, bear [~~entry~~], ibex, [~~game management sub-unit 6B (Valles Caldera national preserve);~~] and GMU 5A private land deer.

E. Two applicants per application: No more than two persons may apply under the same application number for turkey and oryx.

F. Four applicants per application: No more than four persons may apply under the same application number for deer [~~entry~~], elk, pronghorn antelope, Barbary sheep and javelina.

G. Resident and non-resident application combination: Any mixture or combination of residents and non-residents may make application for special drawing providing the number of applicants does not exceed the restriction of this section (subsection D, E or F).

H. Applications rejected: Applications for licenses may be rejected by the department if an applicant did not:

- (1) apply on the proper form as designated by the director;
- (2) submit the correct or required information;
- (3) submit the correct license or application fee, and any other required fee;
- (4) meet the deadline date;
- (5) comply with a current statute or rule, or did not submit valid written landowner permission when specified by rule.

I. More applications than permits: If more applications for public licenses or permits are received than there are licenses or permits available, the available licenses or permits shall be allotted by means of a public drawing.

J. Increase in licenses or permits: The number of licenses or permits available may be increased to accommodate corrections or errors by the department which results in the addition of names to the successful list.

K. Additional choices: Applicants for public licenses may designate additional choices for hunt periods.

L. Application categories: Applications for special drawing hunts will be placed into the appropriate categories, as specified in 17-3-16 NMSA 1978 by department personnel or their designee. Special drawings shall continue to draw applicants from the appropriate drawing pool progressively for each respective hunt code, starting with first choice applicants, then proceeding to second and subsequent choice applicants until the quota has been met or the pool of applicants has been exhausted.

M. Resident and non-resident applications:

(1) ~~[A non-resident applicant must have a valid outfitter registration number on his or her application to be placed in the separate pool designed for guided hunts.] To be placed in the separate pool designated for guided hunts, an applicant must have a valid registration number issued to a New Mexico outfitter as prescribed in Paragraph H of Section 17-3-6 NMSA 1978 Compilation, on their application.~~

(2) For an application to be successfully drawn, there must be a sufficient number of licenses or permits available for that hunt code to accommodate all applicants from their respective drawing pools.

(3) Any licenses left over from the appropriate drawing pool will be allocated as prescribed in Paragraph C of Section 17-3-16 NMSA 1978 Compilation.

N. New Mexico department game and fish customer identification number: All persons making application to the department for hunt drawings for public licenses and permits and private landowner authorizations shall submit on the application a "New Mexico department of game and fish (NMDGF) customer identification number".

(1) "NMDGF customer identification number" shall be obtained only from the department and must be obtained prior to the submission of any application or private landowner authorization.

(2) Each person making application for public drawing license, permit or private

landowner authorization must use their own valid NMDGF customer identification number on his or her application.

(3) Any application received without a valid NMDGF customer identification number or false NMDGF customer number will be rejected.

O. Trapper license restriction: The number of trapper licenses shall be unlimited and available only through department offices or the department's web site.

[19.31.3.8 NMAC - Rp, 19.31.3.8 NMAC, 12-30-04; A, 4-1-07; A, 3-16-09; A, 3-31-10; A, 3-15-11; A, 9-30-11]

19.31.3.9 PRIVATE LAND - PRONGHORN ANTELOPE AND ELK LICENSES:

A. ~~[No application deadline:]~~ Private land licenses for elk and pronghorn antelope will be issued without an application deadline.

B. ~~[Issuance of licenses:]~~ Licenses will be issued, in person or by mail, out of the Santa Fe, Albuquerque, Las Cruces, Roswell, and Raton offices. The amount due for a private land hunting license shall be composed of "landowner authorization certificate" fee, the appropriate "certificate of application" fee as defined in 19.30.9 NMAC and the appropriate license fee as defined in section 17-3-13 NMSA 1978.

C. ~~[Maximum number of licenses:]~~ Licenses will be issued only up to the number of authorizations allotted for each ranch and only to persons who submit a properly completed form and the appropriate fees.

D. ~~[No authorizations issued:]~~ Authorizations for elk licenses may be issued to landowners in game management units where no core occupied elk range is designated and to landowners whose private property lays outside of the designated core occupied elk range pursuant to subsection A of 19.30.5.11 NMAC.

[19.31.3.9 NMAC - Rp, 19.31.3.9 NMAC, 12-30-04; A, 6-15-06; A, 4-1-07; A, 3-16-09; A, 3-15-11; A, 9-30-11]

19.31.3.11 RESTRICTIONS:

A. One license per big game species per year: It shall be unlawful for anyone to hold more than one permit or license for any one big game species during the current license year unless otherwise allowed by rule.

B. Validity of license or permit: All permits or licenses shall be valid only for the specified dates, eligibility requirements or restrictions, legal sporting arms, bag limit and area. Except that a permit

or license will be valid on the contiguous deeded land of private property that extends into an adjacent GMU that is open to hunting for that species, when the license holder is in possession of current, valid written permission from the appropriate landowner. This exception shall only apply when the adjacent unit has the same restrictions as to weapon type, bag limit, season dates and license availability.

C. Improper license and permit: Any person who attempts to capture or shoot, hunts, kills, injures or takes, in any manner any game animal, fur-bearing animal, game bird or game fish other than in accordance with the specified hunt code or dates, legal sporting arm, bag limit allowance or area designated on a license or permit issued by the department to that person is deemed to be hunting, fishing or trapping without a proper license as required by 17-3-1 NMSA 1978 unless otherwise exempted by a valid commission rule.

D. Transfer of permits or licenses: The director may grant the transfer of a hunting license or permit once it has been determined that a licensee or their official representative provides written, verifiable information indicating the licensee has died, sustained an injury or life-threatening illness, or has been subject to deployment by the United States military that prohibits the licensee from hunting. When a transfer of a license results in a higher license fee due to differences between the original licensee and the new licensee (age, residency, etc.), the difference shall be paid prior to issuance of a license or permit.

E. Refunds: The director may grant the refund of a hunting license once it has been determined that a licensee or their official representative provides written, verifiable information indicating the licensee has died, sustained an injury or life-threatening illness, or has been subject to deployment by the United States military that prohibits the licensee from hunting.

F. Donation of permits or licenses: Upon written request from a licensee or their official representative, the director may grant the donation of a hunting license for transfer to a person who has been qualified through a nonprofit wish-granting organization. The donor of the license shall not be eligible for a refund of license or application fees. When a transfer of a license results in a higher license fee due to differences between the original licensee and the new licensee (age, residency, etc.), the difference shall be paid prior to issuance of a license or permit. The state game commission must approve any nonprofit wish-granting organizations that identify and submit recipients for donated licenses or permits. However, a once-in-a-lifetime licensee may be reinstated as eligible to participate in future drawings for the same

species and hunt type if the licensee donated his or her license to an individual qualified by an approved nonprofit wish granting organization. Donation of a once-in-a-lifetime license will not prohibit the donor from applying for and receiving another license for the same species and restrictions in the future.

G. More than one application: It shall be unlawful to submit more than one application per species for any license issued through a special drawing, unless otherwise permitted by regulation. [~~Exception: An individual may apply for both a population management hunt on public or private land and a special drawing hunt. However, an applicant shall follow the application procedures outlined in 19.31.3.8 NMAC.~~]

H. Handicapped fishing or handicapped general hunting license qualifications: To hold a handicapped fishing or handicapped general hunting license, the individual must be a resident of New Mexico and must show proof of a severe disability by reason of one or more developmental or physical disabilities resulting from amputation, arthritis, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, muscular dystrophy, musculoskeletal disorders, neurological disorders, paraplegia, quadriplegia and other spinal cord conditions, sickle cell anemia, and end-stage renal disease, or who has a combination of permanent disabilities which cause comparable substantial functional limitation. Reasonable accommodation will be made, relating to these licenses, upon request.

I. Mobility impaired (MI) deer, elk, oryx, or antelope license qualifications: To hold a mobility impaired deer, elk, oryx, or antelope license, a person must submit verifiable documentation on the proper department form that is attested to by a certified medical physician that the individual has a mobility restriction which limits their activity to a walker, wheelchair, or two crutches, or severely restricts the movement in both arms or who has a combination of permanent disabilities which cause comparable substantial functional limitation and then obtain department approval for MI hunt eligibility. Every person qualified as MI shall have their card/eligibility expire 48 months from the department's approval date or issuance date, whichever is later, and must resubmit their application and obtain department approval as required above prior to being eligible to apply for any MI hunt.

J. 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. Applicant for firearm hunts must provide hunter education certificate number

on application.

K. An individual making license application shall supply the department on the appropriate form with all required personal information including, but not limited to name, address, date-of-birth, last four digits of his/her social security number prior to an application form being processed or a license being awarded.

L. Military only hunts: Applicants must be full time active military and proof of military status must accompany application or, if applying online, must be forwarded to the department by the application deadline date.

M. Penalty assessments: When a person is issued a penalty assessment citation for fishing without a license or hunting small game without a license, the citation will serve as a special permit for that specific activity for 15 calendar days. The person must remit the prescribed penalty amount indicated on the face of the citation within 30 days of the date of citation issuance.

N. Iraq/Afghanistan veteran oryx hunts: Only New Mexico residents who served on active duty military during the Iraq or Afghanistan conflict are eligible to apply for Iraq/Afghanistan veteran oryx licenses. Proof of active duty military assignment in Iraq or Afghanistan must accompany application or, if applying online, must be forwarded to the department by the application deadline date.

O. Mentor/youth only hunts: Applications for mentor/youth only hunts are limited to one adult (18 years and older) and up to three youth applicants (under 18 years as of opening day of the hunt). Youth applicants for any mentor/youth only firearm hunts must provide hunter education certificate number on application.

P. Youth encouragement hunts: Only youth hunters as defined by 19.31.3.11 NMAC that successfully fulfilled all application requirements and responsibilities for draw hunts for deer, elk, antelope, ibex, oryx, or bighorn sheep in the current license year and were unsuccessful in drawing any licenses or permits will be eligible to register for these hunts.

Q. NMDGF customer identification number: It shall be unlawful for an applicant to use another person's NMDGF customer identification number or to provide false information to obtain a NMDGF customer identification number.

R. Application fee: [~~All applicants for special hunt drawings for all public draw licenses shall pay the non-refundable application fee and applicable license fees prior to the drawing as defined by 19.30.9.9 NMAC. Disabled American veterans certified as holders of lifetime general hunting and fishing licenses are exempt from paying the application fee~~

when applying for deer hunt drawings.] Prior to the drawing, all applicants for special hunt drawings for public draw licenses shall pay the applicable species license fees including depredation damage stamp, the required game hunting license fee and the non-refundable application fee as defined by 19.30.9.9 NMAC. Disabled American veterans certified as holders of lifetime general hunting and fishing licenses are exempt from paying the application fee when applying for deer hunt drawings.

S. Game hunting license fee refund: Applicants for special hunt drawings for public draw licenses may elect to receive a refund of the game hunting license and appropriate fees if they are unsuccessful in the drawing for all of the species applied for as long as an authorization number (pursuant to 17-3-5 NMSA 1978) has not been issued to the applicant by the department.

[19.31.3.11 NMAC - Rp, 19.31.3.11 NMAC, 12-30-04; A, 6-30-05; A, 9-30-05; A, 10-31-05; A, 3-31-06; A, 6-15-06; A, 4-1-07; A, 8-15-07; A, 3-16-09; A, 3-15-11; A, 9-30-11]

**NEW MEXICO
PUBLIC REGULATION
COMMISSION**

Repealer: The New Mexico Public Regulation Commission repeals SCC 72-4, Order No. 2202, Docket 335, entitled "Regulations Governing Clearances on Railroads with Reference to Side and Overhead Structures and Parallel Tracks", filed 10/2/1972 and SCC-85-7, entitled "In Re Adoption of Railroad Rules and Regulations", filed 9/18/1985 and replaces them with the new rule 18.14.2 NMAC, "Railroad Safety" effective September 30, 2011.

**NEW MEXICO
PUBLIC REGULATION
COMMISSION**

**TITLE 18 TRANSPORTATION
AND HIGHWAYS
CHAPTER 14 RAILROADS
PART 2 RAILROAD SAFETY**

18.14.2.1 ISSUING AGENCY: Public Regulation Commission. [18.14.2.1 NMAC - N, 9/30/11]

18.14.2.2 SCOPE: This rule applies to all railroads operating in New Mexico. [18.14.2.2 NMAC - N, 9/30/11]

18.14.2.3 STATUTORY AUTHORITY: NMSA 1978 Sections 8-8-

4, 8-8-11, 63-3-36, and 63-7-1.1. [18.14.2.3 NMAC - N, 9/30/11]

18.14.2.4 DURATION: Permanent. [18.14.2.4 NMAC - N, 9/30/11]

18.14.2.5 EFFECTIVE DATE: September 30, 2011, unless a later date is cited at the end of a section. [18.14.2.5 NMAC - N, 9/30/11]

18.14.2.6 OBJECTIVE: The purpose of this rule is to establish safety requirements for railroads operating in New Mexico and to establish basic procedures for use when crossings are sought to be opened or closed. [18.14.2.6 NMAC - N, 9/30/11]

18.14.2.7 DEFINITIONS: In addition to the definitions set out in 49 CFR Parts 200 to 268 and in the AREMA clearances manual, as used in this rule: **commission** means the public regulation commission. [18.14.2.7 NMAC - N, 9/30/11]

18.14.2.8 REFERENCES TO OTHER DOCUMENTS: Whenever this rule refers to a federal or state statute, rule, or regulation, or to a technical or other document, the reference, unless specifically stated to the contrary, is continuous and is intended to refer to the most current version of the document. [18.14.2.8 NMAC - N, 9/30/11]

18.14.2.9 ADOPTION OF MINIMUM SAFETY REQUIREMENTS BY REFERENCE: The commission adopts by reference as part of this rule, and a railroad shall comply with the safety requirements set forth in:

A. Code of federal regulations. 49 CFR parts 200 to 268; and

B. AREMA clearances manual. Chapter 28, clearances, of the manual for railway engineering published by the American railway engineering and maintenance-of-way association (AREMA). [18.14.2.9 NMAC - N, 9/30/11]

[Copies may be obtained from AREMA, 10003 Derekwood Lane, Lanham, Maryland 20706.]

18.14.2.10 RENEWAL OF STATE PARTICIPATION AGREEMENT: The director of the transportation division, on behalf of the commission, may annually renew the agreement between New Mexico and the federal railroad administration for state participation in the national railroad safety program. [18.14.2.10 NMAC - N, 9/30/11]

18.14.2.11 OPENING AND

CLOSING CROSSINGS:

A. Railroads are subject to the construction and maintenance requirements set forth in NMSA 1978 Section 63-3-36.

B. Any person who believes that an additional crossing is necessary and in the public interest may petition the commission for a determination regarding the need for such a crossing. The transportation division director shall promptly notice the pending petition for public comment, and the commission shall, as soon as practicable consistent with due process, hold a hearing, whereupon it may issue an order prohibiting or permitting the additional crossing.

C. Any person who believes that an existing crossing is unnecessary or not in the public interest may petition the commission for a determination regarding the need for such a crossing. The transportation division director shall promptly notice the pending petition for public comment, and the commission shall, as soon as practicable consistent with due process, hold a hearing, whereupon it may issue an order requiring that the existing crossing be closed, kept open, or modified as needed to conform with current applicable safety standards.

D. Any railroad contemplating the closure of an existing crossing of a public highway, city, town or village street at grade, must notify the transportation division director at least sixty (60) days prior to any actual closure of such crossing. The transportation division director shall promptly notice the pending closure for public comment, and the commission shall, as soon as practicable consistent with due process, hold a hearing, whereupon it may issue an order prohibiting or permitting the closure.

E. Railroad DOT and mile post numbers and letters shall be posted at each existing railroad crossing in New Mexico. [18.14.2.11 NMAC - Rp, SCC-85-7, Rule 1, 9/30/11]

18.14.2.12 REPORTS OF ACCIDENTS AND INCIDENTS:

A. Whenever a railroad is required by 49 CFR 225.9 to immediately report an accident/incident by telephone to the federal railroad administration, the railroad shall immediately report the same accident/incident information by telephone to the transportation division of the public regulation commission.

B. Whenever a railroad learns of the occurrence of an accident/incident involving a railroad car carrying hazardous material as provided in 49 CFR 172, the railroad shall immediately report by telephone to the New Mexico state police,

the New Mexico environment department, and the transportation division of the public regulation commission.

C. Each report provided under this section must state:

- (1) the name of the railroad;
- (2) the name, title, and telephone number of the person making the report;
- (3) the time, date, and location of the accident/incident;
- (4) the circumstances of the accident/incident;
- (5) the number of fatalities and injuries involved, if any; and
- (6) the specific hazardous commodity, if any, involved in the accident/incident.

D. A railroad shall furnish to the transportation division of the public regulation commission a copy of each monthly accident/incident report it files with the federal railroad administration pursuant to 49 CFR 225. The report shall be filed with the transportation division at the same time it is filed with the federal railroad administration.

[18.14.2.12 NMAC - Rp, SCC-85-7, Rule 3, 9/30/11]

18.14.2.13 MAPS AND PROFILES:

A railroad shall file with the commission the first January 15 after this rule takes effect a map showing all lines and grade crossings and a list of all grade crossings the railroad has in New Mexico, and on or before January 15 of each year a map showing any changes to its lines and grade crossings in New Mexico since the previous filing and a list of changes to its grade crossings in New Mexico since the previous filing.

[18.14.2.13 NMAC - Rp, SCC-85-7, Rule 7, 9/30/11]

18.14.2.14 WAIVER OF OR VARIANCE FROM RULE REQUIREMENTS:

A. The commission may, in its discretion, waive or vary any state-imposed requirement of these rules whenever the commission finds that such waiver or variance would be in the public interest.

B. A railroad that cannot meet one or more of the state-imposed requirements of these rules may petition the commission for a waiver or variance. The petition shall be in writing and shall include:

- (1) a list of those state-imposed requirements which the railroad wishes to have waived or varied;
- (2) an explanation and description of the specific conditions which prevent the requirement from being met; and
- (3) a statement of steps already taken and to be taken, with projected time limits for each step, in attempting to meet the

requirements.

C. The commission may order a hearing on the merits of the petition.

D. A railroad shall be required to comply with requirements it has petitioned to have waived or varied until the commission has issued an order on the merits of the petition, unless the commission or its designee grants an interim waiver of or variance from one of more of the requirements that are the subject of the petition.

E. No waiver or variance of any state-imposed requirement of these rules granted by the commission is transferable.

[18.14.2.14 NMAC - N, 9/30/11]

18.14.2.15 RULES OF

PROCEDURE: In all hearings before the commission involving railroad companies, the commission shall follow the public regulation commission rules of procedure as codified at 1.2.2.7 NMAC, et seq., except that a specific provision in this rule shall control over a conflicting general provision in the rules of procedure.

[18.14.2.15 NMAC - N, 9/30/11]

18.14.2.16 FILING OF DOCUMENTS:

A. Address for filing pleadings.

(1) **By mail.** Pleadings to be filed by mail must be sent to public regulation commission, records management bureau, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

(2) **In person.** Pleadings to be filed in person must be delivered to public regulation commission, records management bureau, 1120 Paseo de Peralta, at the corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico.

(3) **By facsimile.** Pleadings filed by facsimile must be sent to (505) 476-0324.

(4) **By electronic mail.** Call the records management bureau at 505-827-4526 for the correct email address for filing pleadings by electronic mail.

B. Address for filing all other documents.

(1) **By mail.** Documents other than pleadings to be filed by mail must be sent to public regulation commission, transportation division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

(2) **In person.** Documents to be filed in person must be delivered to the public regulation commission, transportation division, 1120 Paseo de Peralta, at the corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico.

(3) **By facsimile.** Documents filed by facsimile must be sent to (505) 827-4417.

(4) **By electronic mail.** Call the chief of the transportation division investigations bureau at 505-827-4393

for the correct email address for filing documents by electronic mail.

C. Photocopies of forms permitted. The commission will accept filings made on photocopies of commission forms, provided the copies are legible.

D. Filing by facsimile. Persons filing documents by facsimile should also file the original with the commission either by mail or in person. The document will be deemed filed on the date of receipt of either the facsimile or the original, whichever occurs first. The commission will accept filing by facsimile of the following documents:

(1) change of address reports;

(2) reports of fatal accidents;

(3) complaints; and

(4) other documents the commission, in its discretion, or its designee permits.

[18.14.2.16 NMAC - N, 9/30/11]

HISTORY OF 18.14.2 NMAC:

Pre-NMAC History. The material in this rule was previously filed with the State Records Center:

SCC 72-4, Order No. 2202, Docket 335, Regulations Governing Clearances on Railroads with Reference to Side and Overhead Structures and Parallel Tracks, filed 10/2/72

SCC-85-7, In Re Adoption of Railroad Rules and Regulations, filed 9/18/85

History of Repealed Material.

SCC 72-4, Order No. 2202, Docket 335, Regulations Governing Clearances on Railroads with Reference to Side and Overhead Structures and Parallel Tracks, filed 10/2/72 - Repealed effective 9/30/2011
SCC-85-7, In Re Adoption of Railroad Rules and Regulations, filed 9/18/85 - Repealed effective 9/30/2011

End of Adopted Rules Section

Submittal Deadlines and Publication Dates 2011

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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

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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
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Issue Number 15	August 1	August 15
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