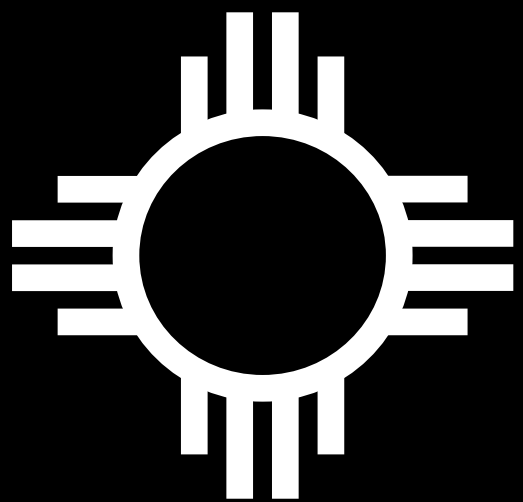


**NEW  
MEXICO  
REGISTER**

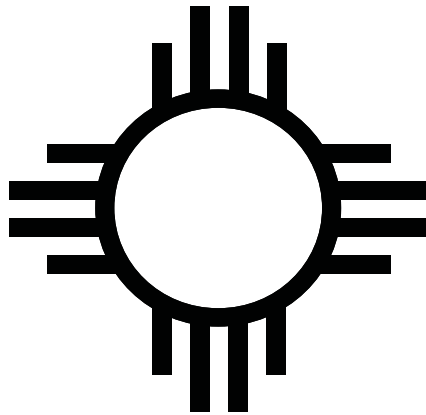


Volume XXIII  
Issue Number 14  
July 31, 2012



# **New Mexico Register**

**Volume XXIII, Issue Number 14  
July 31, 2012**



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

The Commission of Public Records  
Administrative Law Division  
Santa Fe, New Mexico  
2012

COPYRIGHT © 2012  
BY  
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

# New Mexico Register

Volume XXIII, Number 14

July 31, 2012

## Table of Contents

### Notices of Rulemaking and Proposed Rules

<b>Albuquerque-Bernalillo County Air Quality Control Board</b>	
Notice of Hearing and Meeting .....	447
Notice of Hearing and Regular Meeting .....	447
<b>Game Commission</b>	
Public Meeting and Rule Making Notice .....	448
<b>Human Services Department</b>	
Income Support Division	
Notice of Public Hearing (SNAP) .....	448
Notice of Public Hearing (LIHEAP) .....	449
<b>Medical Board</b>	
Notice of Regular Board Meeting and Public Rule Hearing .....	449
<b>Oil Conservation Commission</b>	
Notice of Public Hearing .....	449
<b>Public Records, Commission of</b>	
Notice of Regular Meeting .....	450

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*A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered*

<b>Funeral Services, Board of</b>		
16.64.1 NMAC	A	Funeral Homes and Disposers: General Provisions .....
16.64.2 NMAC	A	Fees .....
16.64.3 NMAC	A	Requirements for Licensure .....
16.64.4 NMAC	A	Requirements for Establishments and Crematories .....
16.64.5 NMAC	A	Examinations .....
16.64.6 NMAC	A	Continuing Education .....
16.64.7 NMAC	A	License Renewal .....
16.64.8 NMAC	A	Funeral Service Intern Practices .....
16.64.9 NMAC	A	Direct Disposition Practices .....
16.64.10 NMAC	A	Cremation Practices .....
16.64.11 NMAC	A	Complaints .....
16.64.12 NMAC	A	Parental Responsibility Act Compliance .....
<b>Game and Fish, Department of</b>		
19.30.12 NMAC	A	Pronghorn License Allocation System .....
19.31.5 NMAC	A	Upland Game .....
19.31.11 NMAC	A	Bear and Cougar .....
19.31.15 NMAC	A	Pronghorn Antelope .....
19.31.17 NMAC	A	Bighorn Sheep .....
19.34.7 NMAC	A	Open Gate: Hunting and Fishing Access Program .....
19.34.2 NMAC	Rn & A	Habitat Protection .....
<b>Human Services Department</b>		
Medical Assistance Division		
8.305.16 NMAC	A	Client Transition of Care .....
<b>Public Records, Commission of</b>		
1.13.2 NMAC	A	Fees .....
1.13.11 NMAC	A	Access to Public Records, Research in the New Mexico Archives .....

<b>Public Regulation Commission</b>			
17.9.551 NMAC	N	Prior Approval of Purchased Power Agreements . . . . .	484
<b>Racing Commission</b>			
15.2.6 NMAC	A	Veterinary Practices, Equine Health, Medication, and Trainer Responsibility . . . . .	486
<b>Regulation and Licensing Department</b>			
12.2.15 NMAC	R	Sale of Recycled Metals . . . . .	499
12.2.15 NMAC	N	Sale of Recycled Metals . . . . .	499
12.2.16 NMAC	N	Application for Registration . . . . .	500
12.2.17 NMAC	N	Reporting Requirements . . . . .	500
12.2.18 NMAC	N	Duties and Responsibilities . . . . .	501
<b>Taxation and Revenue Department</b>			
3.2.242 NMAC	A	Deduction - Gross Receipts Tax - Receipts of Retailers from Sales of Certain Tangible Personal Property . . . . .	502
3.5.12 NMAC	A	Valuation of Property for Inclusion in Property Factor . . . . .	503
3.5.19 NMAC	A	Equitable Adjustment of Standard Allocation or Apportionment. . . . .	504

The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

The *New Mexico Register*  
Published by  
The Commission of Public Records  
Administrative Law Division  
1205 Camino Carlos Rey  
Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507. Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail [staterules@state.nm.us](mailto:staterules@state.nm.us).

## Notices of Rulemaking and Proposed Rules

### ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

#### ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF HEARING AND MEETING

On **September 12, 2012 at 5:30 PM**, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers (City Council/County Commission Chambers) at the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102. The hearing will address a proposal to amend 20.11.82 NMAC, *Rulemaking Procedures-Air Quality Control Board*.

The purpose of the hearing is to receive testimony on a proposal to amend 20.11.82 NMAC, *Rulemaking Procedures-Air Quality Control Board*. The amendments proposed to this regulation include clarification of definitions and procedures; mirroring language in the Environmental Improvement Board rulemaking regulation when possible for the sake of consistency; changing the number of copies required for service of documents to be consistent throughout the regulation; distinguishing between technical and non-technical testimony in the section on "Participation by General Public"; extending the number of days allowed for filing a motion seeking a stay of a rule adopted by the Board from 15 to 30 days; making a clearer distinction between "person", "participants" and "parties" throughout the regulation; and clarifying the procedure for "Stay of Board Regulations".

After the hearing closes the Air Board is expected to convene its regular monthly meeting during which they will consider adopting the proposed amendments to 20.11.82 NMAC, *Rulemaking Procedures-Air Quality Control Board*.

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

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, the Bernalillo County Ordinance 94-5, Section 6, and the currently effective 20.11.82 NMAC, *Rulemaking Procedures - AQCB*.

Anyone intending to present technical testimony at this hearing is asked to submit a written notice of intent to testify (NOI) as required by 20.11.82.20 NMAC. An NOI that complies with 20.11.82.20 NMAC shall be delivered before 5:00pm on August 28, 2012 to: Attn: Margaret Nieto, Albuquerque Environmental Health Department (EHD), P.O. Box 1293, Albuquerque, NM 87103, or, you may deliver your NOI to the EHD, Room 3023, 400 Marquette Avenue NW. The NOI shall identify the name, address, and affiliation of the person testifying.

In addition, EHD asks that non-technical written comments to be incorporated into the public record for the September 12, 2012 hearing be sent to at the above P.O. Box, or EHD office, before 5:00 pm on September 5, 2012. Comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to [mnieto@cabq.gov](mailto:mnieto@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 Ms. Nieto electronically at [mnieto@cabq.gov](mailto:mnieto@cabq.gov) or by phone (505) 768-2637.

**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

### ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

#### ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF HEARING AND REGULAR MEETING

On September 12, 2012, at 5:30 pm, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will 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 20.11.3 NMAC, *Transportation Conformity*, and to incorporate an amended 20.11.3 NMAC into the New Mexico State Implementation Plan (SIP) for air quality. The Air Quality Division (AQD) of the City of Albuquerque Environmental Health Department is proposing these amendments in response to the promulgation by the U.S. Environmental Protection Agency (EPA) of an amended federal transportation conformity rule.

On March 14, 2012, the EPA promulgated changes to the transportation conformity rule. This rule became effective on April 13, 2012 [FR Vol. 77, No. 50, 14979-14988]. In response, and as required by EPA, the AQD is proposing amendments to update the local conformity regulation.

#### **EPA's updated rule:**

The EPA has finalized changes to the transportation conformity rule to make the rule apply to any future new or revised national ambient air quality standards (NAAQS). The final rule restructures two sections of the transportation conformity rule so that existing requirements will apply for any new or revised NAAQS. Restructuring these sections will reduce the need to amend the rule in the future merely to reference a specific NAAQS and will provide more certainty to transportation planners without compromising environmental benefits. This final rule ensures that air quality is protected and clarifies requirements for implementers. EPA has worked closely with the U.S. Department of Transportation to develop this final rule.

#### **Background**

Transportation conformity is a Clean Air Act requirement that ensures that federally supported highway and transit projects are consistent with SIPs. Conformity helps protect public health through early consideration of the air quality impacts of transportation decisions in places where air quality does not currently meet federal standards or has not met them in the past.

#### Key Elements of the Final Rule

The final rule primarily restructures two sections of the conformity rule, 20.11.3.109 NMAC [40 CFR 93.109] and 20.11.3.119 NMAC [40 CFR 93.119], so that the existing rule requirements clearly apply to areas designated for future new or revised NAAQS, thus reducing the need to amend the transportation conformity rule merely to reference specific new NAAQS. As a result of these changes, the conformity rule will apply to any new NAAQS that EPA establishes in the future. This rule also allows PM<sub>2.5</sub> areas with clean air quality data to take advantage of conformity flexibilities that are currently available only to ozone areas.

#### Health and Environmental Benefits

The final rule ensures that transportation activities are consistent with air quality goals of the transportation conformity program. The final rule ensures that all nonattainment and maintenance areas use conformity tests that ensure air quality progress continues in areas that need to attain or maintain the NAAQS.

Following the hearing, the Air Board will hold its regular monthly meeting during which the Air Board is expected to consider adopting the proposed amendments to 20.11.3 NMAC, *Transportation Conformity*, and incorporating the amended regulation into the SIP.

The Air Board is the federally delegated air quality authority for Albuquerque and Bernalillo County. Local delegation authorizes the Air Board to administer and enforce the CAA 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 Air 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.

Anyone intending to present technical testimony is required by 20.11.82 NMAC, *Rulemaking Procedures - AQCB*, to submit a written Notice Of Intent (NOI) before 5:00 pm on August 28, 2012 to: Attn: September Hearing Record, Mr. Neal Butt, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW. The NOI shall identify the person's name, address and affiliation.

Non-technical testimony may be provided at the hearing pursuant to 20.11.82.22 NMAC, but to ensure adequate time for review of submitted testimony, the AQD requests that written comments to be incorporated into the public record be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on September 5, 2012. The 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](mailto: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, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or by phone 768-2660, or by e-mail at [nbutt@cabq.gov](mailto:nbutt@cabq.gov), or by downloading a copy from the City of Albuquerque Air Quality Division website.

**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 GAME COMMISSION

### STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On **Thursday, August 23, 2012**, beginning at 9:00 a.m., at the **Council Chambers of Rio Rancho City Hall, 3200 Civic Center Circle, NE, Rio Rancho, NM 87144**, the State Game Commission will meet in public session to hear and consider action as appropriate on the following: revocations, public land access; *Terk* decision relating to license quota; deer and antelope program update; impact of wildfires on wildlife

and habitat; bear and cougar harvest update; prairie chicken conservation plan; biennial review of state-listed threatened and endangered species; Roswell Spring River Pond fishing partnership; prospective legislative initiatives; FY 2014 budget request; proposed amendments to the following rules: Manner and Method, Revocation, Hunter Education, Turkey, Ibex portion of Barbary sheep, Oryx, and Persian Ibex; and general public comments (comments are limited to three minutes).

Obtain a copy of the agenda from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504, or from the Department's website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8008, or the Department's website at [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us) for updated information.

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 or meeting, please contact Sonya Quintana at (505) 476-8027. Please contact Ms. Quintana at least three working days before the meeting date. Public documents, including the Agenda and Minutes are provided in various accessible forms upon request.

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

### NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing on August 30, 2012 at 12:00 pm, to receive testimony on a proposed change to the Extra Help Supplemental Nutrition Assistance Program (SNAP) benefit amount based on the most current cost neutrality calculation as established by the Food and Nutrition Services, United States Department of Agriculture. This amount is subject to review and adjustment in January of each year.

The proposed regulation is available on the Human Services Department website at <http://www.hsd.state.nm.us/isd/ISDRegisters.html>. Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling 505-827-7250.

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. Please send comments to:

Sidonie Squier, Secretary  
Human Services Department  
P.O. Box 2348, Pollon Plaza  
Santa Fe, NM 87504-2348

You may send comments electronically to:  
[vida.tapia-sanchez@state.nm.us](mailto:vida.tapia-sanchez@state.nm.us)

---

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

### Notice of Public Hearing

This Human Services Register requests public comments on the annual LIHEAP State Plan and proposed regulations. Each year, the LIHEAP State Plan is submitted to the Federal administering agency, the Department of Health and Human Services (DHHS). The LIHEAP State Plan will be amended to reflect the administration of the LIHEAP program in Federal Fiscal Year (FFY) 2013 and to make any adjustments to the LIHEAP Federal poverty guidelines (FPG) as required by federal statute.

The Department proposes to administer LIHEAP in FFY 2013 with any federally mandated changes to the Federal Poverty guidelines (FPG).

The current LIHEAP State Plan can be viewed on the HSD website at <http://www.hsd.state.nm.us/isd/ISDPlans.html>.

The proposed regulations are available on the HSD website at <http://www.hsd.state.nm.us/isd/ISDRegisters.html>

Any changes in Federal Poverty Guidelines that are proposed in policy will be incorporated into the FFY 2013 LIHEAP State Plan.

The current regulations can be viewed on the internet at [http://www.nmcpr.state.nm.us/nmac/\\_title08/T08C150.htm](http://www.nmcpr.state.nm.us/nmac/_title08/T08C150.htm).

Individuals wishing to request a copy of the current and proposed rule changes and/or the current and the proposed LIHEAP State Plan should contact the Income Support Division, Work and Family Support Bureau, P O Box 2348, Santa Fe, New Mexico 87504-2348, or by calling 505-827-7258.

The Department proposes to implement these regulations effective October 1, 2012.

A public hearing to receive testimony on these proposed regulations will be held

August 30, 2012 at 1:00 PM. The hearing will be held in the Income Support Division Director's Conference Room at Pollon Plaza, 2009 S. Pacheco St., Santa Fe, NM 57505. Parking accessible to persons with physical impairments is available.

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 any HSD public hearing, program, or service, please contact the NM Human Services Department toll free at 1-800-432-6217 or through the Relay New Mexico system, toll free at 1-800-659-8331. The Department requests at least ten-day advance notice to provide requested alternative formats and special accommodations.

Interested persons may address written or recorded comments to:

Sidonie Squier, Secretary  
State of New Mexico  
Human Services Department  
P.O. Box 2348  
Santa Fe, New Mexico 87504-2348

Interested parties may also address comments by electronic mail to: [JoAnn.Lapington@state.nm.us](mailto:JoAnn.Lapington@state.nm.us)

These comments must be received no later than 5:00 P.M., on August 30, 2012. Written and recorded comments will be given the same consideration as oral comments made at the public hearing.

Publication of these proposed regulations approved on July 13, 2012 by:

Sidonie Squier, Secretary  
Human Services Department

---

## NEW MEXICO MEDICAL BOARD

### NEW MEXICO MEDICAL BOARD

#### Notice

The New Mexico Medical Board will convene a regular Board Meeting on Thursday, August 9, 2012 at 8:30 a.m. and Friday, August 10, 2012 at 9:00 a.m. in the Conference Room, 2055 S. Pacheco, Building 400, Santa Fe, New Mexico. A Public Rule Hearing will be held on Friday, August 10, 2012 at 9:00 a.m. The Board will reconvene after the Hearing to take action on the proposed rule. The Board may enter into Executive Session during the meeting to discuss licensing or limited personnel issues.

The purpose of the Rule Hearing is to consider amending 16.10.14 NMAC

Management of Chronic Pain with Controlled Substances.

Copies of the proposed rule is available on request from the Board office at the address listed above, by phone (505) 476-7220, or on the Internet at [www.nmmb@state.nm.us](http://www.nmmb@state.nm.us).

Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m., August 3, 2012, to the board office, 2055 S. Pacheco, Building 400, Santa Fe, NM, 87505.

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 in order to attend or participate in the hearing, please contact Lynnelle Tipton, Administrative Assistant at 2055 S. Pacheco, Building 400, Santa Fe, NM at least one week prior to the meeting. Public documents, including the agenda and minutes, can be provided in various accessible formats.

---

## NEW MEXICO OIL CONSERVATION COMMISSION

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

The State of New Mexico, through its Oil Conservation Commission (Commission), hereby gives notice that the Commission will resume a public hearing at 9 a.m. on August 28, 2012, in Porter Hall at 1220 South Saint Francis Drive, Santa Fe, New Mexico. 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. Florene Davidson at (505) 476-3458 or through the New Mexico Relay Network at 1-800-659-1779 by August 17, 2012. Public documents can be provided in various forms. Please contact Ms. Davidson if a summary or other type of form is needed. A preliminary agenda will be available to the public no later than two weeks prior to the meeting. A final agenda will be available no later than 24 hours preceding the meeting. Members of the public may obtain copies of the agenda by contacting Ms. Davidson at the phone number indicated above. Also, the agenda will be posted on the Oil Conservation Division's website at [www.emnrd.state.nm.us/ocd/](http://www.emnrd.state.nm.us/ocd/).

**STATE OF NEW MEXICO TO:  
All named parties and persons**

**having any right, title, interest  
or claim in the following cases  
and notice to the public.**

**Case No.14784: APPLICATION OF THE NEW MEXICO OIL AND GAS ASSOCIATION FOR AMENDMENT OF CERTAIN PROVISIONS OF TITLE 19, CHAPTER 15 OF THE NEW MEXICO ADMINISTRATIVE CODE CONCERNING PITS, CLOSED-LOOP SYSTEMS, BELOW GRADE TANKS, SUMPS AND OTHER ALTERNATIVE METHODS RELATED TO THE FOREGOING AND AMENDING OTHER RULES TO CONFORMING CHANGES, STATEWIDE.** The New Mexico Oil and Gas Association requests an order amending Commission Rules concerning pits, closed-loop systems, below grade tanks, sumps and other alternative methods related to the foregoing proposed amendments, codified as Part 17 of the Rules of the Oil Conservation Division [19.15.17 NMAC]. The proposed amendments are to (i) revise the permitting and registration requirements for permanent pits, temporary pits and below grade tanks; (ii) eliminate the permitting, design, construction and operational requirements for closed-loop systems while requiring that drying pads be designed and constructed to prevent contamination of water; for sumps used to collect liquids from cuttings; and for berms constructed to prevent run-on; (iii) revise the siting, design, construction, operation, closure and site reclamation provisions for temporary pits, permanent pits, drying pads, below grade tanks and tanks associated with closed-loop systems, (iv) authorize standardized plans for pit construction, closure and other matters; (v) adopt a definition for “low chloride” drilling fluids and the establishment of siting, closure and remediation requirements for temporary pits based on the chloride concentration in the waste and the distance between the waste and ground water or a flowing water course; (vi) authorize and adopt requirements for the permitting, siting, design, construction, operation and closure for “multi-well fluid management pits”; (vii) revise the rules governing the testing and removal of below grade tanks; (viii) revise the rules governing onsite disposal in pits and trenches; (ix) revise the rules governing releases, waste testing and excavation and the concentration of wastes disposed in temporary pits or burial trenches; (x) revise the requirements for remediation and site reclamation including contouring and re-vegetation; (xi) revise the rules governing variances and exceptions to these rules to provide for their approval by the appropriate division district office pursuant to procedures set out in the proposed amendments; (xii) revise and adopt rules and procedures set out in the proposed

amendments; (xiii) revise and adopt rules and procedures governing the Oil Conservation Division’s notice, processing and approval of applications filed pursuant to these rules, (xiv) revise the rules governing transfer of a permit; and (xv) otherwise change the Commission’s requirements concerning permitting, design, construction, operation and closure of pits and below grade tanks, operation of sumps and other alternative methods that may be proposed for use in lieu of pits or below grade tanks used in oil and gas operations.

Copies of the text of the proposed amendments are available from the Oil Conservation Division’s Administrator, Florene Davidson at (505) 476-3458 or from the Division’s website at <http://www.emnrd.state.nm.us/ocd/Rules.htm>.

**Case No.14785: APPLICATION OF THE INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO FOR AMENDMENT OF CERTAIN PROVISIONS OF TITLE 19, CHAPTER 15 OF THE NEW MEXICO ADMINISTRATIVE CODE CONCERNING PITS, CLOSED-LOOP SYSTEMS, BELOW GRADE TANKS, SUMPS AND OTHER ALTERNATIVE METHODS RELATED TO THE FOREGOING AND AMENDING OTHER RULES TO CONFORMING CHANGES, STATEWIDE.** The Independent Petroleum Association of New Mexico requests an order amending Commission Rules concerning pits, closed-loop systems, below grade tanks, sumps and other alternative methods related to the foregoing proposed amendments, codified as Part 17 of the Rules of the Oil Conservation Division [19.15.17 NMAC]. The proposed amendments are to (i) revise the permitting and registration requirements for permanent pits, temporary pits and below grade tanks; (ii) eliminate the permitting, design, construction and operational requirements for closed-loop systems while requiring that drying pads be designed and constructed to prevent contamination of water; for sumps used to collect liquids from cuttings; and for berms constructed to prevent run-on; (iii) revise the siting, design, construction, operation, closure and site reclamation provisions for temporary pits, permanent pits, drying pads, below grade tanks and tanks associated with closed-loop systems, (iv) authorize standardized plans for pit construction, closure and other matters; (v) adopt a definition for “low chloride” drilling fluids and the establishment of siting, closure and remediation requirements for temporary pits based on the chloride concentration in the waste and the distance between the waste and ground water or a flowing water course; (vi) authorize and adopt requirements for the permitting, siting, design, construction, operation and closure for “multi-well fluid

management pits”; (vii) revise the rules governing the testing and removal of below grade tanks; (viii) revise the rules governing onsite disposal in pits and trenches; (ix) revise the rules governing releases, waste testing and excavation and the concentration of wastes disposed in temporary pits or burial trenches; (x) revise the requirements for remediation and site reclamation including contouring and re-vegetation; (xi) revise the rules governing variances and exceptions to these rules to provide for their approval by the appropriate division district office pursuant to procedures set out in the proposed amendments; (xii) revise and adopt rules and procedures set out in the proposed amendments; (xiii) revise and adopt rules and procedures governing the Oil Conservation Division’s notice, processing and approval of applications filed pursuant to these rules, (xiv) revise the rules governing the transfer of a permit; and (xv) otherwise change the Commission’s requirements concerning permitting, design, construction, operation and closure of pits and below grade tanks, operation of sumps and other alternative methods that may be proposed for use in lieu of pits or below grade tanks used in oil and gas operations.

Copies of the text of the proposed amendments are available from the Oil Conservation Division’s Administrator, Florene Davidson at (505) 476-3458 or from the Division’s website at <http://www.emnrd.state.nm.us/ocd/Rules.htm>.

Given under the seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 5<sup>th</sup> day of July, 2012.

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

Jami Bailey  
Oil Conservation Commission Chair

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

### NOTICE OF REGULAR MEETING

The New Mexico Commission of Public Records has scheduled a regular meeting for Tuesday, August 21, 2012, at 9:30 A.M. During the meeting, the Commission will also hold a Rule Hearing to take public comment regarding the following proposed rulemaking actions:

**Amendment**  
1.15.3 NMAC GRDS, GENERAL ADMINISTRATIVE RECORDS (For Use by Local Government and Educational

Institutions)

1.18.665 NMAC ERRDS, Department of Health

A copy of the agenda and proposed rules are available at the Office of the State Records Administrator, 1205 Camino Carlos Rey, Santa Fe, NM 87507 and on the Commission website at: [www.nmcpr.state.nm.us/index.htm](http://www.nmcpr.state.nm.us/index.htm). The agenda is subject to change up to 24 hours prior to the meeting.

The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. 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 hearing, please contact Antoinette L. Solano at 476-7902. Public documents, including the agenda and minutes, can be provided in various accessible formats. The Commission requests at least five (5) business days advance notice to provide requested special accommodations and alternative formats.

---

**End of Notices and Proposed  
Rules Section**

---

**This page intentionally left blank**

## Adopted Rules

### NEW MEXICO BOARD OF FUNERAL SERVICES

This is an amendment to 16.64.1 NMAC, Sections 1, 3, 7, 8 and 11, effective 08-08-2012. The chapter name is also amended.

#### CHAPTER 64 F U N E R A L HOMES AND DISPOSERS [~~(THANATOPRACTITIONERS)~~]

**16.64.1.1 ISSUING AGENCY:**  
New Mexico Board of [~~Thanatopractice~~]  
Funeral Services.

[6-15-96, 1-22-99; 16.64.1.1 NMAC - Rn & A, 16 NMAC 64.1.1, 09-15-01; A, 08-08-12]

**16.64.1.3 S T A T U T O R Y  
AUTHORITY:** 16.64.1 NMAC is adopted pursuant to the [~~Thanatopractice~~]  
Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-5, 61-32-6, 61-32-7, and 61-32-12, the Inspection of Public Records Act, Section 14-2-1 et seq. NMSA 1978, and the Open Meeting Act, Section 10-15-1 et seq. NMSA 1978.

[6-15-96; 16.64.1.3 NMAC - Rn & A, 16 NMAC 64.1.3, 09-15-01; A, 08-08-12]

#### **16.64.1.7 DEFINITIONS:**

A. "board" means the board of funeral services;

B. "committal service" means a service at a place of interment or entombment that follows a funeral conducted at another location;

[A-] C. "conspicuously displayed" means certificate of licensure and inspection results notice are collectively posted in a location where a member of the general public within the licensee's place of business will be able to observe and read the certificate of licensure and inspection results notice.

[B-] "arranger(s)" means the person(s) legally entitled to order the final disposition.];

D. "remains" means cremated remains;

E. "cremation" means the reduction of a dead human body by direct flame to a residue, which includes bone fragments;

F. "crematory" means every place or premises that is devoted to or used for cremation and pulverization of the remains;

G. "crematory authority" means the individual who is ultimately responsible for the operation of a crematory;

H. "department" means the regulation and licensing department;

I. "direct disposer" means a person licensed to engage solely

in providing direct disposition at a direct disposition establishment, licensed pursuant to the Funeral Services Act, as provided in that act:

J. "direct disposition" means only the disposition of a dead human body as quickly as possible, without a direct disposer performing or arranging a funeral, graveside service, committal service or memorial service, whether public or private, and without embalming of the body unless embalming is required by the place of disposition;

K. "direct supervision" means that the supervising funeral service practitioner is physically present with and in direct control of the person being trained;

L. "disposition" means the final disposal of a dead human body, whether it be by earth interment, aboveground interment or entombment, cremation, burial at sea or delivery to a medical school, when the medical school assumes complete responsibility for the disposal of the body following medical study;

M. "embalming" means the disinfection, preservation and restoration, when possible, of a dead human body by a licensed funeral service practitioner or a licensed funeral service intern under the supervision of a licensed funeral service practitioner;

N. "ennichement" means interment of cremains in a niche in a columbarium, whether in an urn or not;

O. "entombment" means interment of a casketed body or cremains in a crypt in a mausoleum;

P. "establishment" means every office, premises or place of business where the practice of funeral service or direct disposition is conducted or advertised as being conducted and includes commercial establishments that provide for the practice of funeral service or direct disposition services exclusively to licensed funeral or direct disposition establishments or a school of medicine;

Q. "funeral" means a period following death in which there is an organized, purposeful, time-limited, group centered ceremony or rite, whether religious or not, with the body of the deceased present;

R. "funeral merchandise" means that personal property offered for sale in connection with the transportation, funeralization or disposition of a dead human body, including the enclosure into which a dead human body is or cremains are directly placed, and excluding mausoleum crypts, interment enclosures preset in a cemetery and columbarium niches;

S. "funeral service intern" means a person licensed to be in

training for the practice of funeral service under the supervision and instruction of a funeral service practitioner at a funeral establishment or commercial establishment, licensed pursuant to the Funeral Services Act;

T. "funeral service practitioner" means a person licensed to engage in the practice of funeral service at a funeral establishment or commercial establishment that is licensed pursuant to the Funeral Services Act;

U. "funeral services" means those immediate post-death activities related to a dead human body and its care and disposition, whether with or without rites or ceremonies; but 'funeral services' does not include disposition of the body by a school of medicine following medical study;

V. "general supervision" means that the supervising funeral service practitioner is not necessarily physically present in the establishment with the person being trained but is available for advice and assistance;

W. "graveside service" means a funeral held at the graveside only, excluding a committal service that follows a funeral conducted at another location;

X. "jurisprudence examination" means an examination prescribed by the board on the statutes, rules and regulations pertaining to the practice of funeral service or direct disposition, including the Funeral Services Act, the rules of the board, state health regulations governing human remains and the Vital Statistics Act;

Y. "licensee in charge" means a funeral service practitioner who is ultimately responsible for the conduct of a funeral or commercial establishment and its employees; or a direct disposer who is ultimately responsible for the conduct of a direct disposition establishment and its employees;

Z. "make arrangements" means advising or counseling about specific details for a funeral, graveside service, committal service, memorial service, disposition or direct disposition;

AA. "memorial service" means a gathering of persons for recognition of a death without the presence of the body of the deceased;

BB. "practice of funeral service" means those activities allowed under the Funeral Services Act by the funeral service practitioner or funeral service intern; and

CC. "pulverization" means the process that reduces cremains to a granular substance.

[6-15-96; 16.64.1.7 NMAC - Rn & A, 16



NMAC 64.1.7, 09-15-01; A, 08-08-12]

**16.64.1.8 GENERAL PROVISIONS:**

A. All certificates of licensure, and renewals thereof, issued by the board shall bear the license number, with a different series for each classification of license.

B. The current license, or renewal thereof, of each establishment and crematory and inspection results notice shall be conspicuously displayed in the establishment or crematory, together with the current license, or renewal thereof, of each licensee. The licensee must carry on their person the state issued wallet card license.

C. Any correspondence from the board will be mailed to a licensee at the last address shown in board records. It shall be incumbent on each licensee to notify the board of any change of address. [2-7-76...9-26-93; 16.64.1.8 NMAC - Rn & A, 16 NMAC 64.1.8, 09-15-01; A, 08-08-12]

**16.64.1.11 DOCUMENTS AND CONTRACTS:**

A. All official documents and contracts of any establishment shall bear the signature of the arranger(s), where applicable, and the licensee signing the document or contract as the representative of the establishment, together with the licensee's license classification and license number, and the date the document or contract was signed by the arranger(s) and licensee. The following classification abbreviations shall be allowed:

(1) FSP - funeral service practitioner;

~~[(2) assoc FSP - associate funeral service practitioner;~~

~~(3) asst FSP - assistant funeral service practitioner;]~~

~~[(4)] (2) FSI - funeral service intern;~~

~~[(5)] (3) DD - direct disposer.~~

B. Each establishment and crematory shall maintain copies of all official documents and contracts for funeral, direct disposition, cremation, and any other services rendered for services that fall within the scope of the license held pursuant to 61-32-1 et seq., documents shall include, but are not limited to:

- (1) contracts;
- (2) authorizations;
- (3) permits;
- (4) death certificates;
- (5) embalming case reports; and
- (6) cremations.

C. Each establishment shall maintain documentation with dates and times of all services rendered by the establishment, or on behalf of the establishment by the crematory or other subcontractors, up to and

including final disposition.

D. Each establishment shall maintain copies of all official documents and contracts outlined in ~~[Section]~~ 16.16.1.11 NMAC at the establishment for a period of not less than seven (7) years, and shall make such documents and contracts available for inspection by the board or it's designee.

[5-15-92...9-26-93; 16.64.1.11 NMAC - Rn & A, 16 NMAC 64.1.11, 09-15-01; A, 08-08-12]

**NEW MEXICO BOARD OF FUNERAL SERVICES**

This is an amendment to 16.64.2 NMAC, Sections 1, 3 and 8, effective 08-08-2012. The chapter name is also amended.

**CHAPTER 64 FUNERAL HOMES AND DISPOSERS [(THANATOPRACTITIONERS)]**

**16.64.2.1 ISSUING AGENCY:** New Mexico Board of ~~[Thanatopractice]~~ Funeral Services.

[6-15-96, 1-22-99; 16.64.2.1 NMAC - Rn & A, 16 NMAC 64.2.1, 09-15-01; A, 08-08-12]

**16.64.2.3 STATUTORY AUTHORITY:** 16.64.2 NMAC is adopted pursuant to the ~~[Thanatopractice Act]~~ Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-6, 61-32-7, 61-32-9, 61-32-11, 61-32-21, 61-32-22 and 61-32-23.

[6-15-96, 16.64.2.3 NMAC - Rn, 16 NMAC 64.2.3, 09-15-01; A, 08-08-12]

**16.64.2.8 FEE SCHEDULE:** The following schedule shall be applicable for fees collected by the board under the ~~[Thanatopractice Act]~~ Funeral Services Act:

A. Funeral service practitioner license:	
(1) application	\$50.00
(2) licensure	\$150.00
(3) examination (jurisprudence)	\$100.00
(4) renewal	\$150.00
(5) penalty for late renewal	\$75.00
<del>[B. Associate funeral service practitioner license:</del>	
<del>(1) application</del>	<del>50.00</del>
<del>(2) licensure</del>	<del>150.00</del>
<del>(3) examination (jurisprudence)</del>	<del>50.00</del>
<del>(4) practical and oral examination</del>	<del>\$300.00</del>
<del>(5) practical and oral examiner expenses</del>	<del>actuals not to exceed</del>
	<del>\$500.00</del>
<del>(6) renewal</del>	<del>\$150.00</del>
<del>(7) penalty for late renewal</del>	<del>\$75.00</del>
C. Assistant funeral service practitioner license:	
(1) renewal	\$150.00
(2) penalty for late renewal	\$75.00]
<del>[D.] B. Funeral service intern license - direct supervision:</del>	
(1) Directing and arranging category:	
(a) application	\$50.00
(b) licensure	\$150.00
(c) renewal	\$150.00
(d) penalty for late renewal	\$75.00
(2) Preparation/embalming category:	
(a) application	\$50.00
(b) licensure	\$150.00
(c) renewal	\$150.00
(d) penalty for late renewal	\$75.00
<del>[E.] C. Funeral service intern license - general supervision:</del>	
(1) Directing and arranging category:	
(a) application	\$50.00
(b) licensure	\$150.00
(c) examination (jurisprudence)	\$100.00
<del>[(e)] (d) renewal</del>	<del>\$75.00</del>
<del>[(f)] (e) penalty for late renewal</del>	<del>\$75.00</del>
(2) Preparation/embalming category:	
(a) application	\$50.00
(b) licensure	\$150.00
(c) renewal	\$75.00
(d) penalty for late renewal	\$75.00

[F-] <u>D.</u> Direct disposer license:	
(1) application	\$50.00
(2) licensure	\$150.00
(3) examination (jurisprudence)	\$100.00
(4) renewal	\$150.00
(5) penalty for late renewal	\$75.00
[G-] <u>E.</u> Establishment license:	
(1) application	\$50.00
(2) licensure	\$350.00
(3) renewal	\$400.00
(4) penalty for late renewal	\$75.00
[H-] <u>E.</u> Crematory license:	
(1) application.	\$50.00
(2) licensure	\$350.00
(3) renewal	\$400.00
(4) penalty for late renewal.	\$75.00
[I-] <u>G.</u> Establishments and crematories - re-inspection:	
(1) re-inspection	actuals not to exceed \$500.00
(2) first non-compliance penalty	\$300.00
(3) Second non-compliance penalty (resulting from the first non-compliance. Third non-compliance, resulting from the second non-compliance, will be referred to the board with a recommendation for the issuance of a notice of contemplated action)	\$500.00
[J-] <u>H.</u> Administrative fees:	
(1) copying costs	\$0.50/page
(2) lists of licensees	\$75.00
(3) mailing labels of licensees	\$25.00
(4) return check	\$100.00
(5) reinstatement from inactive status (in addition to the renewal fee)	\$175.00
(6) Duplicate/replacement	\$25.00
[ <del>(6)</del> ] ( <u>7</u> ) other (at the discretion of the board or its designee).	
<u>I.</u> Criminal background fee	fees as currently charged by department of public safety.
[K-] <u>J.</u> The only fee that may be refunded is the licensure fee, as subscribed in each subsection of 16.64.2 NMAC, only if a temporary license, if applicable, has not been issued. The board office will refund any amount due through the state of New Mexico refund process.	
[11-21-86...9-26-93; 1-22-99; 16.64.2.8 NMAC - Rn & A, 16 NMAC 64.2.8, 09-15-01; A, 04-02-10; A, 08-08-12]	

## NEW MEXICO BOARD OF FUNERAL SERVICES

This is an amendment to 16.64.3 NMAC, Sections 1, 3, 6, 7, 9 and 10, effective 08-08-2012. The chapter name is also amended.

### CHAPTER 64 FUNERAL HOMES AND DISPOSERS [~~(F)HATANATOPRACTITIONERS~~]

#### 16.64.3.1 ISSUING AGENCY: New Mexico Board of [~~Thanatopractice~~] Funeral Services.

[6-15-96, 1-22-99; 16.64.3.1 NMAC - Rn & A, 16 NMAC 64.3.1, 09-15-01; A, 08-08-12]

#### 16.64.3.3 STATUTORY AUTHORITY: 16.64.3 NMAC is adopted pursuant to the [~~Thanatopractice Act~~] Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-4, 61-32-6, 61-32-7, 61-32-9, 61-32-10, 61-32-11, 61-32-14, 61-32-15, 61-32-16 and 61-32-17.

[6-15-96; 16.64.3.3 NMAC - Rn, 16 NMAC 64.3.3, 09-15-01; A, 08-08-12]

#### 16.64.3.6 OBJECTIVE: 16.64.3 NMAC is to establish the requirements pertaining to application for licensure and academic requirements for licensure under the New Mexico [~~Thanatopractice Act~~] Funeral Services Act.

[6-15-96; 16.64.3.6 NMAC - Rn, 16 NMAC 64.3.6, 09-15-01; A, 08-08-12]

#### 16.64.3.7 DEFINITIONS:

A. "Accredited college or university" means a college or university that was accredited by American board of funeral service education at the time of the applicant's graduation or completion of courses.

B. [Reserved.]

[6-15-96; 16.64.3.7 NMAC - Rn & A, 16 NMAC 64.3.7, 09-15-01; A, 08-08-12]

16.64.3.9 [~~ACADEMIC REQUIREMENTS FOR LICENSURE~~]: As specified in the Thanatopractice Act, to become licensed as a funeral service practitioner, a person shall be required to have satisfactorily completed at least sixty (60) semester hours {ninety (90) quarter hours} of academic and professional instruction, excluding vocational training from an accredited college or university, and excluding funeral service education for the exception of hours outlined in Subsection B of 16.64.3.9 NMAC; provided, however, that an assistant funeral service practitioner need not satisfy this requirement if the assistant funeral service practitioner has successfully completed examinations prescribed in Subsection B and C of 16.64.5.9 NMAC for practice as an associate funeral service practitioner.

A. The sixty (60) semester hours or ninety (90) quarter hours must be earned from a college or university, specified in

~~16.64.3.9 NMAC, in addition to the semester or quarter hours earned during attendance at an institution accredited by the American board of funeral service education, or any other successor recognized by the United States office of education for funeral service education.~~

~~B. Some institutions that provide funeral service education have academic programs that exceed the basic funeral service education, and, as such, offer varying types of academic degree programs. When a person has graduated from such an institution of funeral service education, only the semester or quarter hours earned in excess of the basic funeral service education requirement will be considered by the board to satisfying the sixty (60) semester hours or ninety (90) quarter hours requirement. The number of hours that are applicable toward the requirements for the basic funeral service education and the number of hours earned in excess of such basic requirement will be determined by the board in communication with the respective institution.] [RESERVED]~~

~~[5-15-92...9-26-96; 16.64.3.9 NMAC - Rn & A, 16 NMAC 64.3.9, 09-15-01; Repealed, 08-08-12]~~

#### **16.64.3.10 PROVISIONS FOR EMERGENCY LICENSURE:**

A. Funeral service practitioners currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four months following the declared disaster at no cost upon satisfying the following requirements:

(1) receipt by the ~~[thanatopractice board of]~~ board of funeral services a completed application which has been signed and notarized and which is accompanied by proof of identity, which may include a copy of a drivers license, passport or other photo identification issued by a governmental entity;

(2) requirements have been met as set forth in 16.64.3.8, 16.64.3.9, 16.64.5.9, 16.64.6.8, 16.64.6.9 and 16.64.6.10 NMAC.

(3) applicant shall provide a sworn affidavit that provides the name, address, years of employment and supervisors name;

(4) sworn affidavit that the applicant was personally ~~[and/or]~~ and professionally affected by the disaster;

(5) verification of previous employment will be accepted from co-worker when it is impossible to obtain it from the employer;

(6) nothing in this section shall constitute a waiver of qualifications of the requirements for licensure contained in 16.64.3 NMAC.

B. The board may waive

the application fee of \$50.00, licensure fee of \$150.00 only, but not the \$50.00 examination fee.

C. The board may waive the specific forms required under Subsection A of 16.64.3.8 NMAC only if the applicant is unable to obtain documentation from the federal declared disaster areas.

D. Emergency provisional license shall expire four (4) months from date of issue. Application for initial license shall be made on or before June 30, 2007 following the date of issue of the emergency provisional license.

E. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving the initial license. [16.64.3.10 NMAC - N/E, 11-10-05; A, 08-08-12]

### **NEW MEXICO BOARD OF FUNERAL SERVICES**

This is an amendment to 16.64.4 NMAC, Sections 1, 3, 8, 9 and 11, effective 08-08-2012. The chapter name is also amended.

#### **CHAPTER 64 F U N E R A L HOMES AND DISPOSERS [(THANATOPRACTITIONERS)]**

**16.64.4.1 ISSUING AGENCY:** New Mexico Board of ~~[Thanatopractice]~~ Funeral Services.

[6-15-96, 1-22-99; 16.64.4.1 NMAC - Rn & A, 16 NMAC 64.4.1, 09-15-01; A, 08-08-12]

**16.64.4.3 S T A T U T O R Y AUTHORITY:** 16.64.4 NMAC is adopted pursuant to the ~~[Thanatopractice Act]~~ Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-4, 61-32-6, 61-32-7, 61-32-8, 61-32-11, 61-32-13, 61-32-18, 61-32-20 and 61-32-21.

[6-15-96; 16.64.4.3 NMAC - Rn, 16 NMAC 64.4.3, 09-15-01; A, 08-08-12]

**16.64.4.8 G E N E R A L PROVISIONS:** The following requirements pertain to all establishments and crematories:

A. The building in which an establishment or crematory is located shall be in conformity with the requirements of the applicable state and local statutes, rules, ordinances and zoning provisions, of good appearance and devoted primarily to the purpose for which it is licensed; provided, however, that a crematory may be located at any establishment if allowed by local ordinances and zoning provisions.

B. The site and any rooms or areas within the structure thereon, and the use thereof, shall conform to all applicable state and local statutes, rules, ordinances

and zoning provisions, and shall be in clean condition and good repair at all times.

C. There shall be some identification visible from the street identifying the name of the establishment as licensed by the board; provided, however, that crematories shall not be required to have visible identification.

D. Within this state there may be presently licensed establishments which were lawful before 16.64 NMAC was effective in its original form on September 14, 1988, but which would not conform to the provisions of 16.64.4 NMAC, or future amendment. It is the intent of 16.64 NMAC to permit these physical structure nonconformities in accordance with the ~~[Thanatopractice Act]~~ Funeral Services Act. To effectuate this intent, the application of 16.64 NMAC shall be prospective only from and after its effective date in its original form on September, 14, 1988 and any existing physical structure nonconformity in a presently licensed establishment shall not be deemed grounds for revocation, suspension, denial or non-renewal of an establishment license for facilities existing and approved under the statutes and 16.64 NMAC in force at the date of the adoption hereof. Any such establishment whose license is revoked or not renewed, or any establishment which has any change in ownership as outlined in 16.64.4.11 NMAC shall be subject to the requirements of the board at the time such establishment applies to again become licensed. The provisions of 16.64.4 NMAC shall be deemed severable.

[2-7-76...6-15-96; 16.64.4.8 NMAC - Rn & A, 16 NMAC 64.4.8, 09-15-01; A, 08-08-12]

#### **16.64.4.9 M I N I M U M REQUIREMENTS OF ESTABLISHMENTS:**

A. To be licensed by the board, each funeral establishment shall have and maintain the following minimum requirements:

(1) a chapel in which funeral services may be conducted, which shall be at least six hundred (600) square feet (inside-wall-to-inside-wall) in size, and shall:

(a) have the capacity for seating not less than sixty (60) persons and for the proper display of a casket containing the deceased;

(b) have good ventilation;

(c) be entirely and completely separated from both the preparation room and the casket display room, except for entrances and exits having doors; and

(2) a casket display room which shall be not less than four hundred fifty (450) square feet (inside-wall-to-inside-wall) in size and shall:

(a) contain burial caskets or a range of models and prices with not less than twelve different adult burial caskets or



models normally displayed, and if models are displayed then the burial caskets shall be available and warehoused within 50 miles of the establishment; and

(b) be adequately illuminated; and

(c) any rental casket considered for interment or cremation services shall have written disclosure as previously used merchandise; consent form shall be provided and signed by the surviving spouse or next of kin; and

(3) a preparation room which shall be not less than one hundred fifty (150) square feet (inside-wall-to-inside-wall) in size and shall:

(a) be equipped with a sanitary flooring of tile or other suitable hard, impervious surface;

(b) be equipped with necessary drainage, lighting and ventilation;

(c) be equipped with the equipment and supplies necessary to embalm and otherwise prepare the human dead for final disposition and transportation; and

(d) be entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors.

B. To be licensed by the board, each commercial establishment shall have and maintain the following minimum requirements:

(1) a preparation room as outlined in Paragraph (3) of Subsection A of 16.64.4.9 NMAC; and

(2) an office which is entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors, and which is totally separate from the preparation room except for entrances and exits having doors; and

(3) commercial establishments shall be exempt from the requirements of Paragraphs (1) and (2) of Subsection A of 16.64.4.9 NMAC, provided the licensee in charge certifies to the board that the commercial establishment will not exceed the provisions allowed for commercial establishments in the ~~[Thanatopractice Act]~~ Funeral Services Act.

C. To be licensed by the board, each direct disposition establishment shall have and maintain the following minimum requirements:

(1) a room for sheltering dead human bodies which shall:

(a) be equipped with a sanitary flooring of tile or other suitable hard, impervious surface;

(b) be equipped with necessary drainage, lighting and ventilation;

(c) have a refrigeration unit thermostatically controlled with a minimum storage area of twelve and one-half (12.5) cubic feet per body;

(d) be entirely enclosed by flooring, walls and ceiling, except for proper

ventilation and entrances and exits having doors;

(2) an office which is entirely enclosed by flooring, walls and ceiling, except for proper ventilation and for entrances and exits having doors, and which is totally separate from the room where bodies are sheltered except for entrances and exits having doors; and

(3) if the establishment contains burial caskets or a range of models the establishment shall comply with the requirements of Paragraph (2) of Subsection A of 16.64.4.9 NMAC.

D. To be licensed by the board, each funeral establishment shall:

(1) entirely complete a body tracking sheet as provided by regulation and licensing which shall be kept in the deceased file; and

(2) obtain and maintain body transport record log at the time of which the deceased is transported to the establishment which shall be kept in the deceased file; the log shall include:

(a) name of deceased;

(b) date of death;

(c) date and time placed in refrigeration;

(d) date and time removed from refrigeration;

(e) condition of body prior to transport;

(f) condition of body at the time of delivery;

(g) weather conditions during time of transport.

[2-7-76..9-26-93, 1-22-99; 16.64.4.9 NMAC - Rn & A, 16 NMAC 64.4.9, 09-15-01; A, 04-02-10; A, 08-08-12]

#### **16.64.4.11 CHANGES OF ESTABLISHMENT AND CREMATORY LICENSES:**

A. An establishment or crematory license is an authority granted to the person, firm partnership, corporation, association, joint venture, or other organization, or any combination thereof, and is not transferable. A change in business designation of an establishment or crematory or of a licensee in charge of an establishment may have the legal effect of attempting to transfer the license and of operating without a license. Therefore, all such changes shall be filed with the board on an application form prescribed by the board, accompanied by the required fees, within thirty (30) days following any such change.

(1) Incorporation creates a new legal entity which requires a new license even though one or more stockholders, officers or directors have been previously issued a license. A license to practice funeral service or direct disposition held by a stockholder, officer or director is not authority to the corporation to operate as a

funeral or direct disposition establishment.

(2) The organization of a partnership or joint venture creates a new legal entity which requires a new license, even though one or more of the partners have previously been issued a license.

(3) The dissolution of a corporation or partnership which has been issued a license, operates to terminate the license and no individual or firm may operate under such a terminated license.

(4) The change of members of a general partnership, or in the general partner membership of a limited partnership, either the addition or withdrawal of a partner or partners, establishes a new legal entity which requires a new license and such partnership cannot operate on a license of the former partnership.

(5) The change of ownership of fifty (50) percent or more of the stock in a corporation or shares in a partnership operates to terminate the license and a new license is required, even if the licensee in charge does not change.

(6) A change in the licensee in charge operates to terminate the establishment license and the establishment can continue to operate only under a new license granted by the board and designating the new licensee in charge. The revocation, suspension, lapse or other loss of the license of the licensee in charge shall likewise cause a termination of the existing establishment license.

(7) A change in location of an establishment or crematory shall require a new establishment or crematory license.

(8) A change in the name of an establishment or crematory shall require a new establishment or crematory license.

(a) Any change in name shall not be announced, used, or in any way conveyed to the public until the new license is issued by the board.

(b) All advertising, signs, listings, newspaper notices, as well as all stationery, business cards, etc., of an establishment or crematory licensed by the board shall include the name of the establishment or crematory, exactly as licensed by the board, and all references to the new name shall be changed within thirty (30) days following the board meeting at which the new license was issued.

B. Prior to the issuance of a new license under Subsection A of 16.64.4.11 NMAC the board may require an inspection of the establishment or crematory, however an inspection of the establishment or crematory shall be required for a change under Paragraph (7) of Subsection A of 16.64.4.11 NMAC prior to the issuance of a new license.

C. Failure to file for a change of an establishment or crematory license within the thirty (30) day period shall

be grounds for termination of licenses of the establishment and the licensee in charge, or of the crematory license.

D. Upon filing for any change, the establishment or crematory shall continue to operate under its current license until the next board meeting, provided all other provisions of the [~~Thanatopractice Act~~] Funeral Services Act are followed.

E. Re-inspections.

(1) The requirement for a re-inspection is based on the following:

(a) the inspector has attempted on two occasions to inspect the establishment or crematory to no avail, and would include the situation where the establishment or crematory is closed during normal business hours and that the licensee in charge is not available within one (1) hour of contact made or attempted by the inspector; or

(b) the establishment or crematory is found to be in non-compliance with the board's inspection requirements.

(2) A re-inspection [~~and/or~~] and penalty fee will be imposed on any establishment or crematory if a re-inspection is required. The licensee in charge of an establishment or a crematory authority will be informed that a re-inspection [~~and/or~~] and penalty fee is being assessed and the reason for the re-inspection.

(3) If the board has good reason to believe that the [~~Thanatopractice Act~~] Funeral Services Act or 16.64 NMAC, governing the inspection requirements have been violated, a re-inspection [~~and/or~~] and penalty fee will be assessed only if a violation exists.

[2-7-76...9-26-93; 1-22-99; 16.64.4.11 NMAC - Rn & A, 16 NMAC 64.4.11, 09-15-01; A, 08-08-12]

## NEW MEXICO BOARD OF FUNERAL SERVICES

This is an amendment to 16.64.5 NMAC, Sections 1, 3, 8 and 9, effective 08-08-2012. The chapter name is also amended.

### CHAPTER 64 F U N E R A L HOMES AND DISPOSERS [~~(THANATOPRACTITIONERS)~~]

**16.64.5.1 ISSUING AGENCY:** New Mexico Board of [~~Thanatopractice~~] Funeral Services.

[6-15-96, 16.64.5.1 NMAC - Rn & A, 16 NMAC 64.5.1, 09-15-01; A, 08-08-12]

**16.64.5.3 S T A T U T O R Y AUTHORITY:** 16.64.5 NMAC is adopted pursuant to the [~~Thanatopractice Act~~] Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-6, 61-32-7, 61-32-9 and 61-32-10. [6-15-96; 16.64.5.3 NMAC - Rn, 16 NMAC 64.5.3, 09-15-01; A, 08-08-12]

### 16.64.5.8 G E N E R A L PROVISIONS:

A. The examination outlined in Subsection A of 16.64.5.9 NMAC shall be given at such times and places as determined by the board.

B. The examination outlined in Subsection B of 16.64.5.9 NMAC may be given at any meeting of the board, or at such other times and places determined by the board.

[~~C. The examinations outlined in Subsection C of 16.64.5.9 NMAC shall be given at such times and places as mutually determined by the applicant and the board or it's designee.~~]

[~~D.~~] C. No applicant may take any specific examination more than twice in any six (6) month period; and an applicant must wait a minimum of thirty (30) days from the examination date prior to retaking any examination. An applicant shall pay all costs and fees to retake any examination.

[~~E.~~] D. No applicant shall be permitted to take any examination until his or her application is complete, as determined by the board.

[2-7-76...4-10-94; 16.64.5.8 NMAC - Rn & A, 16 NMAC 64.5.8, 09-15-01; A, 08-08-12]

### 16.64.5.9 EXAMINATIONS:

A. Each applicant for a license as a funeral service practitioner shall take a written comprehensive examination, comparable to the examination taken by graduates of funeral service education. An applicant must answer not less than 75% of the questions correctly to successfully complete the examination. The candidate shall pay all costs of the examination charged by examining agency together with the administrative costs of the board. The pass/fail decision of the board shall be binding.

B. Each applicant for [~~a license as a funeral service practitioner~~] license, including any [~~funeral service practitioner~~] licensee who wishes to reinstate an inactive license, [~~associate funeral service practitioner, or direct disposer~~] shall take a written jurisprudence examination prescribed by the board. An applicant must answer not less than 75% of the questions correctly to successfully complete the jurisprudence examination. An applicant who does not successfully complete the jurisprudence examination may protest to the board, not later than the following board meeting, if he or she feels the grading of the examination was incorrect or unfair. The decision of the board following a protest shall be binding.

[~~C. Each applicant for a license as an associate funeral service practitioner shall take a practical examination prescribed by the board on one or more dead human bodies, demonstrating embalming skills at least substantially~~

equivalent to that possessed by the average licensed funeral service practitioner; and shall take an oral examination prescribed by the board, demonstrating a practical knowledge of funeral directing and related subject knowledge. Any licensed funeral service practitioner designated by the board shall administer such practical and oral examinations, and the pass/fail decision of the person administering the examinations shall be binding.]

[2-7-76...4-10-94; 16.64.5.9 NMAC - Rn & A, 16 NMAC 64.5.9, 09-15-01; A, 08-08-12]

## NEW MEXICO BOARD OF FUNERAL SERVICES

This is an amendment to 16.64.6 NMAC, Sections 1, 3, 9 and 10, effective 08-08-2012. The chapter name is also amended.

### CHAPTER 64 F U N E R A L HOMES AND DISPOSERS [~~(THANATOPRACTITIONERS)~~]

**16.64.6.1 ISSUING AGENCY:** New Mexico Board of [~~Thanatopractice~~] Funeral Services.

[6-15-96, 16.64.6.1 NMAC - Rn & A, 16 NMAC 64.6.1, 09-15-01; A, 08-08-12]

**16.64.6.3 S T A T U T O R Y AUTHORITY:** 16.64.6 NMAC is adopted pursuant to the [~~Thanatopractice Act~~] Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-6, 61-32-7, 61-32-21 and 61-32-22.

[6-15-96; 16.64.6.3 NMAC - Rn, 16 NMAC 64.6.3, 09-15-01; A, 08-08-12]

**16.64.6.9 C O N T I N U I N G EDUCATION:** The board may, subject to Subsection A of 16.64.6.10 NMAC, recognize continuing education in the following areas related to [~~thanatopractice~~] funeral services.

A. Academic activities:

(1) completion of courses offered by accredited institutions of higher education; and

(2) completion of home study courses offered by approved sponsors of such courses.

B. Professional activities:

(1) attendance at workshops, conferences, seminars and institutions of approved funeral service educational opportunities;

(2) service on a board of directors of a funeral service organization, including the New Mexico board of [~~thanatopractice~~] funeral services; and

(3) published literary contributions.

C. Public education and service:

(1) conducting or participating as an instructor in school presentations and other related workshops, conferences, seminars and institutions;

(2) speeches on funeral service before religious or civic organizations; and

(3) attendance at meetings of the board.

[9-14-88...9-26-93; 16.64.6.9 NMAC - Rn & A, 16 NMAC 64.6.9, 09-15-01; A, 08-08-12]

#### 16.64.6.10 LIMITATIONS:

A. The amount of continuing education credit the board will recognize for any activity will be at the sole discretion of the board, provided however, that the board will grant credit for activities offered by any approved provider of continuing education subject to the limitation imposed in Subsection B of 16.64.6.10 NMAC.

B. No more than four (4) hours {4 CEU} of continuing education credit shall be granted in any renewal period for activities as outlined in Subsection C of 16.64.6.9 NMAC.

C. Upon application for renewal of a license, the applicant shall furnish evidence of having completed continuing education hours to the following extent.

(1) Funeral service practitioners shall be required to complete ten (10) hours {1.0 CEU}.

~~[(2) Associate funeral service practitioners shall be required to complete ten (10) hours {1.0 CEU}.~~

~~[(3) Assistant funeral service practitioners shall be required to complete ten (10) hours {1.0 CEU}.]~~

~~[(4) (2) Funeral service interns who are allowed to practice under the general supervision of a funeral service practitioner in any category shall be required to complete ten (10) {1.0 CEU}.~~

~~[(5) (3) Direct disposers shall be required to complete ten (10) hours {1.0 CEU}.~~

[11-21-86...9-26-93; 16.64.6.10 NMAC - Rn & A, 16 NMAC 64.6.10, 09-15-01; A, 08-08-12]

### NEW MEXICO BOARD OF FUNERAL SERVICES

This is an amendment to 16.64.7 NMAC, Sections 1, 3 and 9, effective 08-08-2012. The chapter name is also amended.

#### CHAPTER 64 F U N E R A L HOMES AND DISPOSERS ~~(THANATOPRACTITIONERS)~~

**16.64.7.1 ISSUING AGENCY:** New Mexico Board of [Thanatopractice] Funeral Services.

[6-15-96; 16.64.7.1 NMAC - Rn & A, 16 NMAC 64.7.1, 09-15-01; A, 08-08-12]

**16.64.7.3 S T A T U T O R Y AUTHORITY:** 16.64.7 NMAC is adopted pursuant to the [~~Thanatopractice—Act~~] Funeral Services Act, NMSA 1978, Section 61-32-4, 61-32-6, 61-32-7, 61-32-11, 61-32-21 and 61-32-22.

[6-15-96; 16.64.7.3 NMAC - Rn, 16 NMAC 64.7.3, 09-15-01; A, 08-08-12]

#### 16.64.7.9 INACTIVE STATUS:

A. Any licensee, excluding [~~assistant funeral service practitioner and~~] funeral service intern licensees, who wishes to place his or her license on inactive status shall notify the board in writing, on a form prescribed by the board, prior to the expiration of his or her current license.

B. The board administrator shall determine if the inactive status of any license will be approved until the next scheduled board meeting.

C. Upon approval by the board of an inactive request, the licensee shall be exempt from the payment of the annual renewal fee during the period of inactive status.

D. No license will automatically be placed on inactive status by failure of the licensee to renew his or her license.

E. No license shall be placed on inactive status if the licensee is under investigation or if disciplinary proceedings have been initiated.

F. Any licensee who has placed his or her license on inactive may, within five (5) years from the date of acceptance by the board of the inactive status, notify the board of his or her desire to reinstate the inactive license. Upon receipt of such notice, the board administrator shall send to the inactive licensee an application for reinstatement.

G. The applicant shall submit the application to the board together with the applicable fee(s) and proof of completion of one (1) CEU, as outlined in 16.64.6 NMAC, for the year in which reinstatement is sought.

H. If the board finds the application in order, the applicant shall be issued a license after successfully completing the written jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC. No person whose license is on inactive status shall practice funeral service in this state until receiving a reinstated license.

I. Any person who, after five (5) years of inactive status, desires to reinstate his or her license, must make application to the board and comply with the same requirements as any previously unlicensed applicant.

J. If a request for reinstatement of an inactive license occurs in the same renewal period, as defined in Subsection C of 16.64.6.7 NMAC, that the inactive status was granted, the applicant shall not be required to complete additional continuing education requirements or the jurisprudence exam in order for the inactive license to be reinstated.

[9-27-90...9-26-93; 16.64.7.9 NMAC - Rn & A, 16 NMAC 64.7.9, 09-15-01; A, 04-02-10; A, 08-08-12]

### NEW MEXICO BOARD OF FUNERAL SERVICES

This is an amendment to 16.64.8 NMAC, Sections 1, 3 and 8, effective 08-08-2012. The chapter name is also amended.

#### CHAPTER 64 F U N E R A L HOMES AND DISPOSERS ~~(THANATOPRACTITIONERS)~~

**16.64.8.1 ISSUING AGENCY:** New Mexico Board of [Thanatopractice] Funeral Services.

[6-15-96, 1-22-99; 16.64.8.1 NMAC - Rn & A, 16 NMAC 64.8.1, 09-15-01; A, 08-08-12]

**16.64.8.3 S T A T U T O R Y AUTHORITY:** 16.64.8 NMAC is adopted pursuant to the [~~Thanatopractice—Act~~] Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-6, 61-32-7 and 61-32-14.

[6-15-96; 16.64.8.3 NMAC - Rn, 16 NMAC 64.8.3, 09-15-01; A, 08-08-12]

#### 16.64.8.8 G E N E R A L PROVISIONS:

A. Each funeral service intern shall inform the board, on quarterly reports prescribed by the board, of the work completed by the funeral service intern, and the name(s) of the funeral service practitioner(s) who supervised each activity, and shall be for the periods as follows, until such time as the minimum requirements are met, as determined by the board:

(1) July 1 thru September 30, inclusive;

(2) October 1 thru December 31, inclusive;

(3) January 1 thru March 31, inclusive;

(4) April 1 thru June 30, inclusive.

B. Original quarterly reports shall be due at the office of the board within thirty (30) days of the close of the quarter (faxed reports will not be accepted). Any quarter for which a report is not received by the date due shall not count as time toward the internship.

C. A funeral service intern may be employed by, or receive training at, more than one (1) funeral or commercial



establishment concurrently provided that:

(1) the establishments are part of the same company;

(2) the establishments are within 50 miles by road travel of each other; and

(3) application is made, together with the application fee for each license held, thirty (30) days prior to employment or training.

D. A funeral service intern shall make it known that he or she is a funeral service intern under the supervision of a funeral service practitioner, and that he or she is not licensed as a funeral service practitioner nor the licensee in charge.

E. A funeral service intern shall not use the title funeral director and shall use the title funeral service director intern. The titles funeral practitioner, funeral director or mortician are reserved for fully licensed practitioners in order to prevent the general public from misunderstanding the terms.

F. A funeral service intern shall practice funeral service only under the supervision of a funeral service practitioner, provided:

(1) when a funeral service intern has made arrangements for fifty (50) funerals under direct supervision, he or she may request approval from the board to make arrangements under general supervision; the request shall be made on an application form prescribed by the board, accompanied by the required fees, provided that if the fees were previously paid for a request in accordance with Paragraph (3) of Subsection F of 16.64.8.8 NMAC, the fees shall not be required; and

(2) when a funeral service intern has assisted in embalming of fifty (50) bodies under direct supervision, he or she may request approval from the board to embalm under general supervision; the request shall be made on an application form prescribed by the board, accompanied by the required fees; and

(3) when a funeral service intern has assisted in the directing of fifty (50) funerals, committal services, grave side services or memorial services under direct supervision, he or she may request approval from the board to direct such services under general supervision; the request shall be made on an application form prescribed by the board, accompanied by the required fees, provided that if the fees were previously paid for a request in accordance with Paragraph (1) of Subsection F of 16.64.8.8 NMAC, the fees shall not be required.

G. A funeral service intern shall not practice funeral service in any category under general supervision until application is made, together with the required fees, and approval has been granted by the board.

H. A funeral service intern

shall be required to make arrangements during his or her internship in order to qualify for a license as a funeral service practitioner.

I. A funeral service intern shall not be required to practice funeral service under general supervision in any category regardless of the amount of time served or work completed as a funeral service intern.

J. A funeral service intern who is practicing funeral service under general supervision in any category shall be subject to the continuing education requirements of 16.64.6 NMAC.

K. A funeral service intern may receive training under more than one (1) licensed funeral service practitioner, provided the board is notified, in writing, of any changes within thirty (30) days following a change.

L. Any time served, and properly reported to the board, as a resident trainee under prior law will be considered the same as time served as a funeral service intern.

M. A funeral service intern who is practicing funeral service under ~~general~~ direct supervision in any category is required to have the licensed funeral service practitioner review and co-sign all ~~documents and~~ contracts prepared by the funeral service intern.

N. A funeral service intern who has a change of employment shall:

(1) return the old license; and

(2) make application for each license held, together with the application fee for each license held as outlined in Subsection D or E of 16.64.2.8 NMAC, within thirty (30) days of the change.

[9-14-88...9-26-93, 6-15-96, 1-22-99; 16.64.8.8 NMAC - Rn & A, 16 NMAC 64.8.8, 09-15-01; A, 04-02-10; A, 08-08-12]

## NEW MEXICO BOARD OF FUNERAL SERVICES

This is an amendment to 16.64.9 NMAC, Sections 1 and 3, effective 08-08-2012. The chapter name is also amended.

### CHAPTER 64 FUNERAL HOMES AND DISPOSERS [(THANATOPRACTITIONERS)]

**16.64.9.1 ISSUING AGENCY:** Regulation and Licensing Department, Board of ~~[Thanatopractice]~~ Funeral Services, P.O. Box 25101, Santa Fe, New Mexico 87504, (505) 827-7013.

[6-15-96; 16.64.9.1 NMAC - Rn, 16 NMAC 64.9.1, 09-15-01; A, 08-08-12]

**16.64.9.3 STATUTORY AUTHORITY:** 16.64.9 NMAC is adopted pursuant to the ~~[Thanatopractice-Act]~~

Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-6, 61-32-7 and 61-32-17.

[6-15-96; 16.64.9.3 NMAC - Rn, 16 NMAC 64.9.3, 09-15-01; A, 08-08-12]

## NEW MEXICO BOARD OF FUNERAL SERVICES

This is an amendment to 16.64.10 NMAC, Sections 1 and 3, effective 08-08-2012. The chapter name is also amended.

### CHAPTER 64 FUNERAL HOMES AND DISPOSERS [(THANATOPRACTITIONERS)]

**16.64.10.1 ISSUING AGENCY:** New Mexico Board of ~~[Thanatopractice]~~ Funeral Services.

[6-15-96; 16.64.10.1 NMAC - Rn & A, 16 NMAC 64.10.1, 09-15-01; A, 08-08-12]

**16.64.10.3 STATUTORY AUTHORITY:** 16.64.10 NMAC is adopted pursuant to the ~~[Thanatopractice-Act]~~ Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-6, 61-32-7 and 61-32-19.

[6-15-96; 16.64.10.3 NMAC - Rn, 16 NMAC 64.10.3, 09-15-01; A, 08-08-12]

## NEW MEXICO BOARD OF FUNERAL SERVICES

This is an amendment to 16.64.11 NMAC, Sections 1, 3, 6, 7 and 8, effective 08-08-2012. The chapter name is also amended.

### CHAPTER 64 FUNERAL HOMES AND DISPOSERS [(THANATOPRACTITIONERS)]

**16.64.11.1 ISSUING AGENCY:** New Mexico Board of ~~[Thanatopractice]~~ Funeral Services.

[2-21-97, 1-22-99; 16.64.11.1 NMAC - Rn & A, 16 NMAC 64.11.1, 09-15-01; A, 08-08-12]

**16.64.11.3 STATUTORY AUTHORITY:** 16.64.11 NMAC is adopted pursuant to the ~~[Thanatopractice-Act]~~ Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-6, 61-32-7, 61-32-24 and the Uniform Licensing Act, Section 61-1-1 et seq., NMSA 1978.

[2-21-97; 16.64.11.3 NMAC - Rn, 16 NMAC 64.11.3, 09-15-01; A, 08-08-12]

**16.64.11.6 OBJECTIVE:** 16.64.11 NMAC is to establish the procedures for filing and processing complaints and for taking disciplinary action against licensees and applicants for licensure, for violation of the ~~[Thanatopractice-Act]~~ Funeral Services Act or any provisions of 16.64 NMAC.

[2-21-97; 16.64.11.6 NMAC - Rn, 16 NMAC 64.11.6, 09-15-01; A, 08-08-12]

**16.64.11.7 DEFINITIONS:**

A. **"Complaint"** means a complaint filed with the board.

B. **"Complainant"** means the complaining party of a complaint filed against a licensee(s), or applicant for licensure, who is/are governed under the ~~[Thanatopractice Act]~~ Funeral Services Act.

C. **"Respondent"** means a licensee, or applicant for licensure who is governed under the ~~[Thanatopractice Act]~~ Funeral Services Act and who is the subject of a complaint.

D. **"Notice of contemplated action"** means the administrative process used by the board for a licensee or applicant for licensure to be afforded notice and an opportunity to be heard in a formal hearing setting before the board has authority to take any action which would have the effect of denying, revoking, or suspending a license or application for licensure governed by the Uniform Licensing Act.

[2-21-97; 16.64.11.7 NMAC - Rn, 16 NMAC 64.11.7, 09-15-01; A, 08-08-12]

**16.64.11.8 GENERAL PROVISIONS:**

A. **Inquiries regarding making a complaint:** Any person, including any member of the board or board staff, may initiate a complaint in writing. Complaints should be submitted on a form prescribed by the board.

B. Complaints must contain factual allegations, constituting the alleged violations of any provisions of the ~~[Thanatopractice Act and/or]~~ Funeral Services Act or 16.64 NMAC.

[2-21-97; 16.64.11.8 NMAC - Rn & A, 16 NMAC 64.11.8, 09-15-01; A, 08-08-12]

**NEW MEXICO BOARD OF FUNERAL SERVICES**

This is an amendment to 16.64.12 NMAC, Sections 1, 2, 3 and 8, effective 08-08-2012. The chapter name is also amended.

**CHAPTER 64 FUNERAL HOMES AND DISPOSERS [(THANATOPRACTITIONERS)]**

**16.64.12.1 ISSUING AGENCY:** New Mexico Board of ~~[Thanatopractice]~~ Funeral Services

[6-15-96; 16.64.12.1 NMAC - Rn, 16 NMAC 64.12.1, 09-15-01; A, 04-02-10; A, 08-08-12]

**16.64.12.2 SCOPE:** 16.64.12 NMAC applies to all licensees and applicants for licensure under the New Mexico ~~[Thanatopractice Act]~~ Funeral Services Act. [6-15-96; 16.64.12.2 NMAC - Rn, 16 NMAC 64.12.2, 09-15-01; A, 08-08-12]

**16.64.12.3 STATUTORY AUTHORITY:** 16.64.12 NMAC is adopted pursuant to the New Mexico Parental Responsibility Act, Section 40-5A-1 et seq., NMSA 1978 (Ch. 25, Laws of 1995), the New Mexico ~~[Thanatopractice Act]~~ Funeral Services Act, Section 61-32-1 et seq., NMSA 1978 and the Uniform Licensing Act, Section 61-1-1 et seq., NMSA 1978. [6-15-96; 16.64.12.3 NMAC - Rn, 16 NMAC 64.12.3, 09-15-01; A, 08-08-12]

**16.64.12.8 DELEGATION OF AUTHORITY:** The authority of the board of ~~[thanatopracticee]~~ funeral services to issue a notice of contemplated action against any licensee or applicant for licensure whose name appears on the certified list issued by the New Mexico department of human services, as provided in NMSA 1978, Section 40-5A-1, et seq., and as provided further in 16.1.1 NMAC, of the New Mexico Administrative Code, which is incorporated herein by reference, and to refer cases in which notices of contemplated action have been issued for administrative prosecution, is delegated to the administrator of the New Mexico board of ~~[thanatopracticee]~~ funeral services. 16.64.12 NMAC shall not be construed to deprive the board of its authority and power to issue a notice of contemplated action for any apparent violation of the Parental Responsibility Act, and to refer any such case for administrative prosecution. [6-15-96; 16.64.12.8 NMAC - Rn, 16 NMAC 64.12.8, 09-15-01; A, 08-08-12]

**NEW MEXICO DEPARTMENT OF GAME AND FISH**

This is an amendment to 19.30.12 NMAC, Sections 8, 9, 10 and 11 effective 7-31-2012.

**19.30.12.8 PARTICIPATION REQUIREMENTS:**

A. Minimum enrollment qualifications:

(1) Private or ~~[leased]~~ public lands that lie within pronghorn habitat.

(2) Private or ~~[leased]~~ public lands that provide meaningful benefits to pronghorn, at least occasionally, as determined by the appropriate district officer or game manager.

(3) Only landowners or lessees who agree in writing to accept pronghorn on their property shall be considered. Any landowner or lessee that files a depredation complaint regarding pronghorn or takes action pursuant to Section 17-2-7.2 NMSA 1978 shall have automatically elected to become ineligible for continued participation in this program. Exceptions to this may be allowed when short-term or

unusual circumstances that are typically not associated with the normal presence of pronghorn using land and forage on the property exist. In these instances, if the landowner desires to continue contributing to pronghorn, the department may allow the landowner to continue participating in this system while seeking resolution to the short-term or unusual damage pursuant to the depredation program.

(4) Landowner must agree that participation is voluntary, is based upon annual pronghorn populations, and there is no guarantee of a specific number of authorizations issued each year.

(5) All participating properties shall be subject to annual review per the requirements found in this section.

B. Enrollment process:

(1) Initial application:

(a) Landowners who choose to enroll in the system must submit a completed application form approved by the department. Application must include all documentation requested on the department application form.

(b) Both public and private land within a ranch boundary shall be enrolled.

(c) Application must be submitted to the department, hand delivered or post marked, no later than ~~[February 1 of each year]~~ the deadline date indicated on the application. Applications received without all required documentation or hand delivered or post marked after ~~[February 1]~~ the deadline date indicated on the application shall be rejected. Rejected applications may be corrected and resubmitted ~~[through March 1 to be included]~~ by a date designated by the department that year if the ~~[original]~~ application was submitted by the ~~[February 1 deadline]~~ original deadline date indicated on the application and the applicant mistakenly omitted ~~[necessary]~~ required documentation or ~~[a documented]~~ can document a family emergency, sickness or death which resulted in the application deadline being missed.

(d) Landowners with properties that do not meet the requirements set forth in Subsection A of 19.30.7.8 NMAC and minimum qualifying acreage shall be advised and given the right to appeal the department's decision with regard to meeting the minimum requirements for participation.

(2) Participating ranches:

(a) All authorized ranch contacts for participating ranches that have been allocated hunting opportunity shall receive an agreement and affidavit of ownership form annually.

(b) The agreement and affidavit of ownership form shall list the name, address, and phone number of the authorized ranch contact, the ranch's enrolled acreage and the qualifying deeded and leased acres for which allocations of licenses and authorizations will be based upon. It shall provide the

opportunity to appeal the listed acreage and allow for the authorized ranch contact to notify the department of appropriate changes. If changes include the addition or reduction of deeded or leased acreage, ~~[a new property boundary map]~~ required documents as listed to include a new ranch boundary map must be submitted with the form. The agreement portion of the form shall set out the terms and conditions for participation.

(c) The agreement and affidavit of ownership form must be signed and initialed where designated and returned to the department via hand delivery, fax, scanned/ email, or post marked no later than ~~[February 1]~~ a date designated by the department each year. Failure to meet these requirements shall result in the ranch being placed on review until the following year. If circumstances beyond the control of the authorized ranch contact or a documented family emergency, sickness or death, resulted in this deadline being missed, the department may accept completed agreement and affidavit of ownership forms ~~[through March 1]~~ on a case by case basis.

(d) If the department determines there has been a breach of the terms set forth in the agreement, false representation of a ranch's deeded or leased acreage, rightful ownership, or legal representation of a ranch, the department shall immediately inactivate the ranch, void all unconverted authorizations issued to the ranch, and the owner or authorized ranch contact shall be subject to the processes set forth in 19.31.2 NMAC.

(e) After ~~[2]~~ 3 years of non-receipt of the agreement and affidavit of ownership, the department shall inactivate the respective ranch until a new initial application has been submitted ~~[by the following February 1 deadline].~~

(f) Properties that are sold or transferred to new ownership must re-apply as required for initial enrollment by ~~[the February 1 deadline]~~ a date designated by the department. The previous owner must report any reduction in acreage resulting from sale or transfer on their annual affidavit of ownership and provide ~~[an updated property boundary map documenting]~~ required documents as listed indicating the acreage reduction. Properties or portions of properties that have been reported by the previous ~~[owner]~~ owner(s) as sold or transferred shall be considered inactive until the new owners submit an initial application.

(g) ~~[The department may make reasonable accommodations in circumstances where transfer of ownership occurs after the February 1 deadline.]~~

~~(h)~~ All enrolled ranches that the department determines do not meet the minimum participation requirements or do not meet the minimum qualifying acreage requirements for [participation] allocation of

hunting opportunity shall be sent written or e-mail notice.

C. The department shall establish properties enrolled as public draw only ranches which will consist of 100% leased state ~~[land, federal or other public]~~ or federal lands that offer reasonable pronghorn antelope hunting opportunity with legal public access to those lands. These properties shall be subject to the minimum qualification requirements as found in 19.30.12.9 NMAC.

D. If a landowner represents or permits the false representation of the property's enrolled ~~[private]~~ acreage, or breaches or violates the conditions of any A-PLUS hunting agreement with the department, the landowner will be inactivated from further participation in A-PLUS and any other department sponsored private land program for a period of up to 3 years. The landowner shall be notified via certified mail upon the department's determination that a violation or breach has occurred. The landowner may request a hearing that shall be held in accordance with the processes set forth in 19.31.2.13 NMAC (without reference to points) through Subsection A of 19.31.2.22 NMAC.

[19.30.12.8 NMAC - N, 4-1-11; A, 7-31-12]

#### **19.30.12.9 DISTRIBUTION OF PRONGHORN AUTHORIZATIONS AND DRAW LICENSES TO QUALIFYING RANCHES:**

A. The department shall determine the acreage of pronghorn habitat within each GMU.

B. The department shall base the number and kind of hunting authorizations and licenses by bag limit and weapon type available in each GMU based upon sustainable harvest as outlined in the department's pronghorn antelope management plan.

C. The number of ~~[any legal weapon and muzzleloader]~~ pronghorn mature buck hunting authorizations and licenses per ranch shall be set as follows.

(1) A ranch's total acreage of pronghorn habitat divided by the unit's enrolled acreage of pronghorn habitat equals the percent qualifying acreage for that ranch.

(2) The percent qualifying acreage for that ranch multiplied by the total remaining mature buck authorizations and licenses to be issued in the GMU equals the total allocation for that ranch. The department may apply a contribution rating to a ranch's final qualifying acreage based on pronghorn densities.

(a) The total allocation multiplied by the percentage of qualifying private land acreage of the ranch equals the number of private land authorizations to issue per ranch.

(b) The total allocation multiplied by the percentage of qualifying public land

acreage of the ranch equals the number of public draw pronghorn hunting licenses per ranch. These public licenses drawn ~~[will be any legal weapon or muzzleloader and the public hunters]~~ will be assigned to ranches to hunt.

D. Female/immature male (F-IM) authorizations and licenses will be issued within GMUs with sufficient populations to provide additional hunting opportunity. This allocation will be to appropriate public and private lands based on harvest objectives of the GMU and the percentage of qualifying public and private land acreage.

E. A portion of total annual ~~[any legal weapon or muzzleloader]~~ authorizations and licenses not to exceed 10% from each GMU may be held by the department for the purpose of addressing special management circumstances or properties as determined by the area chief.

F. All authorizations and licenses issued pursuant to this section shall be ranch-only and valid only within the boundaries of the enrolled ranch. With the exception of GMUs 50, 52 and 29 where all authorizations and licenses issued within the boundaries of these GMUs will be issued as "unit wide" and all landowners who participate will agree to, in writing annually, to allow for free, equal and unrestricted access to their privately deeded lands to any legally licensed pronghorn antelope hunter during the designated seasons pursuant to 19.31.15 NMAC.

G. All pronghorn authorizations issued pursuant to this section are valid for any available hunt code with a lesser weapon type within the GMU the authorization was issued.

H. All qualifying ranches who are assigned public draw hunters shall be issued one authorization valid for a free pronghorn license pursuant to 17-3-14 NMSA 1978.

I. Throughout this allocation process, the department will encourage landowners to cooperate and combine acreage to the extent possible on a willing basis to help them qualify for the most beneficial or useful issuance of authorization certificates.

J. If a ranch's acreage falls across two GMU boundaries, the ranch will be assigned to the GMU in which the majority of acreage occurs. The calculation of hunting opportunities will be based on the qualifying number of acres within each GMU.

[19.30.12.9 NMAC - N, 4-1-11; A, 4-1-11; A, 7-31-12]

#### **19.30.12.10 LANDS OUTSIDE [THE CORE PRONGHORN MANAGEMENT AREA] DESIGNATED PRONGHORN HABITAT AND**



**PROPERTIES IN CLOSED GMUS:**

The department may issue authorizations and licenses to properties that lie outside designated pronghorn habitat or [open] in GMUs that have been closed where pronghorn antelope exist within sufficient population levels to provide hunting opportunities within sustainable harvest objectives. ~~[The area chief shall issue]~~ Authorizations or licenses shall be issued at a ratio equal to the qualifying private and public land acreage of the ranch. [19.30.12.10 NMAC - N, 4-1-11; A, 7-31-12]

**19.30.12.11 SPECIAL MANAGEMENT PROPERTIES:**

In all GMUs, the department may treat specifically identified properties as special management properties and allocate authorizations and licenses to these properties based upon unique contributions to department pronghorn management goals. Landowners that elect to participate pursuant to this section shall be required to develop a pronghorn management plan in cooperation with the department that determines hunting opportunity based upon land status and special contributions to pronghorn. Authorizations or licenses allocated via this section will be at a ratio equal to the qualifying private and public land acreage of the ranch. Landowners that elect to participate pursuant to this section shall be ineligible for any appeal process. [19.30.12.11 NMAC - N, 4-1-11; A, 7-31-12]

## NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.5 NMAC, Sections 6, 7, 8, 9, 10, 12 and 13 effective 7-31-2012.

**19.31.5.6 OBJECTIVE :**

Establishing seasons on ~~[blue]~~ dusky grouse, pheasant, Gambel's quail, Montezuma quail, northern bobwhite, scaled quail, Abert's squirrel, red squirrel, Arizona gray squirrel, fox squirrel, eastern gray squirrel, and setting falconry seasons.

[19.31.5.6 NMAC - Rp, 19.31.5.6 NMAC, 8-16-2010; A, 7-31-2012]

**19.31.5.7 DEFINITIONS:**

**A. "Aggregate"** shall mean the sum of individual game taken comprised of several species as allowed by the bag limit or possession limit.

**B. "Area GS-1"** (GS-1) shall mean the area bounded by the following: beginning at the New Mexico-Colorado border at NM 551, south on NM 551 to U.S. 64/87, west on U.S. 64/87 to I-25, south on I-25 to U.S. 285, south on

U.S. 285 to N.M. 41, south on N.M. 41 to U.S. 60, west on U.S. 60 to I-25, north on I-25 to N.M. 550, northwest on N.M. 550 to the southeastern border of the Jicarilla Apache Indian reservation, north on the Jicarilla Apache Indian reservation border to the New Mexico-Colorado border, east to I-25.

**C. "Area GS-2"** (GS-2) shall mean the area bounded by the following: beginning at the New Mexico-Arizona border at I-40, east on I-40 to I-25, south on I-25 to I-10, west on I-10 to N.M. 11, south on N.M. 11 to the New Mexico-Mexico border, west to the New Mexico-Arizona border, north to I-40.

**D. "Area S-3"** (S-3) shall mean the area bounded by the following: beginning at the New Mexico-Texas border at U.S. 54, north on U.S. 54 to U.S. 285, south on U.S. 285 to the New Mexico-Texas border, east to U.S. 54.

**E. "Area S-4"** (S-4) shall mean the area bounded by the following: beginning at the New Mexico-Arizona border at Four-corners south to I-40; east on I-40 to I-25; north on I-25 to N.M. 550; northwest on N.M. 550 to the southern reservation boundary of the Jicarilla Apache reservation; north and west along the western reservation boundary to the New Mexico-Colorado border; west along the New Mexico-Colorado border to the four-corners.

**F. "Arrows"** shall mean only those arrows or bolts having broadheads with steel cutting edges.

**G. "Bag limit"** shall mean the number of upland game animals a licensed hunter is allowed per day.

**H. "Baiting"** shall mean the placing, exposing, depositing, distributing, or scattering of any salt, grain, scent or other feed on or over areas where hunters are attempting to take upland game birds or mammals.

**I. "Bow"** shall mean compound, recurve, long bow, or crossbow. Sights on bows shall not project light nor magnify.

**J. "Crossbows"** shall mean a device with a bow limb or band of flexible material that is attached horizontally to a stock and has a mechanism to hold the string in a cocked position. Sights on crossbows shall not project light nor magnify.

**K. "Department"** shall mean the New Mexico department of game and fish.

**L. "Department offices"** shall mean department offices in Santa Fe, Albuquerque, Raton, Las Cruces, or Roswell.

**M. "Director"** shall mean the director of the New Mexico department of game and fish.

**N. "Established road"** is defined as follows:

(1) a road, built or maintained by equipment, which shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures;

(2) a two-track road completely void of vegetation in the tracks which shows use prior to hunting seasons for other purposes such as recreation, mining, logging, and ranching and shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures.

**O. "Falconry"** shall mean hunting upland game using raptors.

**P. "License year"** shall mean the period from April 1 through March 31.

**Q. "Modern firearms"** shall mean center-fire firearms, not to include any fully automatic firearms. Legal shotguns shall be only those shotguns capable of being fired from the shoulder.

**R. "Muzzle-loader or muzzle-loading firearms"** shall mean those rifles and shotguns in which the charge and projectile are loaded through the muzzle. Only blackpowder, Pyrodex® or equivalent blackpowder substitute may be used. Use of smokeless powder is prohibited. Legal muzzle-loader shotguns shall be only those shotguns capable of being fired from the shoulder.

**S. "Non-toxic shot"** shall mean that non-toxic shot approved for use by the U. S. fish and wildlife service.

**T. "Permanent mobility limitation"** shall mean an individual that permanently has: restricted movement in both arms, or is restricted to the use of a walker, wheelchair, or two crutches to walk, or has a combination of disabilities that cause comparable substantial functional limitations.

**U. "Possession limit"** shall mean twice the daily bag limit one can have in their ownership, except where otherwise defined.

**V. "Protected species"** shall mean any of the following animals:

(1) all animals defined as protected wildlife species and game fish under Section 17-2-3 New Mexico Statutes Annotated 1978 Compilation;

(2) all animals listed as endangered species or subspecies as stated in regulation(s) set by the state game commission.

**W. "Retention" or "retain"** shall mean the holding of in captivity.

**X. "State game commission owned properties"** shall mean

all department owned or managed waterfowl management areas, wildlife management areas, sandhills prairie conservation area and lesser prairie-chicken areas.

**Y. “Unlimited”** shall mean there is no set limit on the number of permits or licenses established for the described hunt areas.

**Z. “Waterfowl management area (WMA)”** shall mean Bernardo, Brantley, Casa Colorada, Charette lake, Jackson lake, La Joya, McAllister lake, Salt lake, [~~Seven Rivers;~~] Tucumcari, and W.S. Huey state game commission owned or managed waterfowl management areas.

**AA. “Wildlife management area”** shall mean Big Hatchet, Colin Neblett, E.S. Barker, Humphries, Marquez, Rio Chama, Sargent, Socorro-Escondida, and Water canyon wildlife management areas, the Sandhills Prairie conservation area, and state game commission owned lesser prairie-chicken areas.

**BB. “Youth”** shall mean those less than 18 years of age except where otherwise defined.

[19.31.5.7 NMAC - Rp, 19.31.5.7 NMAC, 8-16-2010; A, 7-31-2012]

### 19.31.5.8 LICENSE AND APPLICATION REQUIREMENTS:

**A. License:** It shall be unlawful to hunt [~~blue~~] dusky grouse, pheasant, quail, and squirrel without having purchased a valid license for the current license year.

(1) [~~For pheasant hunting on Casa Colorada and Seven Rivers youth-only, Casa Colorada, Seven Rivers and W.S. Huey WMAs: in addition to a valid license, a special permit obtained by drawing shall be required.~~] For pheasant hunting on Bernardo WMA and Seven Rivers youth-only, W.S. Huey WMA and Seven Rivers: in addition to a valid license, a special permit obtained by drawing shall be required.

(2) For pheasant hunting on private lands in Valencia county: in addition to a valid license, a Valencia county landowner pheasant permit shall be required.

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

**C. Applications:** Applications for upland game special permits shall be submitted [~~on the appropriate application form or~~] via the department website.

(1) No more than four persons may apply per application.

(2) It shall be unlawful to submit more than one application per species per year, unless otherwise specifically allowed by rule. Those submitting more than one application per species will result in the

rejection of all applications for that species.

(3) [~~Applications may be returned to the sender if such applications are not on the proper form or do not supply adequate information.~~] Applications may be rejected if such applications do not supply adequate information.

(4) 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.

(5) All applications must be [~~mailed to the Santa Fe office or~~] submitted via the department website unless otherwise specifically allowed by rule. Persons desiring a Valencia county landowner pheasant hunt permit must obtain an application from registered landowners. Applications must be submitted in person to only the northwest area (Albuquerque) office. Applications for the Valencia county landowner pheasant hunt permits may be submitted up to the day prior to the hunt.

(6) [~~The application deadline for Casa Colorada youth-only, Seven Rivers youth-only, Casa Colorada, Seven Rivers and W.S. Huey WMAs pheasant hunts shall be the first Wednesday in November.~~] The application deadline for the Bernardo and W.S. Huey WMAs as well as the Seven Rivers pheasant hunts shall be on date(s) set by the state game commission.

(7) If applications for permits exceed the number of available permits, permits shall be allotted by means of a random public drawing.

(8) If any permits remain after the original deadline, the director may authorize a new deadline. A person who is not awarded a permit for which he applied may submit a new application for a permit if such permits remain available.

**D. Youth hunts:** Only applicants who have not reached their 18<sup>th</sup> birthday by the opening day of the hunt are eligible to apply for or participate in a youth only hunt.

[19.31.5.8 NMAC - Rp, 19.31.5.8 NMAC, 8-16-2010; A, 1-31-2012; A, 7-31-2012]

### 19.31.5.9 MANNER AND METHODS FOR UPLAND GAME:

**A. Season and hours:** Upland game may be hunted or taken only during open seasons and only during the period from one-half hour before sunrise to one-half hour after sunset, unless otherwise specifically allowed by rule.

(1) On wildlife management areas, the lesser prairie-chicken areas, and the Sandhills Prairie conservation area hunting hours shall be from one-half hour before sunrise to one-half hour after sunset.

(2) On waterfowl management areas (WMAs), hunting hours shall be from

one-half hour before sunrise to 1:00 p.m. For the special permit pheasant hunts on [~~the Seven Rivers WMA~~] Seven Rivers, W.S. Huey WMA and the Seven Rivers [~~WMA~~] youth-only pheasant hunt, hunting hours shall be from one-half hour before sunrise to 4 p.m.

**B. Bag limit:** It is unlawful for any person to hunt for or take more than one daily bag limit allowed by regulation.

**C. Seizure:** Any conservation officer or other officer authorized to enforce game laws and regulations shall seize the carcasses of any upland game that are illegally obtained.

**D. Use of bait:** It shall be unlawful for anyone to take or attempt to take any upland game, other than quail on private property, by use of bait. It shall be lawful to take quail from areas where quail feeders occur on private property.

**E. Live animals:** It shall be unlawful to use live animals as a blind or decoy in taking or attempting to take any upland game.

**F. Use of calling devices:** It shall be unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any upland game.

**G. Killing out-of-season:** It shall be unlawful to kill any upland game out-of-season.

**H. Legal sporting arms and ammunition:**

(1) The following are legal sporting arms for pheasants, and quail:

(a) shotguns firing shot, including muzzle-loading shotguns;

(b) bows and arrows; and

(c) crossbows.

(2) The following are legal sporting arms for [~~blue~~] dusky grouse, Abert's squirrels, Arizona gray squirrels, fox squirrels, eastern gray squirrels and red squirrels:

(a) shotguns firing shot, including muzzle-loading shotguns;

(b) rimfire firearms;

(c) muzzle-loading firearms;

(d) bows and arrows; and

(e) crossbows.

(3) Non-toxic shot is required for hunting on all state game commission owned lands. It shall be unlawful for any person hunting with a shotgun or muzzleloader on state game commission owned properties, to hunt with or be in possession of lead shot, or shotgun shells loaded with lead shot.

**I. Drugs and explosives:** It shall be unlawful to use any form of drug on an arrow or use arrows driven by explosives.

**J. Proof of species or sex:**  
(1) One foot shall remain attached to each quail taken until the bird has arrived at the personal abode of the possessor or



storage facility.

(2) The head or a leg of each pheasant taken must remain attached to the bird until the bird has arrived at the personal abode of the possessor or storage facility.

**K. Possession or sale of protected species:** It shall be unlawful to possess, sell, or offer for sale all or part of any upland game except as provided below:

(1) License or permit: A person may possess upland game or parts thereof that they have lawfully taken (killed) under license or permit.

(2) Game taken by another: Any person may have in their possession or under their control any upland game or parts thereof that have been lawfully taken by another person, if they possess a written statement which shall be provided by the donor of the upland game, or parts thereof, and which shall contain the following:

(a) the kind and number of upland game parts donated;

(b) the date and county where the upland game was lawfully taken;

(c) the donor's name, address, and the number of the hunting license under which the upland game was lawfully taken;

(d) the date and place of the donation.

(3) Retention of live animals: It shall be unlawful to retain upland game in a live condition except under permit or license issued by the director for the following purposes:

(a) zoos open for public display;

(b) in class A parks;

(c) in projects for scientific research and propagation;

(d) a rehabilitation permit;

(e) under a falconry permit, only those birds listed on the permit;

(f) under a scientific collection permit, one may collect and possess only those species listed on the permit;

(g) in transit through New Mexico when the transporter can demonstrate proof of legal possession of the protected upland game being transported.

(4) Sale of game animal parts: Only skins, claws or feathers of legally taken upland game may be bartered or sold. The disposer must supply to the recipient a written statement which shall contain the following:

(a) description of the skin, claws, or feathers involved;

(b) the date and county where the upland game was taken;

(c) the disposer's name, address and hunting license number under which the upland game was taken;

(d) the date and place of the transaction.

**L. Release of wildlife:** It shall be unlawful for any person or persons to release, intentionally or otherwise, or

cause to be released in this state any upland game, without first obtaining a permit from the department of game and fish.

**M. Use of vehicles and roads in hunting upland game:**

(1) Roads: It shall be unlawful to shoot at, wound, take, attempt to take, or kill any upland game on, from, or across any graded paved, or maintained public road and including the areas lying within right-of-way fences or 40 feet from the edge of the pavement or maintained surface, in absence of right-of-way fences.

(2) Vehicles, boats, aircraft: It shall be unlawful to shoot at any upland game from within a motor vehicle, power boat, sailboat, or aircraft.

(3) Harassing protected wildlife: It shall be unlawful, at any time, to pursue, harass, harr, drive, or rally any upland game by use of or from a motor-driven vehicle, powerboat, sailboat, or aircraft.

(4) Vehicle off of established road: During the seasons established for upland game, it shall be unlawful to drive or ride in a motor vehicle, which is driven off an established road when the vehicle bears a licensed hunter, fisherman or trapper. EXCEPTION: 1) snowmobiles; 2) all landowners, lessees or their employees, while on their owned or leased lands in connection with legitimate agricultural activities.

(5) Closed roads: During the seasons established for any upland game, it shall be unlawful to knowingly occupy, drive, or cause to be driven any motor vehicle on a closed road when the vehicle bears a licensed hunter, angler or trapper.

(6) Mobility impaired:

(a) Shooting from a vehicle: The holder of a mobility impaired card is authorized to shoot at and kill upland game birds during their respective open seasons from a stationary motor-driven vehicle that is not on a public road or highway. The director may issue permits to shoot from a stationary vehicle to applicants who provide certification that the applicant is disabled in accordance with the American Disability Act. Such certification shall be signed by an M.D. or O.D. licensed to practice in the applicant's state of residence.

(b) Driving off established roads: Holders of a mobility impaired card may, with permission of the landowner, lessee, or land management agency, drive off established roads to hunt for or take squirrels or upland game birds, during open seasons.

(c) Assistance for mobility impaired hunter: The holder of a mobility impaired card may be accompanied by another person to assist in reducing to possession any upland game animal which has clearly been wounded by the licensed mobility impaired hunter.

**N. Lands and waters**

**owned, administered, controlled, or managed by the state game commission:**

(1) Posting of signs: The state game commission may prohibit, modify, condition, or otherwise control the use of areas under its control by posting of signs as may be required in any particular area.

(2) Violating provisions of posted signs: It shall be unlawful to violate the provisions of posted signs on areas under the control of the state game commission.

(3) Trespass on state game commission owned lands: It shall be unlawful to hunt upland game, camp, or trespass upon state game commission owned lands unless allowed under regulation.

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

(a) The William S. Huey WMA and Seven Rivers [WMA] shall be open for the following purposes:

(i) quail hunting only on Monday, Wednesday, and Saturday during established seasons;

(ii) pheasant hunting by special permit only [;] .

(b) The Brantley WMA (excluding the Seven Rivers [waterfowl management area] portion, as posted) shall be open for quail and pheasant, during established seasons.

(c) The Edward Sargent, W. A. Humphries, Rio Chama, Urraca, Colin Neblett, Water canyon, Marquez, Elliot S. Barker, and Socorro-Escondida wildlife management areas, and the Sandhills Prairie conservation area shall be open for hunting upland game during established seasons.

(d) The Big Hatchet mountain wildlife management area shall be open for quail hunting during established seasons.

(e) The state game commission owned lesser prairie-chicken areas shall be open for quail hunting during established seasons.

(5) The Sandia ranger district of the Cibola national forest shall be open to archery only hunting for upland game during established seasons.

**O. Areas closed to upland game hunting:** The following areas shall remain closed to hunting, except as permitted by regulation.

(1) All state game commission owned or managed properties.

(2) Rio Grande wild and scenic river area.

(3) Sub-unit 6B (Valles Caldera national preserve).

(4) Sugarite canyon state park.

(5) Valle Vidal area.

(6) The old McMillan lake spillway arm of Brantley lake extending from the mouth of South Seven Rivers draw

north to the railroad trestle shall be closed to all hunting from January 1 through February 28.

[19.31.5.9 NMAC - Rp, 19.31.5.9 NMAC, 8-16-2010; A, 7-31-2012]

**19.31.5.10 UPLAND GAME HUNTING SEASONS:** Hunting seasons shall be as indicated below, listing the species, open areas, eligibility requirements or restrictions, season dates, and daily bag and possession limits.

**2010-2013 seasons: all dates are 2010-2013 unless otherwise specified**

SPECIES	OPEN AREAS	SEASON OPEN	DAILY BAG (POSSESSION) LIMITS
[blue] dusky grouse	GS-1 GS-2	Sept. 1- Oct. [15] 31 Oct. 1 – [31] Nov. 30	3 (6 in possession)
pheasant	statewide, excluding Valencia county	Dec. 9-12, 2010, Dec. 8-11, 2011, Dec. 6-9, 2012, Dec. 12- 15, 2013	3 (males) (6 in possession)
youth-only pheasant hunt (special draw permit required)	[Casa Colorada] Bernardo WMA & Seven Rivers [WMAs.]	Dec. 4, 2010, Dec. 3, 2011, [Dec. 4] Oct. 20, 2012 and [Dec- 7] Oct. 19, 2013	3 (males) (6 in possession)
pheasant (special draw permit required)	[Casa Colorada,] Seven Rivers & W.S. Huey [WMAs] WMA	Dec. 11, 2010, Dec. 10, 2011, Dec. 8, 2012 and Dec. 14, 2013	3 (males) (6 in possession)
pheasant (Valencia Co.) (landowner permit required)	Valencia county private lands	Dec. 11, 2010, Dec. 10, 2011, Dec. 8, 2012 and Dec. 14, 2013	3 (males) (6 in possession)
quail: Gambel’s, scaled, northern bobwhite and Montezuma (Mearn’s)	Statewide	Nov. 15 - Feb. 15	15 (singly or in aggregate; no more than 5 shall be Mearn’s, possession shall be 30 singly or in aggregate – no more than 10 shall be Mearn’s)
squirrel: Abert’s, Arizona gray, fox, eastern gray and red squirrel	GS-1 GS-2 S-3 S-4	Sept. 1 - Oct. 31 Oct. 1 - Nov. 30 Sept. 1 - Oct. 31 Sept. 1 - Oct. 31	8 (singly or in aggregate, possession shall be 16 singly or in aggregate)

[19.31.5.10 NMAC - Rp, 19.31.5.10 NMAC, 8-16-2010; A, 7-31-2012]

**19.31.5.12 HUNT CODES AND PERMIT NUMBERS FOR [CASA COLORADA] BERNARDO WMA AND SEVEN RIVERS YOUTH-ONLY PHEASANT HUNTS, [CASA COLORADA] BERNARDO WMA, SEVEN RIVERS AND W.S. HUEY WMA PHEASANT HUNTS AND THE VALENCIA COUNTY LANDOWNER PHEASANT HUNT:**

Hunters may possess a Valencia county landowner permit in addition to another special permit pheasant hunt. Special permit pheasant hunts will be allocated by season as follows:

hunt location	2010 season	2011 season	2012 season	2013 season	hunt code	no. of permits
youth-only [Casa Colorada] Bernardo WMA	12/04	12/03	[12/01] 10/20	[12/07] 10/19	PHE-0-001	[15] 20
youth-only Seven Rivers [WMA]	12/04	12/03	12/01	12/07	PHE-0-002	40
[Casa Colorada WMA	12/11	12/10	12/08	12/14	PHE-0-003	10
Seven Rivers [WMA]	12/11	12/10	12/08	12/14	PHE-0-004	65
W.S. Huey WMA	12/11	12/10	12/08	12/14	PHE-0-005	40
Valencia county landowner permits	12/11	12/10	12/08	12/14	PHE-0-006	unlimited

[19.31.5.12 NMAC - Rp, 19.31.5.12 NMAC, 8-16-2010; A, 7-31-2012]

**19.31.5.13 FALCONRY SEASONS:**

**A. Open areas and season dates:** The season for [blue] dusky grouse, pheasants, quail, Abert’s squirrel, Arizona gray squirrel, fox squirrel, eastern gray squirrel, and red squirrel shall be statewide and shall be open September 1 through February 28 annually during the 2010-2011 through 2013-2014 hunting seasons.

**B. Daily bag and possession limits:** Daily bag limits for [blue] dusky grouse, pheasant, and quail shall be 3 birds (in the aggregate) and 3 squirrels (in the aggregate). Possession limits shall be: [blue] dusky grouse-6; pheasant-6; quail-30 (singly or in the aggregate); Abert’s, Arizona gray, fox, eastern gray and red squirrel-16 (singly or in the aggregate).

**C. Provisions for possession:** The falconry hunter shall not retain nor possess any protected mammal taken by a raptor except Abert’s, Arizona gray, eastern gray, fox and red squirrels legally taken during open falconry season. The falconry hunter shall not retain nor possess any protected birds taken by a raptor except those upland game species listed herein that were legally taken during the open falconry season.

[19.31.5.13 NMAC - Rp, 19.31.5.13 NMAC, 8-16-2010; A, 7-31-2012]

**NEW MEXICO  
DEPARTMENT OF GAME  
AND FISH**

This is an amendment to 19.31.11 NMAC, Sections 4, 8, 10, 11 and 12 effective 7-31-2012.

**19.31.11.4 DURATION:** April 1, [2011] 2012 through March 31, [2015] 2016. [19.31.11.4 NMAC - Rp, 19.31.11.4 NMAC, 4-1-11; A, 7-31-12]

**19.31.11.8 A D J U S T M E N T  
OF LICENSES, PERMITS,  
AUTHORIZATIONS, AND HARVEST  
LIMITS:**

**A.** The director, with the verbal concurrence of the chairman or his designee, may adjust the number of licenses, permits or harvest limits, up or down by no more than 20% within the GMU or zone, to address critical department management needs, significant changes in population levels or habitat availability. This adjustment may be applied to any or all of the specific hunt codes, harvest limits, or sustainable total mortality for bear and cougar. The director, with the verbal concurrence of the chairman or his designee, may also modify the season dates and manner and method of take to facilitate target removals or embedded quotas for cougars and bears in specific areas or zones for ungulate protection or conflict minimization in densely populated residential areas.

**B.** The [department] director, with the verbal concurrence of the chairman or his designee, may take management actions independent of seasons, harvest limits or female sub-limits for management of populations or to address critical situations including ungulate population protection, depredation, and issues involving human health and safety. The decision to take management actions pursuant to this subsection shall be reported to the commission within 48 hours.

**C.** The previous year's harvest data and management implications shall be presented to the commission at a regularly scheduled state game commission meeting by August of each year. The results of this annual review shall be made available to the public at least 30 days prior to presentation at a regularly scheduled and noticed commission meeting. [19.31.11.8 NMAC - Rp, 19.31.11.8 NMAC, 4-1-11; A, 7-31-12]

**19.31.11.10 BEAR AND  
COUGAR MANNER AND  
METHOD REQUIREMENTS AND  
RESTRICTIONS:**

**A. Season and hours:**  
Bear or cougar may be hunted or taken only

during open seasons and only during the period from one-half hour before sunrise to one-half hour after sunset and only in zones or areas designated as open on the department hotline or web-site. Twenty-four hours prior to hunting bear or cougar, every hunter or hunter's designee must call the toll free number designated by the department or access the department's web site, [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us) to determine if their desired hunt zone is open. Failure to call or check prior to hunting is unlawful. Cougar and bear seasons in each zone with a stable or increasing management objective will close within 72 hours of when the number of cougars or bears harvested, in addition to all other known mortalities or removals, is within 10% of the female sub-limit, or 10% of the sustainable mortality limit for that zone, whichever occurs first. Cougar and bear seasons in each zone with a decrease management objective will remain open until the female sub-limit or sustainable mortality limit for that zone is reached, whichever occurs first.

**B. Bag limit:** It is unlawful for any person to hunt for or take more than one of any bear or cougar during a current license year unless otherwise provided by regulation.

**C. Tagging:**  
(1) Any license that permits the taking of any bear or cougar shall be issued with a bear or cougar tag bearing the name of the species.

(2) It shall be unlawful to possess more than one tag per bear or cougar except as permitted by regulation.

(3) It shall be unlawful for any licensee to fail to appropriately tag the bear or cougar as prescribed below:

(a) Immediately after killing any bear or cougar, the licensee killing the bear or cougar shall notch the proper day and month of kill from the bear or cougar tag.

(b) The tag shall be attached to the carcass or the pelt, which ever portion the hunter possesses of the bear or cougar and the tag shall remain attached to the carcass or pelt while the carcass or pelt is in any vehicle, left unattended in the field, or while it is in camp or at a residence or other place of storage. When the bear or cougar is skinned, the tag must immediately be attached and remained attached to the pelt until a department official places a pelt tag on the pelt as described below. The notched tag may be removed from the carcass while the carcass is being removed from the field to a camp or vehicle. In situations where numerous trips are required to remove the carcass from the field, the tag shall remain attached to that portion of the carcass or pelt left in a camp or vehicle.

(4) A bear or cougar tag, when attached to the carcass or pelt of legally killed bear or cougar, shall authorize possession of

the carcass or pelt for five days. The hunter harvesting the bear or cougar must make arrangements with a department official to pelt tag the pelt before the five days expires.

**D. Proof of sex of bear or cougar:** It shall be unlawful for anyone to transport or possess the pelt (even if the pelt is attached to the carcass) of bear or cougar without proof of sex. The external genitalia of any bear or cougar killed shall remain attached to the pelt and be readily visible until pelt has been inspected and tagged by a department official.

**E. Bear and cougar pelt tagging requirements:**

(1) Any bear or cougar killed shall be tagged with pelt tag furnished free of charge by the department.

(2) The hunter who kills the bear or cougar or his hunter designee must present the skull and pelt to a department official for tooth removal and pelt tagging within five days of killing the animal or before the pelt can be processed by a taxidermist or before taking the pelt out of New Mexico, whichever comes first. Exception: only skulls of female cougars will have a tooth removed by a department official.

(3) The pelt tag shall remain attached until the pelt is tanned.

(4) The skull of the bear or female cougar must remain unfrozen with the mouth fixed open for removal of a premolar tooth until the skull has been inspected by a department official.

(5) Licensed bear or cougar hunters who provide false or fraudulent information regarding the required information including, but not limited to, sex, date, or location of harvest shall be assessed 20 revocation points pursuant to 19.31.2 NMAC.

**F. Seizure:** Any conservation officer or other officer authorized to enforce game laws and regulations shall seize the carcasses or pelts of bear or cougar that are improperly tagged, presented for pelt tagging without proof of sex attached or without presenting the skull along with the pelt.

**G. Use of dogs in hunting:**  
Dogs may be used only to hunt bear and cougar during specific open seasons unless otherwise restricted. Dogs shall not be used to pursue bear in any wildlife management area (WMA) as described in 19.30.4 NMAC except as otherwise permitted in regulation. No dogs shall be used to pursue bear during bow seasons. Dogs may be used to pursue bears during hunts for any legal weapon and zones listed below. When dogs are used in pursuit of bear or cougar, the licensed hunter [~~intending to harvest~~] that harvests the bear or cougar must be present continuously once any dog is released. It shall be unlawful to:

(1) release dogs with the intent of pursuing or hunting bears or cougars or to pursue bears or cougars outside of legal

shooting hours; and

(2) to kill a bear or cougar that was pursued by dogs unless the hunter was present from the initial release of the dog(s).

**H. Use of baits or scents:** It shall be unlawful for anyone to take or attempt to take any bear or cougar by use of baits or scents as defined in 19.31.10.7 NMAC. Scent masking agents on one’s person are allowed.

**I. Live animals:** It shall be unlawful to use live animals as a blind or decoy in taking or attempting to take any bear or cougar.

**J. Use of calling devices:** It shall be unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any bear, such calling devices are allowed for taking cougar.

**K. Killing out-of-season:** It shall be unlawful to kill any bear or cougar out of their respective hunting seasons.

**L. Bullets:** It shall be unlawful to take or attempt to take bear or cougar by the use of tracer ammunition or any ammunition loaded with full metal jacketed bullets that does not expand or mushroom. Soft-nosed or hollow-pointed bullets may be used in hunting or taking bear or cougar.

**M. Drugs and explosives:** It shall be unlawful to use any form of drug on an arrow or use arrows driven by explosives.

**N. Legal weapon types** for bear and cougar are as follows: any center-fire rifle; any center-fire handgun; shotguns not smaller than 28 gauge, firing a single slug; muzzle-loading rifles; bows and arrows; and crossbows and bolts. The Sandia ranger district portion of the Cibola national forest in zone 4 shall be open for hunting with crossbow and bow only.

**O. Areas closed to bear and cougar hunting:** The following areas shall remain closed to bear and cougar hunting, except as permitted by regulation: Sugarite canyon state park; Rio Grande wild and scenic river area, including the Taos valley overlook; all wildlife management areas including the Water canyon and Marquez WMAs in GMU 9 (Marquez is open only to hunters with valid bear entry permit and bear hunting license); the Valle Vidal area; and sub-unit 6B (Valles Caldera national preserve). Cougar hunting is closed in the Florida mountains hunt area during any open Persian ibex season, except by legal Persian ibex hunters. Persian ibex hunters choosing to hunt cougar under this provision must adhere to the weapon type restriction and season dates as specified by their ibex license.

**P.** The size and type of traps or snares or other reasonable methods that assist the take of cougars on private land will be allowed as designated by the director and chairman of the state game commission.

**Q.** Any take of cougar on public land by the use of traps or snares shall be unlawful unless authorized by the director. [19.31.11.10 NMAC - Rp, 19.31.11.10 NMAC, 4-1-11; A, 7-31-12]

**19.31.11.11 BEAR HUNTING SEASONS:**

**A. Over-the-counter bear hunts for the ~~2011-15~~ 2012-16 hunt seasons:** The following table lists bear zones, open GMUs or areas within zones, weapon type restrictions, season dates, and total [mortality] harvest limits, female sub-limits, and quotas. Management objectives are to stabilize bear populations in zones [1, 2A, 3, 4A, 4B, 5, 6A, and 6B] 1, 2, 3, 6, 7, 8, 9, 10, 11, 12 and 14 and to reduce bear populations by [20%] 15% over the next [4] 3 years in zones [2B, 2C, and 6C] 4, 5, and 13.

[zone]	open GMUs or areas	bow only hunt period	any legal weapon hunt period	2011-12 total limit (female)	2012-13 total limit (female)	2013-14 total limit (female)	2014-15 total limit (female)
1	2, 4, 5, 6, 7, 51, 52	9/1 - 22	9/23 - 11/15	139 (56)	139 (56)	139 (56)	139 (56)
	GMU 2 sub-limit			15 (6)	15 (6)	15 (6)	15 (6)
2A	41, 42, 43, 47, 48, 49, 50, 53, 56, 57, 58 and 59	9/1 - 22	8/16 - 8/31 and 9/23 - 11/15	85 (34)	85 (34)	85 (34)	85 (34)
2B	45 and 46	9/1 - 22	8/16 - 8/31 and 9/23 - 11/15	122 (61)	116 (58)	110 (55)	104 (52)
2C	54 and 55	9/1 - 22	8/16 - 8/31 and 9/23 - 11/15	106 (53)	100 (50)	95 (48)	90 (45)
3	9 and 10	9/1 - 22	8/16 - 8/31 and 9/23 - 11/15	25 (10)	25 (10)	25 (10)	25 (10)
4A	8	9/1 - 22	10/15 - 11/15	5 (2)	5 (2)	5 (2)	5 (2)
4B	14	9/1 - 22	10/15 - 11/15	12 (5)	12 (5)	12 (5)	12 (5)
5	12, 13, 15, 16, 17, 18, 20, 21, 22, 23, 24, 26, and 27	9/1 - 24	8/16 - 8/31 and 9/25 - 11/30	109 (44)	109 (44)	109 (44)	109 (44)
6A	37 and 38	9/1 - 22	8/16 - 8/31 and 9/23 - 11/30	16 (6)	16 (6)	16 (6)	16 (6)
6B	34	9/1 - 22	8/16 - 8/31 and 9/23 - 11/30	31 (12)	31 (12)	31 (12)	31 (12)



6C	36	9/1 - 22	8/16 - 8/31 and 9/23 - 11/15	28 (14)	26 (13)	25 (13)	24 (12)]
----	----	----------	------------------------------------	---------	---------	---------	----------

zone	open GMUs or areas	bow only	any legal weapon	2012-13 total limit (female)	2013-14 total limit (female)	2014-15 total limit (female)	2015-16 total limit (female)
1	4, 5, 6, 7, 51, 52	9/1 - 22	9/23 - 11/15	124 (50)	124 (50)	124 (50)	124 (50)
2	2	9/1-22	9/23 - 11/15	15 (6)	15 (6)	15 (6)	15 (6)
3	48, 49, 50 and 53	9/1 - 22	8/16 - 8/31 and 9/23 - 11/15	44 (17)	44 (17)	44 (17)	44 (17)
4	45 and 46	9/1 - 22	8/16 - 8/31 and 9/23 - 11/30	116 (58)	110 (55)	104 (52)	104 (52)
5	54 and 55	9/1 - 22	8/16 - 8/31 and 9/23 - 11/15	100 (50)	95 (48)	90 (45)	90 (45)
6	41, 42, 43, 47 and 59	9/1 - 22	8/16 - 8/31 and 9/23 - 11/15	18 (7)	18 (7)	18 (7)	18 (7)
7	56, 57 and 58	9/1 - 22	8/16 - 8/31 and 9/23 - 11/15	23 (9)	23 (9)	23 (9)	23 (9)
8	8	9/1 - 22	10/15 - 11/15	5 (2)	5 (2)	5 (2)	5 (2)
9	9 and 10	9/1 - 22	8/16 - 8/31 and 9/23 - 11/15	25 (10)	25 (10)	25 (10)	25 (10)
10	12, 13, 15, 16, 17, 18, 20, 21, 22, 23, 24, 26, and 27	9/1 - 24	8/16 - 8/31 and 9/25 - 11/30	109 (44)	109 (44)	109 (44)	109 (44)
11	37 and 38	9/1 - 22	8/16 - 8/31 and 9/23 - 11/30	16 (6)	16 (6)	16 (6)	16 (6)
12	34	9/1 - 22	8/16 - 8/31 and 9/23 - 11/30	31 (12)	31 (12)	31 (12)	31 (12)
13	36	9/1 - 22	8/16 - 8/31 and 9/23 - 11/15	26 (13)	25 (13)	24 (12)	24 (12)
14	14	9/1 - 22	10/15 - 11/15	12 (5)	12 (5)	12 (5)	12 (5)

B. Entry hunts for the 2011-12 through [2014-15] 2015-16 hunting seasons shall be as indicated below, listing the open areas, hunt dates, hunt codes, number of permits, and bag limit.

open GMUs or areas	hunt start	hunt end	hunt code	licenses	bag limit
2, YO	8/1	8/31	BER-1-100	5	1 bear
4: Sargent WMA only	8/1	8/31	BER-1-101	10	1 bear
4: Humphries WMA only	8/1	8/31	BER-1-102	5	1 bear
9: Marquez WMA only	8/1	8/31	BER-1-103	5	1 bear
54/55: E.S. Barker/Colin Neblett WMAs	8/1	8/31	BER-1-104	12	1 bear
55: Valle Vidal and Greenwood areas	8/1	8/31	BER-1-105	20	1 bear
[*]55: Valle Vidal and Greenwood areas	[4/1] 4/15	[4/14] 5/20	BER-1-106	20	1 bear

[\* Experimental spring bear hunt: This hunt is designed to test the effects of spring bear take on the mortality of elk calves in the Valle Vidal and Greenwood areas. This hunt shall close once 15 bears have been harvested.]

C. Bear hunting is closed in the Valle Vidal and Greenwood areas except by legal Valle Vidal and Greenwood area elk hunters or successful applicants for bear entry hunts BER-1-105 and BER-1-106. Dogs are permitted for BER-1-105 and BER-1-106. Valle Vidal and Greenwood area elk hunters choosing to hunt bears under this provision must adhere to the weapon type restriction and season dates specified by their elk license.

D. Bears taken from the Sargent and William A. Humphries WMAs in zone 1, Elliot Barker/Colin Neblett WMAs and Valle Vidal and Greenwood areas in zone [2] 5, or Marquez WMA in zone [3] 8 shall count towards the harvest limit in those zones. [Bears removed by department management action will count against that zone's harvest limit. Bears relocated to other zones and harvested in the zone of release during that fall's hunt season will count against the zone of origin and not the zone where released. If a relocated bear is harvested in a subsequent year, the harvest counts as a normal kill in the zone of harvest.]

E. Bag limit shall be one bear except any female accompanied by cub(s), or except any cub less than a year old. [19.31.11.11 NMAC - Rp, 19.31.11.11 NMAC, 4-1-11; A, 7-31-12]

**19.31.11.12 COUGAR HUNTING SEASONS:**

A. Over the counter cougar hunt seasons shall be from [October] April 1 through March 31 or until the total mortality limit,

or female sub-limit, whichever comes first, is met in any given cougar management zone. [On private lands the season shall run from April 1 through March 31 or until the total mortality limit, or female sub-limit, whichever comes first, is met in any given cougar management zone.]

**B.** Private landowners or their designees who hunt on private land must obtain a private land cougar permit prior to trapping or snaring a cougar on private land. It shall be unlawful for any private land cougar hunter to take a cougar contrary to the allowable manner and method including traps and snares.

**C.** The following table lists cougar zones, open GMUs or areas within zones, weapon type restrictions, season dates, total mortality limits and female sub-limits for the [2011-15] 2012-2016 seasons. Management objectives include increasing cougar populations in zones A, B, E, I, J, M, N, O, [P] Q and R, by harvesting at  $\leq 17\%$  and no more than 30% females and to maintain stable or decrease cougar populations in zones C, D, F, G, H, K, L, P and S by harvesting at  $\leq 25\%$  and no more than 50% females.

[zone	open GMUs or areas	2011-12 total limits- (female)	2012-13 total limits- (female)	2013-14 total limits- (female)	2014-15 total limits- (female)
A	2 and 7	42 (13)	42 (13)	42 (13)	42 (13)
B	5, 50, and 51	28 (8)	28 (8)	28 (8)	28 (8)
C	43, 45, 46, 48, 49, 53	85 (43)	85 (43)	85 (43)	85 (43)
D	41, 42, 47 and 59	23 (12)	23 (12)	23 (12)	23 (12)
E	9 and 10	50 (15)	50 (15)	50 (15)	50 (15)
F	6	46 (23)	46 (23)	46 (23)	46 (23)
G	13, and 17	73 (37)	73 (37)	73 (37)	73 (37)
H	19 and 20	24 (12)	24 (12)	24 (12)	24 (12)
I	18, 36, 37, and 38	37 (11)	37 (11)	37 (11)	37 (11)
J	15, 16, 21, and 25	89 (27)	89 (27)	89 (27)	89 (27)
K	22, 23, and 24	66 (33)	66 (33)	66 (33)	66 (33)
L	26 and 27	19 (10)	19 (10)	19 (10)	19 (10)
M	31, 32, 33, 39, and 40	31 (9)	31 (9)	31 (9)	31 (9)
N	4 and 52	15 (5)	15 (5)	15 (5)	15 (5)
O	12	21 (6)	21 (6)	21 (6)	21 (6)
P	56, 57, and 58	10 (3)	10 (3)	10 (3)	10 (3)
Q	28, 29, 30, and 34	35 (11)	35 (11)	35 (11)	35 (11)
R	54 and 55	26 (8)	26 (8)	26 (8)	26 (8)
S	8 and 14	25 (13)	25 (13)	25 (13)	25 (13)]

zone	open GMUs or areas	2012-13 total limits (female)	2013-14 total limits (female)	2014-15 total limits (female)	2015-16 total limits (female)
A	2 and 7	42 (13)	42 (13)	42 (13)	42 (13)
B	5, 50, and 51	28 (8)	28 (8)	28 (8)	28 (8)
C	43, 45, 46, 48, 49, 53	85 (43)	85 (43)	85 (43)	85 (43)
D	41, 42, 47 and 59	23 (12)	23 (12)	23 (12)	23 (12)
E	9 and 10	50 (15)	50 (15)	50 (15)	50 (15)
F	6	46 (23)	46 (23)	46 (23)	46 (23)
G	13, and 17	73 (37)	73 (37)	73 (37)	73 (37)
H	19 and 20	24 (12)	24 (12)	24 (12)	24 (12)
I	18, 36, 37, and 38	37 (11)	37 (11)	37 (11)	37 (11)
J	15, 16, 21, and 25	89 (27)	89 (27)	89 (27)	89 (27)
K	22, 23, and 24	66 (33)	66 (33)	66 (33)	66 (33)
L	26 and 27	19 (10)	19 (10)	19 (10)	19 (10)
M	31, 32, 33, 39, and 40	31 (9)	31 (9)	31 (9)	31 (9)
N	4 and 52	15 (5)	15 (5)	15 (5)	15 (5)
O	12	21 (6)	21 (6)	21 (6)	21 (6)
P	56, 57, and 58	14 (7)	14 (7)	14 (7)	14 (7)
Q	28, 29, 30, and 34	35 (11)	35 (11)	35 (11)	35 (11)
R	54 and 55	26 (8)	26 (8)	26 (8)	26 (8)
S	8 and 14	25 (13)	25 (13)	25 (13)	25 (13)

**D.** Bag limits shall be [~~one cougar~~] two cougars, except any female accompanied by [a] spotted kitten(s), and except any spotted kitten.  
 [19.31.11.12 NMAC - Rp, 19.31.11.12 NMAC, 4-1-11; A, 7-31-12]

**NEW MEXICO DEPARTMENT OF GAME AND FISH**

This is an amendment to 19.31.15 NMAC, Sections 13 and 14 effective 7-31-2012.

**19.31.15.13 PRONGHORN ANTELOPE HUNTING SEASONS FOR PUBLIC DRAW LICENSES:** Numbers of licenses are evaluated annually based upon population dynamics, weather conditions, sustainable harvest, and department management objectives. Values listed are ‘up to’ or the upper limit of available licenses under current conditions. Pursuant to 19.31.15.8 NMAC, these may be modified as needed.

**A.** Pronghorn antelope hunts for any legal sporting arms, listing the open GMUs, hunt dates, hunt code and bag limit for the 2011-12 through the 2014-15 hunt seasons shall be as indicated below. Licenses and authorizations shall be issued pursuant to 19.30.12.9 NMAC.

open GMUs	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates	hunt code	lic.	bag limit
2	10/1-10/3	10/6-10/8	10/5-10/7	10/4-10/6	ANT-1-100	5	MB
7, 9, 12, 13	10/1-10/3	10/6-10/8	10/5-10/7	10/4-10/6	ANT-1-101	80	MB
8, 14, 43 (west of Hwy. [285] 3)	9/10-9/12	9/8-9/10	[9/7-9/9] 10/5-10/7	[9/6-9/8] 10/4-10/6	ANT-1-102	15	MB
15			10/5-10/7	10/4-10/6	ANT-1-167	50	MB
16	10/1-10/3	10/6-10/8	10/5-10/7	10/4-10/6	ANT-1-103	80	MB
17	10/1-10/3	10/6-10/8	10/5-10/7	10/4-10/6	ANT-1-104	40	MB
20	10/1-10/3	10/6-10/8	10/5-10/7	10/4-10/6	ANT-1-105	45	MB
21	10/1-10/3	10/6-10/8	10/5-10/7	10/4-10/6	ANT-1-106	20	MB
23	10/1-10/3	10/6-10/8	10/5-10/7	10/4-10/6	ANT-1-107	30	MB
24	10/1-10/3	10/6-10/8	10/5-10/7	10/4-10/6	ANT-1-108	10	MB
25	10/1-10/3	10/6-10/8	10/5-10/7	10/4-10/6	ANT-1-109	10	MB
26	10/1-10/3	10/6-10/8	10/5-10/7	10/4-10/6	ANT-1-110	10	MB
27	10/1-10/3	10/6-10/8	10/5-10/7	10/4-10/6	ANT-1-111	10	MB
31	9/10-9/12	9/8-9/10	[9/7-9/9] 10/5-10/7	[9/6-9/8] 10/4-10/6	ANT-1-112	90	MB
31: <b>YO</b>	9/17-9/19	9/15-9/17	9/14-9/16	9/13-9/15	ANT-1-113	10	F-IM
32, 33	9/10-9/12	9/8-9/10	[9/7-9/9] 10/5-10/7	[9/6-9/8] 10/4-10/6	ANT-1-114	200	MB
32, 33: <b>YO</b>	9/17-9/19	9/15-9/17	9/14-9/16	9/13-9/15	ANT-1-115	10	F-IM
portions of 32	12/1-12/15	12/1-12/15	12/1-12/15	12/1-12/15	ANT-1-116	30	F-IM
18, 36, 37, 38	9/10-9/12	9/8-9/10	[9/7-9/9] 10/5-10/7	[9/6-9/8] 10/4-10/6	ANT-1-117	200	MB
18, 36, 37, 38: <b>YO</b>	9/17-9/19	9/15-9/17	9/14-9/16	9/13-9/15	ANT-1-118	40	F-IM
39, 40	9/10-9/12	9/8-9/10	[9/7-9/9] 10/5-10/7	[9/6-9/8] 10/4-10/6	ANT-1-119	60	MB
39, 40: <b>YO</b>	9/17-9/19	9/15-9/17	9/14-9/16	9/13-9/15	ANT-1-120	10	F-IM
41, 42, 43 (east of Hwy. [285] 3), 46, 47, 48, 54, 55, 56, 57, 58, 59	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-121	500	MB
41, 42, 43 (east of Hwy. [285] 3), 46, 47, 48, 54, 55, 56, 57, 58, 59: <b>YO</b>	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-122	50	ES
41, 42, 43 (east of Hwy. [285] 3), 46, 47, 48, 54, 55, 56, 57, 58, 59: <b>YO</b>	9/3-9/5	9/1-9/3	8/31-9/2	8/30-9/1	ANT-1-123	100	F-IM

**B.** The following hunts will be limited to youth only (YO) hunters. Licenses issued pursuant to this section shall be valid within the GMU for which they were issued.

open GMUs	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates	hunt code	lic.	bag limit
-----------	----------------------	----------------------	----------------------	----------------------	-----------	------	-----------

any legal sporting arms:							
2: YO	11/25-11/27	11/23-11/25	[11/22-11/24] 10/26-10/28	[11/21-11/23] 10/25-10/27	ANT-1-130	1	ES
7, 9, 12, 13: YO	11/25-11/27	11/23-11/25	[11/22-11/24] 10/26-10/28	[11/21-11/23] 10/25-10/27	ANT-1-131	8	ES
8, 14, 43 (west of Hwy. [285] 3): YO	11/25-11/27	11/23-11/25	[11/22-11/24] 10/26-10/28	[11/21-11/23] 10/25-10/27	ANT-1-132	3	ES
15: YO	11/25-11/27	11/23-11/25	10/26-10/28	10/25-10/27	ANT-1-148	5	ES
16: YO	11/25-11/27	11/23-11/25	[11/22-11/24] 10/26-10/28	[11/21-11/23] 10/25-10/27	ANT-1-133	8	ES
17: YO	11/25-11/27	11/23-11/25	[11/22-11/24] 10/26-10/28	[11/21-11/23] 10/25-10/27	ANT-1-134	4	ES
20: YO	11/25-11/27	11/23-11/25	[11/22-11/24] 10/26-10/28	[11/21-11/23] 10/25-10/27	ANT-1-135	5	ES
21: YO	11/25-11/27	11/23-11/25	[11/22-11/24] 10/26-10/28	[11/21-11/23] 10/25-10/27	ANT-1-136	2	ES
23: YO	11/25-11/27	11/23-11/25	[11/22-11/24] 10/26-10/28	[11/21-11/23] 10/25-10/27	ANT-1-137	3	ES
24: YO	11/25-11/27	11/23-11/25	[11/22-11/24] 10/26-10/28	[11/21-11/23] 10/25-10/27	ANT-1-138	1	ES
25: YO	11/25-11/27	11/23-11/25	[11/22-11/24] 10/26-10/28	[11/21-11/23] 10/25-10/27	ANT-1-139	1	ES
26: YO	11/25-11/27	11/23-11/25	[11/22-11/24] 10/26-10/28	[11/21-11/23] 10/25-10/27	ANT-1-140	1	ES
27: YO	11/25-11/27	11/23-11/25	[11/22-11/24] 10/26-10/28	[11/21-11/23] 10/25-10/27	ANT-1-141	1	ES
31: YO	11/25-11/27	11/23-11/25	[11/22-11/24] 10/26-10/28	[11/21-11/23] 10/25-10/27	ANT-1-142	9	ES
32, 33: YO	11/25-11/27	11/23-11/25	[11/22-11/24] 10/26-10/28	[11/21-11/23] 10/25-10/27	ANT-1-143	20	ES
portions of 32: YO	11/25-11/27	11/23-11/25	[11/22-11/24] 10/26-10/28	[11/21-11/23] 10/25-10/27	ANT-1-144	3	ES
18, 36, 37, 38: YO	11/25-11/27	11/23-11/25	[11/22-11/24] 10/26-10/28	[11/21-11/23] 10/25-10/27	ANT-1-145	20	ES
39, 40: YO	11/25-11/27	11/23-11/25	[11/22-11/24] 10/26-10/28	[11/21-11/23] 10/25-10/27	ANT-1-146	5	ES
41, 42, 43 (east of Hwy. [285] 3), 46, 47, 48, 54, 55, 56, 57, 58, 59: YO	11/25-11/27	11/23-11/25	[11/22-11/24] 10/26-10/28	[11/21-11/23] 10/25-10/27	ANT-1-147	50	ES
<b>muzzleloader rifles and bows only:</b>							
[15: YO]	11/25-11/27	11/23-11/25	11/22-11/24	11/21-11/23	ANT-3-148	5	ES]
29: YO	11/25-11/27	11/23-11/25	[11/22-11/24] 10/26-10/28	[11/21-11/23] 10/25-10/27	ANT-3-149	5	ES
50 (north of Hwy. 64), 52: YO	11/25-11/27	11/23-11/25	[11/22-11/24] 10/26-10/28	[11/21-11/23] 10/25-10/27	ANT-3-150	15	ES

C. The following hunts will be limited to mobility impaired (MI) hunters. Licenses issued pursuant to this section shall be valid within the GMU for which they were issued.

open GMUs	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates	hunt code	lic.	bag limit
8	7/30-8/1	7/28-7/30	[7/27-7/29] 8/17-8/19	[7/26-7/28] 8/16-8/18	ANT-1-155	10	MB
12	7/30-8/1	7/28-7/30	[7/27-7/29] 8/17-8/19	[7/26-7/28] 8/16-8/18	ANT-1-156	10	MB



13	7/30-8/1	7/28-7/30	[7/27-7/29] 8/17-8/19	[7/26-7/28] 8/16-8/18	ANT-1-157	10	MB
14, 43 (west of Hwy. [285] 3)	7/30-8/1	7/28-7/30	[7/27-7/29] 8/17-8/19	[7/26-7/28] 8/16-8/18	ANT-1-158	5	MB
16	7/30-8/1	7/28-7/30	[7/27-7/29] 8/17-8/19	[7/26-7/28] 8/16-8/18	ANT-1-159	5	MB
17	7/30-8/1	7/28-7/30	[7/27-7/29] 8/17-8/19	[7/26-7/28] 8/16-8/18	ANT-1-160	5	MB
23	7/30-8/1	7/28-7/30	[7/27-7/29] 8/17-8/19	[7/26-7/28] 8/16-8/18	ANT-1-161	10	MB
31	7/30-8/1	7/28-7/30	[7/27-7/29] 8/17-8/19	[7/26-7/28] 8/16-8/18	ANT-1-162	10	MB
32, 33	7/30-8/1	7/28-7/30	[7/27-7/29] 8/17-8/19	[7/26-7/28] 8/16-8/18	ANT-1-163	15	MB
18, 36, 37, 38	7/30-8/1	7/28-7/30	[7/27-7/29] 8/17-8/19	[7/26-7/28] 8/16-8/18	ANT-1-164	10	MB
39, 40	7/30-8/1	7/28-7/30	[7/27-7/29] 8/17-8/19	[7/26-7/28] 8/16-8/18	ANT-1-165	10	MB
41, 42, 43 (east of Hwy. [285] 3), 46, 47, 48, 54, 55, 56, 57, 58, 59	7/30-8/1	7/28-7/30	7/27-7/29	7/26-7/28	ANT-1-166	25	MB

**D.** Pronghorn antelope hunts for bows, listing the open GMUs, hunt dates, hunt code and bag limit for the 2011-12 through the 2014-15 hunt seasons shall be as indicated below. Licenses issued pursuant to this section shall be valid within the GMU for which they were issued.

open GMUs	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates	hunt code	lic.	bag limit
7, 9, 12, 13	8/13-8/21	8/11-8/19	[8/10-8/18] 8/24-9/1	[8/9-8/17] 8/23-8/31	ANT-2-170	25	MB
8, 14, 43 (west of Hwy. [285] 3)	8/13-8/21	8/11-8/19	[8/10-8/18] 8/24-9/1	[8/9-8/17] 8/23-8/31	ANT-2-171	5	MB
15	8/13-8/21	8/11-8/19	[8/10-8/18] 8/24-9/1	[8/9-8/17] 8/23-8/31	ANT-2-172	10	MB
16	8/13-8/21	8/11-8/19	[8/10-8/18] 8/24-9/1	[8/9-8/17] 8/23-8/31	ANT-2-173	30	MB
17	8/13-8/21	8/11-8/19	[8/10-8/18] 8/24-9/1	[8/9-8/17] 8/23-8/31	ANT-2-174	30	MB
20	8/13-8/21	8/11-8/19	[8/10-8/18] 8/24-9/1	[8/9-8/17] 8/23-8/31	ANT-2-175	10	MB
23	8/13-8/21	8/11-8/19	[8/10-8/18] 8/24-9/1	[8/9-8/17] 8/23-8/31	ANT-2-176	10	MB
25	8/13-8/21	8/11-8/19	[8/10-8/18] 8/24-9/1	[8/9-8/17] 8/23-8/31	ANT-2-177	10	MB
26	8/13-8/21	8/11-8/19	[8/10-8/18] 8/24-9/1	[8/9-8/17] 8/23-8/31	ANT-2-178	10	MB
30	8/13-8/21	8/11-8/19	[8/10-8/18] 8/24-9/1	[8/9-8/17] 8/23-8/31	ANT-2-179	50	MB
31	8/13-8/21	8/11-8/19	[8/10-8/18] 8/24-9/1	[8/9-8/17] 8/23-8/31	ANT-2-180	75	MB
32, 33	8/13-8/21	8/11-8/19	[8/10-8/18] 8/24-9/1	[8/9-8/17] 8/23-8/31	ANT-2-181	75	MB
18, 36, 37, 38	8/13-8/21	8/11-8/19	[8/10-8/18] 8/24-9/1	[8/9-8/17] 8/23-8/31	ANT-2-182	25	MB
39, 40	8/13-8/21	8/11-8/19	[8/10-8/18] 8/24-9/1	[8/9-8/17] 8/23-8/31	ANT-2-183	10	MB
41, 42, 43 (east of Hwy. [285] 3), 46, 47, 48, 54, 55, 56, 57, 58, 59	8/6-8/14	8/4-8/12	8/3-8/11	8/2-8/13	ANT-2-184	100	MB

**E.** Pronghorn antelope hunts for legal muzzleloading rifles, crossbows, and bows, listing the hunt dates, open areas or

GMUs, hunt code and bag limit for the 2011-12 through the 2014-15 hunt seasons shall be as indicated below. Licenses and authorizations shall be issued pursuant to 19.30.12.9, NMAC.

open GMUs	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates	hunt code	lic.	bag limit
[15	9/30-10/3	10/5-10/8	10/4-10/7	10/3-10/6	ANT-3-187	50	MB]
28: <b>MO</b>	9/3-9/4	9/1-9/2	8/31-9/1	8/30-8/31	ANT-3-188	10	MB
28	9/3-9/4	9/1-9/2	8/31-9/1	8/30-8/31	ANT-3-189	5	MB
28: <b>YO</b>	9/3-9/4	9/1-9/2	8/31-9/1	8/30-8/31	ANT-3-190	10	MB
29	9/9-9/12	9/7-9/10	9/6-9/9	9/5-9/8	ANT-3-191	50	MB
29: <b>M/YO</b>	9/9-9/12	9/7-9/10	9/6-9/9	9/5-9/8	ANT-3-192	10	ES
50 (north of Hwy. 64), 52	8/13-8/16	8/11-8/14	8/10-8/13	8/9-8/12	ANT-3-193	150	MB
50 (north of Hwy. 64), 52: <b>YO</b>	8/13-8/16	8/11-8/14	8/10-8/13	8/9-8/12	ANT-3-194	25	ES

[19.31.15.13 NMAC - Rp, 19.31.15.13 NMAC, 4-1-11; A, 7-31-12]

**19.31.15.14 PRONGHORN ANTELOPE HUNTING SEASONS FOR PRIVATE LAND AUTHORIZATIONS; A-PLUS PRONGHORN ANTELOPE HUNTS:** The department may allocate A-PLUS pronghorn antelope authorization certificates or numbers for use on those ranches whose owners, managers, or lessees sign return a hunting agreement with the department. Private land hunt dates for the 2011-15 hunt seasons for any legal sporting arms shall be any 3 consecutive days within a 15 day period beginning on the start of the public draw license dates as indicated in Subsection A of 19.31.15.13 NMAC. Hunt seasons for mobility impaired shall be as indicated above in Subsection B of 19.31.15.13 NMAC; bow only seasons shall be as indicated above in Subsection C of 19.31.15.13 NMAC, muzzle loading rifle seasons shall be as indicated above in Subsection D of 19.31.15.13 NMAC. Private land pronghorn hunts shall be limited to the following eligibility requirements or restrictions, season dates and legal sporting arms. All private land bow, mobility impaired and youth only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during the “bow only”, “mobility impaired only” or “youth only” hunt periods.

legal sporting arms	open GMUs or area	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates	bag limit
bows only	7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 20, 23, 25, 26, 31, 32, 33, 36, 37, 38, 39, 40, 43 (west of Hwy. [285] 3)	8/13-8/21	8/11-8/19	[8/10-8/18] 8/24-9/1	[8/9-8/17] 8/23-8/31	MB
	41, 42, 43 (east of Hwy. [285] 3), 46, 47, 48, 54, 55, 56, 57, 58, 59	8/6-8/14	8/14-8/12	8/3-8/11	8/2-8/13	MB
any legal sporting arms: <b>MI only</b>	[8, 12, 13, 14, 16, 17, 18, 23, 31, 32, 33, 36, 37, 38, 39, 40,] 41, 42, 43, 46, 47, 48, 54, 55, 56, 57, 58, 59	7/30-8/1	7/28-7/30	7/27-7/29	7/26-7/28	MB
any legal sporting arms: <b>MI only</b>	8, 12, 13, 14, 16, 17, 18, 23, 31, 32, 33, 36, 37, 38, 39, 40			8/17-8/19	8/16-8/18	MB
muzzle loading rifles and bows	[15	9/30-10/3	10/5-10/8	10/4-10/7	10/3-10/6	MB]
	28	9/3-9/4	9/1-9/2	8/31-9/1	8/30-8/31	MB
	29	9/9-9/12	9/7-9/10	9/6-9/9	9/5-9/8	MB
	50 (north of Hwy. 64), 52	8/13-8/16	8/11-8/14	8/10-8/13	8/9-8/12	MB

any legal sporting arms, any 3 consecutive days within dates stated	2, 7, 9, 12, 13, <del>15</del> , 16, 17, 20, 21, 23, 24, 25, 26, 27[ <del>]</del>	10/1-10/15	10/6-10/20	<del>[10/5-10/19]</del> 10/5-10/20	<del>[10/4-10/18]</del> 10/4-10/19	MB
	8, 14, 18, 31, 32, 33, 36, 37, 38, 39, 40, 43 (west of Hwy. [285] <del>3</del> )	9/10-9/24	9/8-9/22	<del>[9/7-9/21]</del> 10/5-10/20	<del>[9/6-9/20]</del> 10/4-10/19	MB
	41, 42, 43 (east of Hwy. [285] <del>3</del> ), 46, 47, 48, 54, 55, 56, 57, 58, 59	8/27-9/10	8/25-9/8	<del>[8/24-9/07]</del> 8/24-9/08	<del>[8/23-9/06]</del> 8/23-9/07	MB
	18, 31, 32, 33, 36, 37, 38, 39, 40	9/17-10/1	9/15-9/29	<del>[9/14-9/28]</del> 9/14-9/29	<del>[9/13-9/27]</del> 9/13-9/28	F-IM
	41, 42, 43 (east of Hwy. [285] <del>3</del> ), 46, 47, 48, 54, 55, 56, 57, 58, 59	8/27-9/10	8/25-9/8	<del>[8/24-9/7]</del> 8/24-12/31	<del>[8/23-9/6]</del> 8/23-12/31	F-IM
	portions of 32	12/1-12/15	12/1-12/15	12/1-12/15	12/1-12/15	ES

[19.31.15.14 NMAC - N, 4-1-11; A, 7-31-12]

**NEW MEXICO DEPARTMENT OF GAME AND FISH**

This is an amendment to 19.31.17 NMAC, Sections 7, 9, 11 and 12 effective 7-31-2012.

**19.31.17.7 DEFINITIONS:**

- A. "Arrows"** shall mean only those arrows or bolts having broadheads with steel cutting edges.
  - B. "Baiting"** shall mean the placing, exposing, depositing, distributing, or scattering of any salt, grain, scent or other feed on or over areas where hunters are attempting to take bighorn sheep.
  - C. "Bighorn enhancement program"** as used herein, shall mean the department activity that allows the issuance of not more than ~~two~~ four permits for the taking of one bighorn ram per permit with the purpose of raising funds for programs and projects to benefit bighorn sheep.
  - D. "Bighorn ewe"** shall mean any adult female bighorn sheep.
  - E. "Bighorn ram"** shall mean any male bighorn sheep.
  - F. "Bighorn sheep license"** shall mean a valid official document that is issued or approved by the director that each person hunting bighorn sheep in New Mexico must have or obtain prior to hunting.
  - G. "Bow"** shall mean compound, recurve, or long bow. Sights on bows shall not project light nor magnify.
  - H. "Crossbow"** shall mean a device with a bow limb or band of flexible material that is attached horizontally to a stock and has a mechanism to hold the string in a cocked position. Sights on crossbows shall not project light nor magnify.
  - I. "Department"** shall mean the New Mexico department of game and fish.
  - J. "Director"** shall mean the director of the New Mexico department of game and fish.
  - K. "Game management unit" or "GMU"** shall mean those areas as described in the state game commission's rule 19.30.4 NMAC Boundary Descriptions for Wildlife Management Areas.
  - L. "License year"** shall mean the period from April 1 through March 31.
  - M. "Modern firearms"** shall mean center-fire firearms, not to include any fully automatic firearms. Legal shotguns shall be only those shotguns capable of being fired from the shoulder.
  - N. "Muzzle-loader or muzzle-loading firearms"** shall mean those rifles and shotguns in which the charge and projectile are loaded through the muzzle. Only blackpowder, Pyrodex or equivalent blackpowder substitute may be used. Use of smokeless powder is prohibited. Legal muzzle-loader shotguns shall be only those shotguns capable of being fired from the shoulder.
  - O. "Wildlife management areas" or "WMAs"** shall mean those areas as described in the state game commission's rule 19.30.4 NMAC Boundary Descriptions for Wildlife Management Areas.
- [19.31.17.7 NMAC - Rp, 19.31.17.7 NMAC, 4-1-11; A, 7-31-12]

**19.31.17.9 BIGHORN SHEEP LICENSE APPLICATION REQUIREMENTS AND RESTRICTIONS:**

- A. One bighorn sheep license per year:** It shall be unlawful for anyone to hold more than one permit or license for any bighorn sheep during a 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 specified by the hunt code printed on the permit, license, or carcass tag.
- C. Rocky mountain bighorn sheep ram once-in-a-lifetime hunts:** It shall be unlawful for anyone to apply for a Rocky mountain bighorn sheep ram license if one has previously held a license to hunt a Rocky mountain bighorn sheep ram in New Mexico, excluding the youth-only, private land, auction, and raffle bighorn ram licenses. A person that has received the youth-only ram license is eligible for this hunt only once as a youth (under age 18), but may apply for the other Rocky mountain and desert bighorn once-in-a lifetime hunts as long as they are eligible. Exception: An applicant is eligible to submit a bid for the special bighorn auction and raffle licenses whether or not he or she has previously held a license to hunt Rocky mountain or desert bighorn sheep in New Mexico.
- D. Desert bighorn sheep once-in-a-lifetime hunts:** It shall be unlawful for anyone to apply for a desert bighorn sheep license if one has previously held a license to hunt desert bighorn sheep in New Mexico, excluding the youth-only, private land, auction, and raffle bighorn ram licenses. A person that has received the youth-only ram license is eligible for this hunt only once as a youth (under age 18), but may apply for the other Rocky mountain and desert bighorn once-in-a lifetime hunts as long as they are eligible. Exception: An applicant is eligible to submit a bid for the special bighorn auction and raffle licenses whether or not he or she has previously held a license

to hunt Rocky mountain or desert bighorn sheep in New Mexico.

**E. Youth only (YO) bighorn sheep hunts:** It shall be unlawful for anyone to apply for a youth only (YO) bighorn sheep license except as allowed by 19.31.3.11 NMAC. Youth hunters must provide their hunter education certificate number on their application.

**F. Rocky mountain bighorn sheep ewe hunts:** This hunt is not once-in-a-lifetime hunt. A person that has previously held a license to hunt Rocky mountain bighorn rams or ewes is eligible to apply for this hunt.  
[19.31.17.9 NMAC - Rp, 19.31.17.9 NMAC, 4-1-11; A, 7-31-12]

**19.31.17.11 BIGHORN SHEEP HUNTING SEASONS:** [Bighorn sheep hunts for 2011-12 through 2014-15 hunting seasons shall be as indicated below, listing the GMUs or areas open, eligibility requirements or restrictions, hunt dates, hunt codes, number of licenses available, and bag limits. Additional eligibility requirements and restrictions are defined in 19.31.17.9 NMAC above. The hunter with the auction license must declare and hunt any one of the open hunt areas below. The hunter with the raffle license must declare and may hunt any one open hunt area below not chosen by the hunter of the auction tag. The Wheeler peak area is closed 8/11 to 8/31 annually to all bighorn sheep hunters. All desert bighorn sheep hunts, except the BHS-1-100 Peloncillo mountain hunt, shall be contingent upon the de-listing of desert bighorn sheep following the procedures set forth in the Wildlife Conservation Act (17-2-40, NMSA 1978). All bighorn hunts on private deeded lands, including the Culebra and Fra Cristobal mountains, and hunts on the San Andres national wildlife refuge and White Sands missile range shall be contingent on agreements established between the department and the respective land owners, including the dates of the hunting season. The hunt areas as set forth in the following table shall be open for the auction (BHS-1-500) and raffle (BHS-1-600) hunters. The Wheeler peak, Pecos, and Latir mountain ewe hunts shall be offered to address department management needs.] Bighorn sheep hunts for 2011-12 through 2014-15 hunting seasons shall be as indicated below, listing the GMUs or areas open, eligibility requirements or restrictions, hunt dates, hunt codes, number of licenses available, and bag limits. Additional eligibility requirements and restrictions are defined in 19.31.17.9 NMAC above. The hunters with the auction licenses must declare by June 1 annually to hunt the designated subspecies in one of the open hunt areas listed below. The hunters with the raffle licenses must declare to hunt the designated subspecies in one of the open hunt areas listed below not chosen by the hunter of the auction license. By July 20 annually, the raffle hunters must declare if they are choosing the Fra Cristobals or Culebras hunt. If the raffle hunters choose any other hunt they must declare at the time of obtaining the hunting license. The Wheeler peak area is closed 8/11 to 8/31 annually to all bighorn sheep hunters. The hunt areas as set forth in the following table shall be open for the designated subspecies auction (BHS-1-500) and raffle (BHS-1-600) hunters. Auction and raffle licenses and licenses issued through private land authorizations are not 'once-in-a lifetime'. The Wheeler peak, Pecos, and Latir mountain ewe hunts shall be offered to address department management needs.

open GMUs or areas	2011-2012 hunt period	2012-2013 hunt period	2013-2014 hunt period	2014-2015 hunt period	hunt code	lic.	bag limit
<u>Rocky mountain bighorn sheep hunts:</u>							
<del>[27: Peloncillo mountains</del>	<del>11/1-11/30</del>	<del>11/1-11/30</del>	<del>11/1-11/30</del>	<del>11/1-11/30</del>	<del>BHS-1-100</del>	<del>1</del>	<del>1 ram]</del>
45: Pecos mountains	8/20-8/26	8/18-8/24	8/17-8/23	8/16-8/22	BHS-1-101	[3] <u>2</u>	1 ram
45: Pecos mountains	8/27-9/2	8/25-8/31	8/24-8/30	8/23-8/29	BHS-1-102	[2] <u>1</u>	1 ram
45: Pecos mountains, <b>YO</b>	8/27-9/2	8/25-8/31	8/24-8/30	8/23-8/29	BHS-1-103	1	1 ram
45: Pecos mountains	9/3-9/9	9/1-9/7	8/31-9/6	8/30-9/5	BHS-1-104	17	1 ewe
45: Pecos mountains, <b>YO</b>	9/3-9/9	9/1-9/7	8/31-9/6	8/30-9/5	BHS-1-105	5	1 ewe
53: Wheeler peak portion south of NM 38	9/10-9/16	9/8-9/14	9/7-9/13	9/6-9/12	BHS-1-106	4	1 ram
53: Wheeler peak portion south of NM 38	9/17-9/23	9/15-9/21	9/14-9/20	9/13-9/19	BHS-1-107	[ <del>up to</del> 28] <u>10</u>	1 ewe
<u>53: Wheeler peak portion south of NM 38</u>	<u>n/a</u>	<u>9/22-9/28</u>	<u>9/21-9/27</u>	<u>9/20-9/26</u>	<u>BHS-1-125</u>	<u>14</u>	<u>1 ewe</u>
53: Wheeler peak, <b>YO</b> - portion south of NM 38	9/17-9/23	9/15-9/21	9/14-9/20	9/13-9/19	BHS-1-108	4	1 ewe
53, 55: Latir mountains	8/13-8/19	8/11-8/17	8/10-8/16	8/9-8/15	BHS-1-109	1	1 ram
53, 55: Latir mountains	9/3-9/9	9/1-9/7	8/31-9/6	8/30-9/5	BHS-1-110	[ <del>up to</del> ] 11	1 ewe

53, 55: Latir mountains, YO	9/3-9/9	9/1-9/7	8/31-9/6	8/30-9/5	BHS-1-111	1	1 ewe
16B, 22, 23, 24: Turkey creek-San Francisco river	1/7-1/16	1/5-1/14	1/4-1/13	1/3-1/12	BHS-1-112	2	1 ram
55A: Culebras	[8/1-9/30] n/a	[8/1-9/30] 8/15-9/30	[8/1-9/30] 8/15-9/30	[8/1-9/30] 8/15-9/30	BHS-1-113	1	1 ram
<u>desert bighorn sheep hunts:</u>							
27: Peloncillo mountains	11/1-11/30	11/1-11/30	11/1-11/30	11/1-11/30	BHS-1-100	2	1 ram
26: Hatchet mountains	TBD	TBD	TBD	TBD	BHS-1-114	[2] 3	1 ram
26: Hatchets mountains	TBD	TBD	TBD	TBD	BHS-1-115	[2] 3	1 ram
19: San Andres mountains [(WMSR only)]	TBD	TBD	TBD	TBD	BHS-1-116	TBD	1 ram
[19: San Andres mountains (SANWR only)]	TBD	TBD	TBD	TBD	BHS-1-117	TBD	1 ram]
20: Caballo mountains	TBD	TBD	TBD	TBD	BHS-1-118	1	1 ram
20: Caballo mountains	TBD	TBD	TBD	TBD	BHS-1-119	1	1 ram
20: Fra Cristobal mountains public draw	TBD	TBD	TBD	TBD	BHS-1-120	TBD	1 ram
20: Fra Cristobal mountains private land	TBD	TBD	TBD	TBD	BHS-1-121	TBD	1 ram
20: Fra Cristobal mountains, YO public draw	TBD	TBD	TBD	TBD	BHS-1-122	TBD	1 ram
20: Fra Cristobal mountains, YO private land	TBD	TBD	TBD	TBD	BHS-1-124	TBD	1 ram
13: Ladron mountain	TBD	TBD	TBD	TBD	BHS-1-123	1	1 ram
auction hunt	8/1-12/31	8/1-12/31	8/1-12/31	8/1-12/31	BHS-1-500	[+] 2	1 ram
raffle hunt	8/1-12/31	8/1-12/31	8/1-12/31	8/1-12/31	BHS-1-600	[+] 2	1 ram

[19.31.17.11 NMAC - Rp, 19.31.17.11 NMAC, 4-1-11; A, 7-31-12]

#### 19.31.17.12 BIGHORN SHEEP ENHANCEMENT PROGRAM:

**A.** The director of the department shall collect all proceeds generated through auction and lottery of special bighorn sheep permits, and such monies shall be deposited in the game protection fund. These monies shall be made available for expenditure by the department solely for programs and projects to benefit bighorn sheep and for direct costs incurred in carrying out these programs. These monies shall be used to augment, and not replace, monies appropriated from existing funds available to the department for the preservation, restoration, utilization, and management of bighorn sheep.

**B.** The state game commission shall authorize the director of the department to issue not more than ~~two~~ four special bighorn sheep permits in any one license year to take one bighorn sheep ram per permit. The director shall allow the sale of ~~one permit~~ two permits through auction to the highest bidders and ~~one permit to a person~~ two permits to persons selected through a random drawing for the holder of a lottery ticket by the department or by an incorporated, nonprofit organization dedicated to the conservation of wild sheep.

**C.** ~~[Proposals for auctioning one special bighorn sheep permit and the sale of lottery tickets to obtain a second special bighorn sheep permit through a random drawing shall be submitted to the director of the department prior to January 31, preceding the license year when the permit may be legally used.]~~ Proposals for auctioning two special bighorn sheep permits and the sale of lottery tickets to obtain two special bighorn sheep permits through a pair of random drawings shall be submitted to the director of the department prior to January 31, preceding the license year when the permits may be legally used.

**D.** ~~[The proposals for auctioning one permit, and for the sale of lottery tickets and subsequent selection of a recipient for a second permit through a random draw shall each contain and identify]~~ The proposals for auctioning two permits, and for the sale of lottery tickets and subsequent selection of recipients for two permits through random drawing(s) shall each contain and identify: (1) the name of the organization making the request as well as the names, addresses and telephone numbers of those members of the organization who are



coordinating the proposal; (2) the estimated amount of money to be raised and the rationale for that estimate; and (3) a copy of the organization's articles of incorporation with a letter attesting that the organization has tax-exempt status. The letter must also affirm that the proponent agrees to the conditions set forth by the director of the department. The letter must be signed and dated by the president and secretary-treasurer, or their equivalents.

**E.** The director of the department shall examine all proposals following the close of the application period. The director may reject any application which does not conform with the requirements of this section. In selecting a marketing organization, the director shall consider the qualifications of the organization as a fund raiser; the proposed fund raising plan; the fee charged by the marketing organization for promotional and administrative costs, relative to the funds obtained from auctioning the permit; and the organizations previous involvement with wild sheep management and its conservation objectives. The director may accept any proposals when it is in the best interest of bighorn sheep to do so.

**F.** After a proposal has been approved, the state game commission shall establish open season dates, open areas, and license requirements.

**G.** The marketing organization must agree in writing to the following: (1) to transfer all proceeds on or before the tenth day of the month following the auction and drawing for the lottery, and (2) to provide the department with the names, addresses, and the physical descriptions of the individuals to whom the special bighorn sheep permits are issued.

**H.** The department and the marketing organization must agree to the arrangements for the deposit of the proceeds, payment for services rendered, the accounting procedures, and final audit.

**I.** Unless his or her hunting privileges have been revoked pursuant to law, any resident of New Mexico, nonresident, or alien is eligible to submit a bid for the special bighorn auction ~~permit~~ permits or purchase lottery tickets in an attempt to be selected for the special bighorn lottery ~~permit~~ permits.

**J.** The special bighorn sheep permits issued through auction and lottery may be transferred, through sale, barter or gift by the successful individuals to only other individuals qualified to hunt.

**K.** Special bighorn sheep permits granted through auction or lottery, as described above, shall not be considered 'once-in-a-lifetime' permits.  
[19.31.17.12 NMAC - Rp, 19.31.17.12 NMAC, 4-1-11; A, 7-31-12]

## NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.34.7 NMAC, Sections 7, 8, 10, 11 and 12 effective 7-31-2012.

### 19.34.7.7 DEFINITIONS:

**A. "Commission"** shall mean the New Mexico state game commission.

**B. "Director"** shall mean the director of the New Mexico department of game and fish.

**C. "Department"** shall mean the New Mexico department of game and fish.

**D. "Open gate"** shall mean a program of the department to provide hunters, anglers, and trappers with wildlife associated activities as determined by the department with the purpose to increase access on private lands, state lands (including lands of counties and other instrumentalities of the state), federal lands or tribal lands.

**E. "Landowner"** shall mean a private landowner, lessee, [or] tribal entity, or local, state, or federal entity authorized to manage property with whom the department enters into an open gate access agreement.

**F. "Open gate property"** shall mean lands enrolled in the open gate program recognized as a game and fish management area for the purposes designated.

[19.34.7.7 NMAC - N, 10-31-2005; A, 9-28-2007; A, 9-30-2010; A, 7-31-2012]

### 19.34.7.8 ~~[CONSERVATION AND ACCESS FEE]~~ HABITAT MANAGEMENT AND ACCESS VALIDATION FEE:

On or after April 1, 2006 ~~[each resident and nonresident license or permit shall include a \$1.00 open gate conservation and access fee.]~~ no resident ~~[and]~~ or nonresident license or permit shall be considered to be a proper and valid license unless the licensee can demonstrate, by a stamp, check-off or other official mark, that ~~[the]~~ a \$4.00 fee for [conservation and access] habitat management and access validation has been paid, provided that an individual purchaser shall be required to pay for only one ~~[conservation]~~ habitat management and access validation fee each license year, regardless of the number of licenses or permits purchased by the licensee. Exceptions: no person under the age of 18, no resident angler age 70 and older and no person designated by the department as a 100% disabled resident veteran is required to purchase the ~~[open gate conservation and access fee]~~ habitat management and access validation.

[19.34.7.8 NMAC - N, 10-31-2005; A, 3-31-2006; A, 10-31-2006; A, 9-28-2007; A, 9-30-2010; A, 7-31-2012]

### 19.34.7.10 A C C E S S AGREEMENTS FOR THE OPEN GATE PROGRAM:

**A.** The director may enter into open gate access agreements for hunting, fishing, trapping or other recreational endeavors to take place on private land with suitable habitat to support the recreational uses, or to provide a right-of-way corridor through private land or tribal land to large, inaccessible blocks of public lands meeting the conditions of 19.34.7.11 NMAC.

(1) Such access agreements shall include the name of the landowner, map of the property, the permitted uses, property rules, responsibilities of the landowner and department, term, amount of compensation, the liability clauses for the department and landowner, with signatures of the director and landowner.

(2) Landowners shall agree participation is voluntary and enrollment is contingent on the annual availability of funds.

(3) All renewals of open gate access agreements shall be subject to annual review per the requirements found in 19.34.7.11 NMAC.

**B.** Subject to consideration for access rights granted by the landowner, the landowner shall be paid a fee ~~[approved by the director consistent with the opportunities provided and state purchasing constraints] pursuant to commission approved fee schedule or as otherwise approved by the director for unique circumstances.~~

**C.** To enhance wildlife habitat and provide a more quality hunting, fishing and trapping experience on participating properties, the department may provide additional financial and technical incentives for wildlife habitat improvements undertaken by the landowner. The terms and conditions of such improvements and incentives shall be negotiated between the landowner, ~~[and]~~ the department and local, state, or federal partners as appropriate.

**D.** Amendments of an existing open gate access agreement may only be done by mutual consent of the department and landowner, in writing.

**E.** False representation of a property's rightful ownership is grounds for legal action and will result in immediate termination of the access agreement.

[19.34.7.10 NMAC - N, 10-31-2005; A, 9-28-2007; A, 9-30-2010; A, 7-31-2012]

### 19.34.7.11 PARTICIPATION REQUIREMENTS:

**A. Minimum qualifications:** Lands or waters eligible for enrollment in the open gate program

must provide suitable fish or wildlife habitat or access to said habitat to support the recreational uses designated through an open gate agreement, and meet, at minimum, one of the following conditions:

(1) enrollment will result in increased hunting, fishing or trapping access on private land; or

(2) enrollment will provide a meaningful access corridor to large or exceptional, inaccessible blocks of state lands, federal lands or tribal lands for hunting, fishing or trapping; or

(3) enrollment may improve regional wildlife or fisheries management goals of the department which may include, but are not limited to, supplying quality or extraordinary hunting, fishing or trapping opportunities and enhancing fish or wildlife habitat conditions.

**B. Enrollment process:**

~~(1) Persons interested in enrolling in the open gate program must submit a completed application and provide proof of ownership, or if leasing the property, a copy of the lease with a notarized and signed statement from the landowner authorizing program participation.~~

~~(2) Application must be submitted by the following dates:~~

~~(a) Applications including opportunities for fishing, spring turkey hunting, statewide ibex hunting, except the Florida mountains, statewide Barbary sheep hunting, except closed areas, statewide off-range oryx hunting, private land cougar hunting, protected furbearers with open seasons, must be submitted by January 1 of each year.~~

~~(b) Applications including all other big game and small game hunting opportunities must be submitted by April 30 of each year.~~

~~(3) All applications are subject to a department evaluation to determine if the lands or waters proposed for enrollment satisfy the requirements found in 19.34.7.11 NMAC.~~

~~(4) If the lands or waters do not meet the requirements, the applicant will be notified that the application does not qualify for participation in the open gate program.~~

~~(5) If the department determines the lands or waters meet the requirements, the department and landowner will negotiate an open gate access agreement.]~~

(1) Persons interested in enrolling in the open gate program must submit a completed application and provide proof of ownership, or if leasing the property, a copy of the lease with a notarized and signed statement from the landowner authorizing program participation.

(2) All applications are subject to a department evaluation to determine if the lands or waters proposed for enrollment satisfy the requirements found in 19.34.7.11

NMAC.

(3) If the lands or waters do not meet the requirements, the applicant will be notified that the application does not qualify for participation in the open gate program.

(4) If the department determines the lands or waters meet the requirements, the department and landowner may negotiate an open gate access agreement.

[19.34.7.11 NMAC - N, 9-30-2010; A, 7-31-2012]

**19.34.7.12 USE OF OPEN GATE AREAS:**

**A.** Any person accessing land enrolled in the open gate program to hunt, fish or trap must:

(1) obtain and possess a valid hunting, fishing or trappers license when required unless otherwise provided in the access agreement; and

(2) comply with enrolled property rules as described on the access agreement and as posted at access points or parking areas to include manner and method of take or other special use restrictions as posted.

**B.** It shall be unlawful for any person to violate any provisions posted on an open gate property.

[19.34.7.12 NMAC - N, 9-30-2010; A, 7-31-2012]

**NEW MEXICO  
DEPARTMENT OF GAME  
AND FISH**

This is an amendment to 19.34.2 NMAC, Section 10 effective 7-31-2012. This part is also reformatted and renumbered from 19 NMAC 34.2 to comply with current NMAC requirements.

**19.34.2.10 CLOSURE TO ENTRY:**

**A. Summer closure.**

(1) The elk calving area described in Paragraph (2) of Subsection A of 19.34.2.10 NMAC, below will be closed to public entry during the period of May 1 through June 30 of each year except on those roads therein that have been posted with arrows as open or as allowed by rule.

(2) Beginning at the west boundary of the Valle Vidal addition of the Questa district of the Carson national forest at the Costilla river, thence north along the Valle Vidal boundary to the north boundary of the Valle Vidal, thence east along the Valle Vidal boundary to the Taos-Colfax county line, thence south and west along the county line to its intersection with the south boundary of Valle Vidal, thence west and north along the Vidal boundary to the beginning.

**B. Winter closure.**

(1) The elk wintering area described in Paragraph (2) of Subsection B

of 19.34.2.10 NMAC below will be closed to public entry during the period January 1 through March 31 of each year except on those roads therein that have been posted with arrows as open.

(2) Beginning on the north boundary of the Valle Vidal addition of the Questa district of the Carson national forest at its intersection with the Taos-Colfax county line, thence east, south, west and north along the Valle Vidal boundary to its intersection with the Taos-Colfax county line, thence east and north along the county line to the beginning.

[3-5-85, 6-5-85, 1-31-96; 19.34.2.10 NMAC - Rn & A, 19 NMAC 34.2.10, 7-31-12]

**NEW MEXICO HUMAN  
SERVICES DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

This is an amendment to 8.305.16 NMAC, Sections 1, 3, 6, 8 and 9, effective August 1, 2012.

**8.305.16.1 ISSUING AGENCY:** Human Services Department (HSD).  
[8.305.16.1 NMAC - N, 7-1-01; A, 8-1-12]

**8.305.16.3 STATUTORY AUTHORITY:** ~~[The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See NMSA 1978 Section 27-2-12 et. seq.]~~ The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-2-12 et seq.  
[8.305.16.3 NMAC - N, 7-1-01; A, 8-1-12]

**8.305.16.6 OBJECTIVE:** The objective of [these regulations] this rule is to provide policies for the service portion of the New Mexico medicaid managed care program.  
[8.305.16.6 NMAC - N, 7-1-01; A, 8-1-12]

**8.305.16.8 MISSION STATEMENT:** ~~[The mission of the medical assistance division is to reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities.]~~ To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.  
[8.305.16.8 NMAC - N, 7-1-01; A, 7-1-09;

A, 8-1-12]

### 8.305.16.9 M E M B E R

**TRANSITION OF CARE:** Transition of care refers to the movement of members from one health care practitioner or setting to another as their condition and care needs change. The [MCO/SE] MCO and SE shall have the resources and policies and procedures in place to actively assist members with transition of care. Members transitioning from institutional levels of care such as hospitals, nursing homes, residential treatment facilities or ICFs/MR back to community services with transition of care needs shall be provided with care coordination services. Medicaid-eligible clients may initially receive physical and behavioral health services under fee-for-service medicaid prior to enrollment in managed care. During the member's medicaid eligibility period, enrollment status with a particular MCO may change and the member may switch enrollment to a different MCO. Certain members covered under managed care may become exempt and other members may lose their medicaid eligibility while enrolled in an [MCO/SE] MCO and SE. A member changing from MCO to MCO, fee-for-service to managed care coverage and vice versa shall continue to receive medically necessary services in an uninterrupted manner.

#### A. Member transition:

The [MCO/SE] MCO and SE shall have policies and procedures that address member identification and the clinical transition and transfer of members into or out of the MCO, including the CoLTS MCO members and state coverage insurance (SCI) MCO members.

(1) The [MCO] MCO and SE shall have policies and procedures that cover potentially large or mass transfer of members into or out of the MCO, including the identification of members currently receiving services[~~—~~ and the SE shall be notified].

(a) When the medical assistance division notifies the MCO and SE of a mass transfer of members, the MCO and SE shall participate in a work group to decide on processes to be followed for the transition.

(b) For a mass transfer of members, the prior authorizations granted by HSD contractors, the COLTS MCOs, the SE and the SCI MCOs shall be honored for the following timeframes:

(i) all practitioner authorizations shall be honored for 60 days or until the receiving MCO has made other arrangements for care; providers who delivered these approved services shall be reimbursed by the receiving MCO;

(ii) for members with approved transplant services, the receiving MCO shall reimburse the approved providers

if a donor organ becomes available during the first 60 days of enrollment;

(iii) all prescription drug refills shall be paid for by the receiving MCO for the first 90 days or until the MCO has made other arrangements; and

(iv) all durable medical equipment (DME) delivered after the mass transfer shall be paid for by the receiving MCO.

(c) Encounter data requirement. The MCO and SE shall provide pharmacy, dental, practitioner, facility, vision, DME and transportation encounter data for the one year prior to transition for their members identified as individuals with special health care needs, home and community-based waiver recipients, members receiving long-term services, members eligible for disease management and members receiving care coordination. The medical assistance division reserves the right to include other encounter data and other populations as it deems necessary.

(2) The MCO shall have policies and procedures covering the transition into the MCO of an individual member, which shall include member and provider education about the MCO, about self-care and the optimization of treatment, and the review and update of existing courses of treatment. The SE shall be notified and coordination of care shall occur.

(3) The MCO shall have policies and procedures that identify members transferring out of the MCO and ensure the provision of member data and clinical information to the future MCO necessary to avoid delays in member treatment. The MCO shall have written policies and procedures to facilitate a smooth transition of a member to another MCO when a member chooses and is approved to switch to another MCO.

(4) The [MCO/SE] MCO and SE shall have policies and procedures regarding provider responsibility for discharge planning upon the member's discharge from an inpatient or residential treatment facility, and the [MCO/SE] MCO and SE shall help coordinate for a seamless transition of post-discharge care. The [MCO/SE] MCO and SE shall have a mechanism for monitoring the transition of care from an inpatient or residential treatment facility.

#### B. Prior authorization and provider payment requirements:

(1) For newly enrolled members, the [MCO/SE] MCO and SE shall honor all prior authorizations granted by HSD through its contractors or the CoLTS MCO for the first 30 days of enrollment or until the [MCO/SE] MCO and SE has made other arrangements for the transition of services. Providers who delivered services approved by HSD through its contractors shall be reimbursed by the [MCO/SE] MCO and SE.

(2) For members who recently

became exempt from managed care or enrolled in CoLTS, HSD or the CoLTS MCO shall honor prior authorization of fee-for-service covered benefits or CoLTS covered benefits granted by the [MCO/SE] MCO and SE for the first 30 days under fee-for-service medicaid or CoLTS or until other arrangements for the transition of services have been made. Providers who deliver these services and are eligible and willing to enroll as medicaid fee-for-service providers shall be reimbursed by HSD or the CoLTS MCO.

(3) For members who had transplant services approved by HSD under fee-for-service or under CoLTS, the MCO shall reimburse the providers approved by HSD or the CoLTS MCO if a donor organ becomes available for the member during the first 30 days of enrollment.

(4) For members who had transplant services approved by the MCO, HSD or the CoLTS MCO shall reimburse the providers approved by the MCO if a donor organ becomes available for the member during the first 30 days under fee-for-service medicaid. Providers who deliver these services shall be eligible and willing to enroll as medicaid fee-for-service providers.

(5) For newly enrolled members, the [MCO/SE] MCO and SE shall pay for prescriptions for drug refills for the first 30 days or until the [MCO/SE] MCO and SE has made other arrangements. All drugs prescribed by a licensed behavioral health provider shall be paid for by the SE.

(6) For members who recently became exempt from managed care, HSD shall pay for prescriptions for drug refills for the first 30 days under the fee-for-service formulary. The pharmacy provider shall be eligible and willing to enroll as a medicaid fee-for-service provider.

(7) The MCO shall pay for DME costing \$2,000 or more, approved by the MCO but delivered to the member after disenrollment from managed care or enrollment into CoLTS.

(8) HSD or the CoLTS MCO shall pay for DME costing \$2,000 or more, approved by HSD or the CoLTS MCO but delivered to the member after enrollment in the MCO. The DME provider shall be eligible for and willing to enroll as a medicaid fee-for-service provider. DME is not covered by the SE unless it has been prescribed by a behavioral health provider.

C. **Special payment requirement.** The MCO shall be responsible for payment of covered physical health services, provided to the member for any month the MCO receives a capitation payment. The SE shall be responsible for payment of covered behavioral health services provided to the member for any month the SE receives a capitation payment.

D. **Claims processing and**



**payment** In the event that an [MCO's/SE's] MCO's and SE's contract with HSD has ended, is not renewed or is terminated, the [MCO/SE] MCO and SE shall remain responsible for processing and paying claims for services delivered through the contract period, but submitted after the [MCO's/SE's] MCO's and SE's contract has ended.

(1) The [MCO/SE] MCO and SE shall be required to inform providers in writing, at least 30 days prior to the end of the contract, of the termination of the contract and of the process for providers to submit claims for services provided through the contract end date. The letter shall include the telephone, fax numbers, and the billing address for claims submissions as well as the names of persons to contact with questions.

(2) The [MCO/SE] MCO and SE shall allow six months to process claims for services provided prior to the contract termination date.

(3) The [MCO/SE] MCO and SE shall continue to meet timeframes established for processing all claims. [8.305.16.9 NMAC - N, 7-1-01; A, 7-1-04; A, 7-1-05; A, 7-1-07; A, 7-1-08; A, 7-1-09; A, 8-1-12]

**NEW MEXICO  
COMMISSION OF PUBLIC  
RECORDS**

This is an amendment to 1.13.2 NMAC, Public Records, Fees, amending Sections 7, 10, 11, 12, 13 and 17, and repealing Section 21, effective 7/31/2012.

**1.13.2.7 DEFINITIONS:**

**A.** "Acid-free" means having a pH of 7.0 or greater.

**B.** "Archival" means the material properties inherent in any medium permitting its preservation under controlled conditions.

**C.** "Certified copy" means a reproduction of a public record expressly verified by the custodial agency as a true and accurate representation of the official copy of the record.

**D.** "Clip" means a selected part of a motion picture film.

~~**E.** "Commercial-use requester" means a requester seeking records and information for a use or purpose that furthers the commercial, trade or profit interests of the requester, organization or person on whose behalf the request is made.~~

**F.] E.** "Digital restoration" means digitally improving the overall appearance of a scanned photograph by adjusting brightness or contrast or both, sharpening, adjusting overall color, cropping, etc.

**[G.] E.** "DVD" means digital video disc, an optical disc storage medium.

**[H.] G.** "Enhancement" means digitally repairing a scanned photograph to remove signs of deterioration and damage (spots, tears, red eye, fold lines, etc.).

**[I.] H.** "JPEG" means a compressed image file format, commonly used for the compression of photographic images, developed by the joint photograph experts group.

**[J.] L.** "MiniDV" means a video digital storage format available in small cassettes with high storage capacity.

~~**[K.]** "Non-profit organization" means any organization, which by its articles of association and by-laws prohibits acts of private inurement, that is, transferring of the organization's earnings to persons in their private capacity; non-profit organizations are required to use their earnings for their program activities and these earnings are tax-exempt if the organization has met the approval of the internal revenue service as falling within a category such as 501(c)(3).~~

~~**[L.] J.** "Over-sized material" means maps, architectural drawings, books and textual and other documents larger than 12 inches by 16 inches.~~

**[M.] K.** "Record" means all books, papers, maps, photographs, recordings, tapes or other documentary materials, regardless of physical form or characteristics.

**[N.] L.** "Requester" means any individual who is not a commercial-use requester. This term does not include requests citing the Inspection of Public Records Act, which are handled in accordance with the law and agency policy.

**[O.] M.** "SRCA" means the state records center and archives.

**[P.] N.** "TIFF" means tagged image file format, a bitmap image format used for storing images.

[1.13.2.7 NMAC - N, 3/14/01; A, 7/15/03; A, 6/30/05; A, 6/1/06; A, 7/1/09; A, 7/31/12]

**1.13.2.10 A C I D - F R E E ARCHIVAL STORAGE CONTAINERS:**

**A.** Document storage box 15 ¼ in. x 10 ¼ in. x 5 in. - [~~\$3.94~~] \$4.04

**B.** Document storage box 15 ¼ in. x 10 ¼ in. x 2 in - [~~\$3.89~~] \$3.99

**C.** Record storage box 15 in. x 12 in. x 10 in. - [~~\$4.36~~] \$4.52

**D.** Full telescope box 15 in. x 11 ½ in. x 3 in. - [~~\$6.93~~] \$7.14

**E.** Full telescope box 24 ½ in. x 20 ½ in. x 3 in. - [~~\$10.92~~] \$11.24

**F.** Clam shell box 15¼ in. x 10 ¼ in. x 3 in. - [~~\$4.15~~] \$4.25

**G.** Newspaper box 25 in. x 19 in. x 2 ½ in. - [~~\$11.29~~] \$11.66

**H.** Legal size folder full tab package (100 count) - [~~\$26.00~~] \$27.00

**I.** Letter size folder full tab package (100 count) - [~~\$23.00~~] \$24.00

**J.** Corrugated board, 40 in. x 60 in. sheet - [~~\$8.75~~] \$9.09

**K.** Legal size, acid-lignin free paper, 20 lb. bond, package (500 count) - [~~\$20.44~~] \$21.26

**L.** Letter size, acid-lignin free paper, 20 lb. bond, package (500 count) - [~~\$14.95~~] \$15.54

**M.** Polyester transparent sleeve, 5 in. x 7 in. - [~~\$0.76~~] \$0.78

**N.** Polyester transparent sleeve, 8 ¾ in. x 11 ¼ in. - [~~\$1.16~~] \$1.21

**O.** Polyester transparent sleeve, 8 ¾ in. x 14 ¼ in. - [~~\$1.31~~] \$1.37

**P.** Polyester transparent sleeve, 9 ¼ in. x 12 ¼ in. - [~~\$1.32~~] \$1.38

**Q.** Polyester transparent sleeve, 11 ¼ in. x 14 ¼ in. - [~~\$1.37~~] \$1.42

**R.** Other containers and archival supplies - containers of sizes other than those listed above and other archival supplies may be available at cost plus five percent.

[1.13.2.10 NMAC - N, 3/14/01; A, 4/30/02; A, 6/30/04; A, 6/1/06; A, 7/1/09; A, 7/15/10; A, 7/31/12]

[Please contact the Archives and Historical Services Division at 505-476-7956 for the availability and prices of the other containers and supplies noted in Subsection R.]

**1.13.2.11 PHOTOCOPY FEES:**

**A.** Paper photocopies (made by staff).

~~(1) 8 ½ x 11 (1 to 99 copies) -~~  
\$0.25

~~(2) 8 ½ x 11 (100 to 499 copies) -~~  
\$0.40

~~(3) 8 ½ x 11 (500 or more copies) -~~  
\$0.55

~~(4) 8 ½ x 14 (1 to 99 copies) -~~  
\$0.30

~~(5) 8 ½ x 14 (100 to 499 copies) -~~  
\$0.45

~~(6) 8 ½ x 14 (500 or more copies) -~~  
\$0.60

~~(7) 11 x 17 (1 to 99 copies) -~~ \$0.35

~~(8) 11 x 17 (100 to 499 copies) -~~  
\$0.50

~~(9) 11 x 17 (500 or more copies) -~~  
\$0.65]

(1) 8 ½ x 11 - \$0.25

(2) 8 ½ x 14 - \$0.30

(3) 8 ½ x 17 - \$0.35

**B.** Certification of paper copies - \$0.50 per page.

**C.** Self-service photocopies (made by patron).

(1) 8 ½ x 11 - \$0.10

(2) 8 ½ x 14 - \$0.10

(3) 11 x 17 - \$0.15

~~**D.** Oversized records (color or black and white)~~  
~~(1) 12 x 18 - \$8.00~~  
~~(2) 17 x 22 - \$8.00~~  
~~(3) 18 x 24 - \$8.00~~  
~~(4) 22 x 34 - \$8.00~~

~~(5) 24 x 36 - \$12.00~~

~~(6) 30 x 42 - \$12.00~~

~~(7) 32 x 44 - \$12.00~~

~~(8) 35.5 x 48 - \$16.00~~

~~(9) Sizes greater than 35.5 x 48 add \$4.00 per each additional foot. Width cannot exceed 35.5 inches.~~

~~E. Fax copies - \$0.60]~~

[7/1/95, 1/1/98, 9/15/98; 1.13.2.11 NMAC - Rn, 1 NMAC 3.100.9.1 through 1 NMAC 3.100.9.4 and 1 NMAC 3.100.13 & A, 3/14/01; A, 6/30/04; A, 7/1/09; A, 7/31/12]

### 1.13.2.12 MICROPHOTOGRAPHY FEES:

A. Microfilm to paper copies (made by staff).

(1) 8 1/2 x 11 - \$0.50

(2) 8 1/2 x 14 - \$0.60

B. Self-service microfilm to paper copies.

(1) 8 1/2 x 11 - \$0.10

(2) 8 1/2 x 14 - \$0.10

(3) 11 x 14 - \$0.15

C. Microfilm duplication.

(1) 16mm - \$12.00 per reel

(2) 35mm - \$16.00 per reel

D. Microfilm services.

(1) Technical consultation and assistance - \$10.00 per hour with a minimum charge of one hour

(2) Document preparation - \$10.00 per hour with a minimum charge of one hour, plus cost of supplies

(3) Microfilming - \$0.35 per image

(4) Microfilm processing, 16 mm and 35 mm - \$19.85 per reel

(5) Step-test analysis - \$5.00 per analysis

E. Microfilm to electronic media (made by staff) - \$0.70 per image on CD.

F. Self-service microfilm to electronic media - \$0.30 per image on CD. CD is provided by SRCA. The use of outside external drives is prohibited.

[7/1/95, 9/15/98, 12/15/98; 1.13.2.12 NMAC - Rn, 1 NMAC 3.100.10 & A, 3/14/01; A, 4/30/02; A, 6/30/04; A, 6/30/05; A, 7/1/09; A, 7/31/12]

### 1.13.2.13 DIGITAL REPRODUCTION OF PHOTOGRAPHS, DOCUMENTS, OVERSIZED RECORDS AND MOVING IMAGE MATERIAL:

A. Requests for duplication and reproduction of public records that are covered under Section 14-3-15.1 NMSA 1978 or are copyrighted or otherwise contractually restricted shall be accompanied by a letter of intent describing the proposed use and SRCA form 96-18 "conditions for publication/reproduction."

B. Photographs and documents. Prices are assessed per individual image.

(1) 8 x 10 print on photo quality

paper from digital images file - \$17.00. [This option is not available for oversized material. See 1.13.2.11 NMAC, *photocopy fees*.]

(2) 8 x 10 print on photo quality paper from original source material - \$21.00. [This option is not available for oversized material. See 1.13.2.11 NMAC, *photocopy fees*.]

~~(3) Reproduction of digital image files (JPEG or TIFF) - \$14.00~~

~~(4) Creation of digital image file (JPEG or TIFF) from original source material - \$19.00~~

~~(5) (3) Digital image file (JPEG) from digital image file delivered via e-mail or on CD/DVD - \$14.00. Digital image files delivered via e-mail shall be limited to 8 x 10 images scanned at 300 dots per inch (dpi).~~

~~[(6) (4) Digital image file (JPEG) from original source material delivered via e-mail or on CD/DVD - \$19.00. Digital image files delivered via e-mail shall be limited to 8 x 10 images scanned at 300 dpi.~~

C. Moving image material. Prices are assessed per moving image title.

(1) VHS video cassette from digital video file or miniDV master - \$17.00

(2) VHS video cassette from original source material - \$50.00

(3) MiniDV tape from digital video file or miniDV master - \$20.00

(4) MiniDV tape from original source material - \$52.00

(5) DVD from digital video file of miniDV master - \$15.00

(6) DVD from original source material - \$47.00

D. Oversized records (color or black and white). Prices are assessed per individual image.

(1) Hard copy reproduction from a digital image file - \$17.00

(2) Hard copy reproduction from the original source material - \$21.00

(3) Digital image file (JPG) from a digital image file delivered via CD or DVD - \$14.00.

(4) Digital image file (JPG) from the original source material delivered via CD or DVD - \$19.00.

(5) Sizes greater than 35.5 x 48 add \$4.00 per each additional foot for hard copy reproductions. The width cannot exceed 35.5 inches.

(6) E-mail delivery of digital image files for oversized material is not available.

~~[B:] E.~~ Where items are fragile or require specialized handling, the SRCA may charge the costs of the additional labor.

~~[E:] E.~~ Fees for digital restoration or enhancement or clip selection of digitized materials or motion picture films vary according to the extent of work required. The minimum fee for digital restoration or enhancement or clip selection shall be

\$15.00 per reproduced item, in addition to the reproduction fee set forth in Subsection B of this section. For work requiring over one hour, \$15.00 per additional hour shall be charged.

~~[F:] G.~~ Expedited orders can be requested for an additional fee of \$20.00. Waiting time will be reduced by one week.

[7/1/95, 4/30/96, 12/15/98; 1.13.2.13 NMAC - Rn, 1 NMAC 3.100.11 & A, 3/14/01; A, 4/30/02; A, 7/15/03; A, 6/30/05; A, 6/1/06; A, 06/30/07; A, 7/1/09; A, 7/31/12]

### 1.13.2.17 ELECTRONIC COPIES OF RECORDS:

A. Portable document format file (PDF) from microsoft word or PDF file

~~[(1) 1 to 99 pages] - \$0.25 per page.~~

~~[(2) 100 to 499 copies - \$0.40 per page~~

~~[(3) 500 or more copies - \$55 per page]~~

B. PDF from digital image file

~~[(1) 1 to 99 pages] - \$1.75 per page.~~

~~[(2) 100 to 499 copies - \$2.00 per page~~

~~[(3) 500 or more copies - \$2.25 per page]~~

C. PDF from original source

~~[(1) 1 to 99 pages] - \$3.25 per page.~~

~~[(2) 100 to 499 copies - \$3.50 per page~~

~~[(3) 500 or more copies - \$3.75 per page]~~

[1.13.2.17 NMAC - N, 04/30/02; A, 7/1/09; A, 7/31/12]

### 1.13.2.21 [COMMERCIAL-USE FEES:

A. Commercial-use requesters, as defined in 1.13.2 NMAC, who make requests for records shall be assessed a commercial service fee. Service fees shall be pre-paid and shall be in addition to the fees for copying or reproduction prescribed in 1.13.2 NMAC.

B. The SRCA requires all requesters to submit a letter of intent and SRCA form 96-18, "conditions for publication/reproduction," before a request is considered.

C. Not-for-profit organizations requesting reproductions of records and information for fund raising shall be charged 50 percent of the applicable commercial-use fees. Proof of not-for-profit status shall be provided before the not-for-profit rate is considered.

D. The SRCA reserves the right to require proof of intent of publication prior to final approval.

~~E. The SRCA shall not grant exclusive rights for use of its materials. Permission shall be granted for one time use only. Requesters shall submit an additional letter of intent and SRCA form 96-18 "conditions for publication/reproduction" and pay additional fees for any subsequent use.~~

~~F. The SRCA reserves the right to restrict the use of reproductions of rare and valuable records and to make special fee quotations on records involving unusual and difficult reproduction.~~

~~G. Fees for commercial use of reproductions of records in books, including book jackets and end papers, shall be as follow:~~

~~(1) less than 5,000 editions - \$30.00 per reproduction;~~

~~(2) 5,000 to 24,999 editions - \$75.00 per reproduction;~~

~~(3) 25,000 or more editions - \$100.00 per reproduction.~~

~~H. Fees for commercial use of reproductions of records in serials, magazines, including magazine covers, and newspapers shall be as follow:~~

~~(1) circulation of 49,999 or less - \$20.00 per reproduction;~~

~~(2) circulation 50,000 to 99,999 - \$50.00 per reproduction;~~

~~(3) circulation over 100,000 - \$100.00 per reproduction.~~

~~I. Commercial use of reproductions of records in videotapes, CD-ROMs, DVDs or other digital media shall require a fee of \$150.00 per reproduction.~~

~~J. Commercial use of reproductions of records in motion picture productions and documentaries shall require a fee of \$150.00 per reproduction.~~

~~K. Fees for commercial use of reproductions of records for posters, postcards, T-shirts, calendars, mousepads and non-paper shall be as follow:~~

~~(1) less than 999 items - \$20.00 per reproduction;~~

~~(2) 1,000 to 4,999 items - \$75.00 per reproduction;~~

~~(3) 5,000 or more items - \$100.00 per reproduction.~~

~~L. Fees for commercial use of reproductions of records in advertising shall be as follow:~~

~~(1) display in commercial offices, stores, and restaurants - \$25.00 per reproduction;~~

~~(2) other advertising formats - \$150.00 per reproduction.~~

~~M. Fees for commercial use of reproductions of records in exhibits shall be \$30.00 per image in exhibit. Fees for not-for-profit organizations will be waived if admission to the exhibit is free.]~~

~~[RESERVED]~~

~~[1.13.2.21 NMAC - N, 6/1/06; A, 7/1/09; Repealed, 7/31/12]~~

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.13.11 NMAC, Section 8, effective 7/31/2012.

### 1.13.11.8 GUIDELINES FOR USE OF ARCHIVES RESEARCH ROOM:

A. Research room hours are 12:00 pm to 4:30 pm, Monday through Friday, except holidays or other times specified by NMSRCA.

(1) Reference assistance is available from 12:00 pm to 4:30 pm.

(2) Historical films and videos can be viewed by appointment only.

(3) Requests to view 10 or more photographs require an appointment.

(4) Material shall not be pulled from the vault between 12:00 pm and 1:00 pm or after 4:15 pm.

B. All researchers and visitors shall sign the daily log as they enter the research rooms.

C. Researchers shall complete a user registration form (SRC 96-20).

(1) Researchers shall be asked to update registration forms periodically.

(2) To register, researchers shall provide photographic identification. Acceptable forms of identification include a driver's license, a school or business identification card, or a passport.

D. The NMSRCA prohibits researchers from carrying boxes, briefcases, satchels, valises, backpacks, purses, folders, coats, newspapers, or other large containers into the research rooms.

(1) Researchers will be provided lockers for their belongings on a first-come, first-serve basis. Lockers are available for a quarter.

(2) Researchers' personal belongings must be removed from the lockers each night.

E. Except as provided in Paragraphs (1) through (4) of Subsection E of 1.13.11.8 NMAC, only paper and pencils may be taken into the research rooms.

(1) Researchers may use a personal computer provided their use does not disturb others. The speakers shall be disabled or lowered to an inaudible level.

(2) Cell phones brought into the research rooms are subject to the following procedures.

(a) Cell phones must be placed on vibrate mode.

(b) Calls must be made or answered outside of the research rooms.

(3) Researchers may use still digital or film cameras in the research rooms

provided their use does not disturb others and subject to the following procedures.

(a) Researchers shall request approval from the archivist on duty before the equipment is allowed into the research rooms.

(b) Equipment is subject to inspection by staff prior to admittance.

(c) Flash photography is not allowed in any research room. Violators will be asked to put their cameras away.

(d) Researchers shall place a "New Mexico state records center and archives" template on each page photographed. Staff will supply the template. Template shall be returned to staff once work is completed.

(e) Researchers shall follow the copyright law of the United States (Title 17, United States Code) which governs the making of photocopies or other reproductions of copyrighted material. If publishing materials, researchers shall comply with [the commercial use fees pursuant 1.13.2.21 NMAC and with 1.13.2.10 NMAC] 1.13.11.10 NMAC.

(4) Notes, references, list of documents to be consulted, such as one spiral notebook [or binder], may be admitted if they are essential to a researchers work but are subject to inspection upon entering or leaving the research rooms.

(5) Researchers may use approved optical scanners in the research rooms provided their use does not disturb others and subject to the following procedures.

(a) Researchers shall request approval from the archivist on duty before the equipment is allowed into the research room.

(b) Equipment is subject to inspection by staff prior to admittance.

(c) Prior to scanning, researchers shall present the material to be scanned to the archivist on duty for approval. The archivist shall refuse a request if he or she determines that scanning would damage the materials.

(d) If approved for scanning, researchers shall follow scanning guidelines. Guidelines will be provided by the archivist on duty.

(e) Researchers shall follow the copyright law of the United States (Title 17, United States Code) which governs the making of photocopies or other reproductions of copyrighted material. If publishing materials, researchers shall comply with [the commercial use fees pursuant 1.13.2.21 NMAC and with] 1.13.11.10 NMAC.

F. No eating, drinking, or smoking is permitted in the research rooms.

G. Loud talking or other activities likely to disturb other researchers is prohibited.

H. Children under the age of 16 years shall not be admitted in the research rooms unless they are accompanied



by an adult. The archivist on duty may waive this requirement with respect to individual researchers.

I. Researchers refusing to comply with NMSRCA research room guidelines or whose actions present a danger to the documents or annoyance to other researchers shall be denied access to archival collections and shall be asked to leave by the director of archives and historical services. [07/01/96; 1.13.11.8 NMAC - Rn, 1 NMAC 3.2.10.2.8 & A, 07/15/03; A, 06/01/06; A, 06/30/09; A, 01/14/11, A, 07/31/12]

**NEW MEXICO  
PUBLIC REGULATION  
COMMISSION**

**TITLE 17 PUBLIC UTILITIES  
AND UTILITY SERVICES  
CHAPTER 9 ELECTRIC  
SERVICES  
PART 551 PRIOR APPROVAL  
OF PURCHASED POWER  
AGREEMENTS**

**17.9.551.1 ISSUING AGENCY:** New Mexico Public Regulation Commission. [17.9.551.1 NMAC – N, 7-31-12]

**17.9.551.2 SCOPE:** This rule applies to the investor owned electric utility operating within New Mexico subject to the jurisdiction of the New Mexico public regulation commission and to purchased power agreements entered into after the the effective date of this rule. This rule shall not supersede or modify requirements pertaining to an electric utility’s purchased power agreements with its affiliates as set by New Mexico public regulation commission orders. [17.9.551.2 NMAC – N, 7-31-12]

**17.9.551.3 STATUTORY AUTHORITY:** Public Regulation Commission Act, Sections 8-8-1 et. seq. NMSA 1978, Public Utility Act, Sections 62-3-1, 62-6-4, and 62-6-19 NMSA 1978. [17.9.551.3 NMAC – N, 7-31-12]

**17.9.551.4 DURATION:** Permanent. [17.9.551.4 NMAC – N, 7-31-12]

**17.9.551.5 EFFECTIVE DATE:** July 31, 2012, unless a later date is cited at the end of a section. [17.9.551.5 NMAC – N, 7-31-12]

**17.9.551.6 OBJECTIVE:** To establish review and approval procedures for purchased power agreements. [17.9.551.6 NMAC – N, 7-31-12]

**17.9.551.7 DEFINITIONS:**

**A. “Capacity cost”** means a charge separately identified and incurred under a purchased power agreement for capacity or the reservation of capacity.

**B. “Commission”** means the New Mexico public regulation commission.

**C. “Electric utility”** means an entity certified by the commission to provide retail electric service in New Mexico pursuant to the Public Utility Act Sections 62-13-1, et seq. NMSA 1978, but does not include rural electric cooperatives.

**D. “Fixed cost”** means a charge separately identified and incurred under a purchased power agreement that does not vary with changes in amount used, volume consumed, or units purchased. A fixed cost includes, but is not limited to, administrative fees, accounting fees, facilitation fees, minimum payment amounts, and similar charges.

**E. “Long term purchased power agreement”** or “LTPPA” means a purchased power agreement with a term of five (5) years or more and for which an electric utility seeks or intends to seek rate recovery from its New Mexico retail customers. The term shall be inclusive of the base term and any automatic or option extensions.

**F. “Purchased power agreement”** means a agreement for the purchase of energy or capacity, or both, by an electric utility with a term of any length and for which an electric utility seeks or intends to seek rate recovery from its New Mexico retail customers, but does not include agreements to purchase renewable energy subject to commission review and approval under the Renewable Energy Act Sections 62-16-1, et seq. NMSA 1978, or agreements to purchase energy or capacity from a qualifying facility pursuant to Section 17.9.570 NMAC. [17.9.551.7 NMAC – N, 7-31-12]

**17.9.551.8 GENERAL REQUIREMENTS FOR FILING AN APPLICATION FOR APPROVAL OF A LONG TERM PURCHASED POWER AGREEMENT:**

**A.** No electric utility shall become irrevocably obligated under an LTPPA without first obtaining the commission’s written approval of the agreement.

**B.** An electric utility shall file at the commission within thirty (30) days after the execution of a LTPPA, an application for the commission’s review and approval of the LTPPA. The proceeding to consider the application shall be a proceeding concerning a utility’s resource acquisition under Subsection B of 17.7.3.12 NMAC.

**C.** Copies of the application

shall be served on commission staff, the New Mexico attorney general and parties in the electric utility’s most recent general electric rate case, in accordance with Subsection C of 1.2.2.10 NMAC.

**D.** An application for commission review and approval of an LTPPA shall be accompanied by supporting testimony and exhibits that provide:

(1) a copy of the LTPPA; and

(2) an explanation of the key terms and conditions of the LTPPA containing:

(a) the term of the LTPPA including any options to extend the agreement;

(b) the size in MW of capacity and the amount of energy in MWh or kWh per month and any conditions regarding the minimum or maximum amount of energy or capacity made available or required to be purchased;

(c) the price or pricing formula under which the electric utility will pay for the power and energy contracted for, including identification of when charges begin to be incurred, any price reopeners and any price escalation provisions;

(d) obligations by the electric utility to pay for any fixed or variable administrative, transactional or operation and maintenance costs incurred through the operation of the generation facility, including start-up costs, taxes, insurance, environmental or reclamation-related costs, fuel costs and any other costs that the electric utility may incur; and

(e) provisions relating to non-performance by the counter-party and the remedies provided;

(3) a description of transmission costs the electric utility will incur or pay to receive the purchased power, which may include the costs of third-party transmission wheeling, or construction of transmission to facilitate purchases under the LTPPA or both;

(4) an explanation of how the electric utility proposes to recover from ratepayers the costs incurred and an estimate of the effect on rates to customers;

(5) a general description of:

(a) the generating facility or facilities that will generate the purchased power; or

(b) if the power is to be generated from one or more specific generating units to be constructed outside New Mexico, a description of the anticipated siting of the generating unit, expected construction time and the expected commercial operation date; and

(c) if the power is to be generated from one or more specific generating units to be constructed within New Mexico, a description of:

(i) the approvals required to construct and operate the generating unit, including air quality and

other environmental permits;  
 (ii) the expected construction time;  
 (iii) the expected commercial operation date;  
 (iv) the fuel type and supply sources; and  
 (v) other provisions addressing the electric utility's ownership options for the generating unit during or after the term of the agreement;

(6) evidence that entering into the LTPPA is consistent with the provision of safe and reliable electric utility service at the lowest reasonable cost, considering both short and long-term costs and all other relevant factors;

(7) evidence of the LTPPA's impact on the electric utility's financial condition and financial metrics;

(8) evidence that the LTPPA is consistent with the electric utility's most recent commission-accepted integrated resource plan unless, as described in Section 17.9.51.10 NMAC, material changes that would warrant a different course of action by the electric utility have occurred; in which case, the testimony shall include justification for deviation from the integrated resource plan;

(9) evidence addressing whether a utility-owned generation resource could have been constructed as an alternative to the LTPPA with greater benefit to ratepayers;

(10) evidence addressing the methodology and criteria by which the purchased power agreement was selected; and

(11) any other information or evidence that the electric utility believes will assist the commission in its review of the LTPPA.

**E.** The electric utility may, as set forth in Subsection D of 17.9.551.8 NMAC, submit any portion of its application and supporting documentation under seal, to the extent that the electric utility deems the specific information to be confidential. The electric utility shall seek a protective order under Subsection B of 1.2.2.8 NMAC for the information it considers confidential.  
 [17.9.551.8 NMAC – N, 7-31-12]

**17.9.551.9 R A T E M A K I N G T R E A T M E N T F O R A L L P U R C H A S E D P O W E R A G R E E M E N T S:**

**A.** The following ratemaking treatment shall apply to all purchased power agreements unless otherwise expressly authorized by order of the commission:

(1) energy costs incurred under a purchased power agreement are recoverable through a fuel and purchased power cost adjustment clause ("FPPCAC") according to the provisions of the FPPCAC approved for the electric utility; and

(2) capacity costs and fixed costs incurred under a purchased power agreement, as well as energy costs incurred by an electric utility without an approved FPPCAC, may be recoverable through base rates when the commission issues an order authorizing a change in base rates that includes recovery of the capacity costs and fixed costs, and energy costs in the case of an electric utility without an approved FPPCAC.

**B.** An electric utility may include in an application for approval of an LTPPA a request that the commission determine other ratemaking principles and treatment that will apply to the LTPPA.

**C.** If a request for a determination of other ratemaking principles and treatment is made, the commission shall determine the appropriate ratemaking treatment and principles that will apply to the LTPPA during its term and include that determination in the order granting approval of the LTPPA.  
 [17.9.551.9 NMAC – N, 7-31-12]

**17.9.551.10 P R O C E S S F O R A P P R O V A L O F A L O N G - T E R M P U R C H A S E D P O W E R A G R E E M E N T:**

**A.** The commission may approve an application for approval of an LTPPA without a formal hearing if no protest is filed within sixty (60) days after the date that notice is given pursuant to a commission order.

**B.** The commission shall issue its final order acting on the application within six (6) months after the date the application was filed. A final order denying an application shall be without prejudice. The electric utility may re-file a previously denied application at any time after that denial. If the commission does not issue its final order within six (6) months after the date that the application was filed by the electric utility, the application shall be deemed to be approved.  
 [17.9.551.10 NMAC – N, 7-31-12]

**17.9.551.11 I N F O R M A T I O N A L F I L I N G R E Q U I R E M E N T S F O R A P U R C H A S E D P O W E R A G R E E M E N T W I T H A T E R M O F T W O ( 2 ) Y E A R S O R M O R E B U T L E S S T H A N F I V E ( 5 ) Y E A R S:**

**A.** An electric utility may, but is not required to, request approval or request ratemaking treatment other than as provided in Subsection A of 17.9.551.9 NMAC, for a purchased power agreement with a term of two (2) years or more but less than five (5) years, by filing the same type of application applicable to a LTPPA. The provisions in 17.9.551.10 NMAC shall apply to an application regarding a purchased power agreement with a term of two (2) years or more but less than five (5)

years.

**B.** An electric utility entering into a purchased power agreement with a term of two (2) years or more but less than five (5) years for which the utility intends to seek rate recovery either in base rates or its fuel and purchased power cost adjustment clause, shall file with the commission a notice of purchased power agreement within thirty (30) days of execution.

**C.** A notice of purchased power agreement shall include a copy of the agreement and:

(1) an explanation of the key terms and conditions of the agreement, including:

(a) its term;  
 (b) its size in MW of capacity and any conditions regarding the minimum or maximum amount of energy or capacity made available or required to be purchased;

(c) the price or pricing formula, including any escalation provisions, and, if applicable, any obligations of the utility to pay for any fixed or variable operation and maintenance costs incurred through the operation of any generation facility providing service under the agreement, including start-up costs, taxes, insurance, environmental or reclamation-related costs and fuel costs; and

(d) any other costs for which the public utility is obligated;

(2) a description of transmission costs the utility will incur or pay to receive the purchased power and any impact on the transmission system of the agreement, including any needed construction of transmission facilities to facilitate purchases under the agreement;

(3) an explanation of how the utility intends to recover costs incurred under the agreement from ratepayers;

(4) an explanation of the impact of the agreement on the electric utility's financial condition or financial metrics;

(5) an explanation of how entering into the agreement is consistent with the provision of safe and reliable electric utility service at the lowest reasonable cost, considering both short- and long-term costs and all other relevant factors;

(6) an explanation of whether the agreement will result in the deferment or delay of any capacity addition by the public utility, and whether the agreement is consistent with the utility's most recent commission-accepted integrated resource plan;

(7) evidence addressing the methodology and criteria by which the purchased power agreement was selected; and

(8) any information that the electric utility believes will assist the commission in its review of the agreement.

[17.9.551.11 NMAC – N, 7-31-12]



**17.9.551.12 VARIANCES:**

A. An electric utility may file a request for a variance from the requirements of this rule with service of the request to the same parties on whom the application must be served; such request shall:

- (1) identify the sections of this rule for which the variance is requested;
- (2) describe the reasons for the variance;
- (3) set out the effect of complying with this rule on the parties and the electric utility's customers if the variance is not granted;
- (4) describe the expected result that the request will have if granted; and
- (5) state how the variance will aid in achieving the purposes of this rule.

B. The commission may grant a request for a procedural variance through an order issued by a single commissioner or a designated hearing examiner. Other variances shall be presented to the commission for its determination.

[17.9.551.12 NMAC - N, 7-31-12]

History of 17.9.551 NMAC: [Reserved]

## NEW MEXICO RACING COMMISSION

This is an amendment to 15.2.6 NMAC, Sections 6, 8, 9, 10, 11 and 12, effective 07/31/12.

**15.2.6.6 OBJECTIVE:** The objective of Part 6 of Chapter 2 is to describe requirements and procedures used to protect the integrity of horse racing, to ensure the health and welfare of race horses and to safeguard the interests of the public and the participants in racing.

[15.2.6.6 NMAC - Rp, 15 NMAC 2.6.6, 04/13/2001; A, 07/31/2012]

**15.2.6.8 VETERINARY PRACTICES:**

A. **VETERINARIANS UNDER AUTHORITY OF OFFICIAL VETERINARIAN:** Veterinarians licensed by the commission and practicing at any location under the jurisdiction of the commission are under the supervision of the official veterinarian and the stewards. The official veterinarian [may] shall recommend to the stewards or the commission the discipline to be imposed upon a veterinarian who violates the rules [and shall attend any hearing before the stewards concerning such discipline or violation if requested].

**B. TREATMENT RESTRICTIONS:**

(1) Except as otherwise provided by this subsection, no person other than a veterinarian licensed to practice veterinary

medicine in this jurisdiction and licensed by the commission may administer a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any location under the jurisdiction of the commission.

(2) This subsection does not apply to the administration of the following substances except in approved quantitative levels, if any, present in post-race samples or as they may interfere with post-race testing:

(a) a recognized non-injectable nutritional supplement or other substance approved by the official veterinarian;

(b) a non-injectable substance on the direction or by prescription of a licensed veterinarian;

(c) a non-injectable non-prescription medication or substance.

(3) No person shall possess on any location under the jurisdiction of the commission any of the following unless approved by the commission:

(a) any drug which is a narcotic, stimulant, or depressant, or any other substance or medication that has been prepared or packaged for injection by a hypodermic syringe, or hypodermic needle;

(b) any hypodermic syringe, hypodermic needle or any equipment associated with the aid of intravenous administration.

(4) At any location under the jurisdiction of the commission, veterinarians may use only one-time disposable needles, and shall dispose of them in a manner approved by the commission.

(5) If a person has a medical condition which makes it necessary to possess a prohibited item pursuant to Paragraph (3) of Subsection B of 15.2.6.8 NMAC, that person may:

(a) request permission of the stewards or the commission in writing;

(b) furnish a letter from a licensed physician explaining why it is necessary for the person to possess a prohibited item;

(c) and must comply with any conditions and restrictions set by the stewards or the commission.

(6) If the licensee is a trainer the following requirements are to be followed: Commencing on the day of the alleged violation of Paragraph (3) of Subsection B of 15.2.6.8 NMAC, all of the trainer's horses that will be racing within 48 hours will be tested by the commission's official laboratory. Upon a finding of a violation by the board of stewards of Paragraph (3) of Subsection B of 15.2.6.8 NMAC payment of all costs for testing of the horses shall be borne by the trainer.

(7) The recommended penalty (in absence of mitigating circumstances) for violation of Paragraph (3) of Subsection B

of 15.2.6.8 NMAC is a fifteen hundred dollar (\$1,500) fine and a six month suspension.

(8) Veterinarians shall not have contact with an entered horse on race day except for the administration of furosemide under the guidelines set forth in Subsection F of 15.2.6.9 NMAC unless approved by the official veterinarian or in an emergency situation. Should an emergency occur during evening hours, the veterinarian shall notify the official veterinarian as soon as possible the following morning.

**C. VETERINARIAN'S REPORTS:**

(1) Every veterinarian who treats a race horse at any location under the jurisdiction of the commission shall, in writing on a form approved by the commission, report to the official veterinarian the name of the horse treated, any medication, drug or substance administered or prescribed or administered, the name of the trainer of the horse, the date and time of treatment and any other information requested by the official veterinarian.

(2) The report shall be signed by the practicing veterinarian.

(3) The report will be made available to racing officials on request within a 48-hour period. Any such report is confidential and its content shall not be disclosed except in the course of an investigation of a possible violation of these rules or in a proceeding before the stewards or the commission, or to the trainer or owner of record at the time of treatment.

**D. VETERINARY COMPLIANCE:** The official veterinarian, racing veterinarian, and each practicing veterinarian shall comply with all federal and state statutes and applicable rules regulating veterinary practices as may be promulgated by the New Mexico board of veterinary medicine and the New Mexico board of pharmacy.

[15.2.6.8 NMAC - Rp, 15 NMAC 2.6.8, 04/13/2001; A, 07/15/2002; A, 02/15/2012; A, 07/31/2012]

**15.2.6.9 MEDICATIONS AND PROHIBITED SUBSTANCES:**

The "uniform classification guidelines for foreign substances and recommended penalties and model rule", revised December 2011, version 3.00 as issued by the association of racing commissioners international, is incorporated by reference. Upon a finding of a violation of [these] any medication and prohibited substances [rules] rule, which includes the possession of contraband as listed in Subsection I of 15.2.6.9 NMAC, the stewards shall consider the classification level of the violation as listed at the time of the violation by the uniform classification guidelines of foreign substances as promulgated by the association of racing commissioners international and impose

penalties and disciplinary measures as determined by the New Mexico racing commission. ~~[The commission only adopts the recommended overages for permitted non-steroidal anti-inflammatory drugs (NSAIDs) and furosemide (in either serum or plasma) listed in this reference material should a violation occur in a graded thoroughbred stakes race. The guidelines and recommended overages for NSAIDs and furosemide are attached to this section and incorporated by reference. Provided, however, that in the event a majority of the stewards determine that mitigating circumstances require imposition of a lesser penalty they may impose the lesser penalty.]~~

**A. UNIFORM CLASSIFICATION GUIDELINES:** The following outline describes the types of substances placed in each category. This list shall be publicly posted in the offices of the official veterinarian and the racing secretary.

**(1) Class 1** - Opiates, opium derivatives, synthetic opioids, psychoactive drugs, amphetamines and U.S. drug enforcement agency (DEA) scheduled I and II drugs. Also found in this class are drugs which are potent stimulants of the nervous system. Drugs in this class have no generally accepted medical use in the race horse and their pharmacological potential for altering the performance of a race is very high.

**(2) Class 2** - Drugs in this category has a high potential for affecting the outcome of a race. Most are not generally accepted as therapeutic agents in the race horse. Many are products intended to alter consciousness or the psychic state of humans, and have no approved or indicated use in the horse. Some, such as injectable local anesthetics, have legitimate use in equine medicine, but should not be found in a race horse. The following groups of drugs are in this class.

**(a)** Opiate partial agonists, or agonist-antagonists.

**(b)** Non-opiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects.

**(c)** Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS).

**(d)** Drugs with prominent CNS depressant action.

**(e)** Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects.

**(f)** Muscle blocking drugs, which have a direct neuromuscular blocking action.

**(g)** Local anesthetics, which have a reasonable potential for use as nerve blocking agents (except procaine).

**(h)** Snake venoms and other biologic substances, which may be used as nerve blocking agents.

**(3) Class 3** - Drugs in this class may or may not have an accepted therapeutic

use in the horse. Many are drugs that affect the cardiovascular, pulmonary and autonomic nervous systems. They all have the potential of affecting the performance of a race horse. The following groups of drugs are in this class.

**(a)** Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class).

**(b)** A local anesthetic, which has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine).

**(c)** Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines.

**(d)** Primary vasodilating/hypotensive agents.

**(e)** Potent diuretics affecting renal function and body fluid composition.

**(4) Class 4** - This category is comprised primarily of therapeutic medications routinely used in race horses. These may influence performance, but generally have a more limited ability to do so. Groups of drugs assigned to this category include the following.

**(a)** Non-opiate drugs which have a mild central analgesic effect.

**(b)** Drugs affecting the autonomic nervous system, which do not have prominent CNS, cardiovascular, or respiratory effects.

**(i)** Drugs used solely as topical vasoconstrictors or decongestants.

**(ii)** Drugs used as gastrointestinal antispasmodics.

**(iii)** Drugs used to void the urinary bladder.

**(iv)** Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs.

**(c)** Antihistamines, which do not have a significant CNS depressant effect (This does not include H1 blocking agents, which are listed in class 5).

**(d)** Mineralocorticoid drugs.

**(e)** Skeletal muscle relaxants.

**(f)** Anti-inflammatory drugs--those that may reduce pain as a consequence of their anti-inflammatory actions, which include.

**(i)** Non-steroidal anti-inflammatory drugs (NSAIDs), except for those specifically approved by the commission [~~--- aspirin-like drugs~~].

**(ii)** Corticosteroids (glucocorticoids).

**(iii)** Miscellaneous anti-inflammatory agents.

**(g)** Anabolic [~~and/or~~] or androgenic steroids and other drugs.

**(h)** Less potent diuretics.

**(i)** Cardiac glycosides and antiarrhythmics including.

**(i)** Cardiac glycosides.

**(ii)** Antiarrhythmics agents (exclusive of lidocaine, bretylium and propranolol).

**(iii)** Miscellaneous cardiotoxic drugs.

**(j)** Topical anesthetics--agents not available in injectable formulations.

**(k)** Antidiarrheal agents.

**(l)** Miscellaneous drugs including:  
**(i)** expectorants with little or no other pharmacologic action;

**(ii)** stomachics;

**(iii)** mucolytic agents.

**(5) Class 5** - Drugs in this category are therapeutic medications for which concentration limits have been established as well as certain miscellaneous agents. Included specifically are agents, which have very localized action only, such as anti-ulcer drugs and certain antiallergic drugs. The anticoagulant drugs are also included.

**~~B. PENALTY RECOMMENDATIONS (in the absence of mitigating circumstances):~~**

~~**(1)** Class 1 - one to five years' suspension and at least \$5,000 fine and loss of purse.~~

~~**(2)** Class 2 - six months to one-year suspension and \$1,500 to \$2,500 fine and loss of purse.~~

~~**(3)** Class 3 - sixty days to six months suspension and up to \$1,500 fine and loss of purse.~~

~~**(4)** Class 4 - fifteen to 60 days suspension and up to \$1,000 fine and loss of purse.~~

~~**(5)** Class 5 - zero to 15 days suspension with a possible loss of purse and/or fine.]~~

**B. PENALTIES:**

**(1)** In issuing penalties against individuals found guilty of medication and drug violations, a regulatory distinction shall be made between the detection of therapeutic medications used routinely to treat racehorses and those drugs that have no reason to be found at any concentration in the test sample on race day.

**(2)** The stewards or the commission will use the association of racing commissioner's international recommended penalty as a starting place in the penalty stage of the deliberations for a rule violation for any drug listed in the association of racing commissioners international uniform classification guidelines for foreign substances.

**(3)** If a licensed veterinarian is administering or prescribing a drug not listed in the association of racing commissioner's international uniform classification guidelines for foreign substances, the identity of the drug shall be forwarded to the New Mexico racing commission designee to be forwarded to the racing medication and testing consortium for classification.

(4) Any drug or metabolite thereof found to be presenting a pre- or post-race sample which is not classified in the association of racing commissioners international uniform classification guidelines for foreign substances shall be assumed to be an association of racing commissioners international class 1 drug and the trainer and owner shall be subject to those penalties as set forth in penalty category A unless satisfactorily demonstrated otherwise by the racing medication and testing consortium, with a penalty category assigned.

(5) The penalty categories and their related schedules, if applicable, shall be on the following criteria:

(a) whether the drug is approved by the U.S. food and drug administration for use in the horse;

(b) whether the drug is approved by the U.S. food and drug administration for use in any species;

(c) whether the drug as approved has any legitimate therapeutic application in the equine athlete;

(d) whether the drug was identified as "necessary" by the racing medication and testing consortium veterinary advisory committee;

(e) whether legitimate, recognized therapeutic alternate exist, and;

(f) the association of racing commissioners international classification of the drug.

(6) The penalty categories A, B, and C and their related schedules for trainers and owners are shown in Subsection C of 15.2.6.8 NMAC.

(7) The recommended penalty for a violation involving a drug that carries a category "D" penalty is a written warning to the trainer and owner. Multiple violations may result in fines or suspensions.

(8) Any licensee of the commission, including veterinarians, found responsible for the improper or intentional administration of any drug resulting in a positive test may, after proper notice and hearing, be subject to the same penalties set forth for the licensed trainer.

(9) The licensed owner, veterinarian or any other licensed party involved in a positive laboratory finding shall be notified in writing of the hearing and any resulting action. In addition their presence may be required at any and all hearings relative to the case.

(10) Any veterinarian found to be involved in the administration of any drug carrying the penalty category of "A" shall be referred to the state licensing board of veterinary medicine for consideration of further disciplinary action or license revocation. This is in addition to any penalties issued by the stewards or the commission.

(11) Any person who the stewards or the commission believe may have committed acts in violation of criminal statutes may be referred to the appropriate law enforcement agency. Administrative action taken by the stewards or the commission does not prohibit a prosecution for a criminal act, nor does a potential criminal prosecution stall administrative action by the stewards or the commission.

(12) Procedures shall be established to ensure that a licensed trainer is not able to benefit financially during the period for which the individual has been suspended. This includes, but is not limited to, ensuring that horses are not transferred to a licensed person within the first degree of affinity (marriage relationship) or first degree of consanguinity (blood relationship):

(a) first degree of affinity shall mean license holder's spouse or spouse's mother, father, brother, sister, son or daughter;

(b) first degree of consanguinity shall mean license holder's mother, father, brother, sister, son or daughter.

#### C. P E N A L T Y RECOMMENDATIONS:

(1) Category A penalties will be assessed against a trainer for violations due to the presence of a drug carrying a category A penalty. Recommended penalties for category A violations for a licensed trainer are as follows.

(a) First offense shall be a minimum one-year suspension to a maximum three-year suspension, a fine of \$10,000 or 10% of total purse (greater of the two) and may be referred to the commission for any further action deemed necessary by the commission.

(b) Second lifetime offense in any jurisdiction shall be a minimum three-year suspension with a maximum license revocation with no reapplication for a three-year period, a fine of \$10,000 or 25% of total purse (greater of the two), and may be referred to the commission for further action deemed necessary by the commission.

(c) Third lifetime offense in any jurisdiction shall be a minimum five-year suspension with a maximum of license revocation with no reapplication for a five-year period, a fine of \$10,000 or 50% of the purse (whichever of the two is greater), and may be referred to the commission for any further action deemed necessary by the commission.

(2) Category A penalties will be assessed against an owner for violations due to the presence of a drug carrying a category A penalty. Recommended penalties for category A violations for a licensed owner are as follows.

(a) First offense shall be disqualification, loss of purse and horse shall be placed on the veterinarian's list for 90 days and must pass a commission-approved

examination before becoming eligible to be entered.

(b) Second lifetime offense in owner's stable in any jurisdiction shall be disqualification, loss of purse and horse shall be placed on the veterinarian's list for 120 days and must pass a commission-approved examination before becoming eligible to be entered.

(c) Third lifetime offense in owner's stable in any jurisdiction shall be disqualification, loss of purse, \$10,000 fine, horse shall be placed on the veterinarian's list for 180 days and must pass a commission-approved examination before becoming eligible to be entered, and referral to the commission with a recommendation of a suspension for a minimum of 90 days.

(3) Category B penalties will be assessed against a trainer for violations due to the presence of a drug carrying a category B penalty and for the presence of more than one NSAID in a plasma/serum sample. Recommended penalties for category B violations and for the presence of more than one NSAID in a plasma/serum sample for a licensed trainer are as follows.

(a) First offense shall be a minimum 15-day suspension to a maximum 60-day suspension and \$500 to \$1,000 fine.

(b) Second offense within a 365-day period in any jurisdiction shall be a minimum 30-day suspension to a maximum 180-day suspension and a minimum \$1,000 to a maximum \$2,500 fine.

(c) Third offense within a 365-day period in any jurisdiction shall be a 60-day suspension to a maximum one year suspension, a minimum \$2,500 to a maximum \$5,000 fine or 5% of purse (greater of the two) and may be referred to the commission for any further action deemed necessary by the commission.

(4) Category B penalties will be assessed against a licensed owner for violations due to the presence of a drug carrying a category B penalty and for the presence of more than one NSAID in a plasma/serum sample. Recommended penalties for category B violations and for the presence of more than one NSAID in a plasma/serum sample.

(a) First offense shall be disqualification, loss of purse and horse must pass a commission-approved examination before becoming eligible to be entered.

(b) Second offense in stable with a 365-day period in any jurisdiction shall be disqualification, loss of purse and horse must pass a commission-approved examination before becoming eligible to be entered.

(c) Third offense in stable within a 365-day period in any jurisdiction shall be disqualification, loss of purse, \$5,000 fine and horse shall be placed on the veterinarian's list for 45 days and must pass a commission-approved examination before



becoming eligible to be entered.

**(5)** Category C penalties will be assessed against a licensed trainer for violations due to the presence of a drug carrying a category C penalty and overages for NSAID's and furosemide (all concentrations are for measurements in serum or plasma). Recommended penalties for category C violations, overages for permitted NSAID's and furosemide are as follows.

**(a)** First offense in the following levels within a 365-day period in any jurisdiction shall be a minimum of a written warning to a maximum of a \$500 fine:

**(i)** 2.1 micrograms per milliliter to 5.0 micrograms per milliliter of phenylbutazone; or

**(ii)** 21 nanograms per milliliter to 100 nanograms per milliliter of flunixin; or

**(iii)** 11 nanograms per milliliter to 50 nanograms per milliliter of ketoprofen; or

**(iv)** 101 nanograms per milliliter of furosemide; or

**(v)** no furosemide when identified as administered.

**(b)** Second offense in the following levels within a 365-day period in any jurisdiction shall be a minimum of a written warning to a maximum \$750 fine:

**(i)** 2.1 micrograms per milliliter to 5.0 micrograms per milliliter of phenylbutazone; or

**(ii)** 21 nanograms per milliliter to 100 nanograms per milliliter of flunixin; or

**(iii)** 11 nanograms per milliliter to 50 nanograms per milliliter of ketoprofen; or

**(iv)** 101 nanograms per milliliter of furosemide; or

**(v)** no furosemide when identified as administered.

**(c)** Third offense in the following levels within a 365-day period in any jurisdiction shall be a minimum of \$500 fine to a maximum fine of \$1,000:

**(i)** 2.1 micrograms per milliliter to 5.0 micrograms per milliliter of phenylbutazone; or

**(ii)** 21 nanograms per milliliter to 100 nanograms per milliliter of flunixin; or

**(iii)** 11 nanograms per milliliter to 50 nanograms per milliliter of ketoprofen; or

**(iv)** 101 nanograms per milliliter of furosemide; or

**(v)** no furosemide when identified as administered.

**(d)** First offense in the following levels within a 365-day period in any jurisdiction shall be a minimum \$1,000 fine:

**(i)** 5.1 micrograms per milliliter of phenylbutazone; or

**(ii)** 101 nanograms per milliliter of flunixin; or

**(iii)** 51 nanograms per milliliter of ketoprofen; or

**(iv)** class C violations.

**(e)** Second offense in the following levels within a 365-day period in any jurisdiction shall be a minimum \$1,500 fine and a 15-day suspension:

**(i)** 5.1 micrograms per milliliter of phenylbutazone; or

**(ii)** 101 nanograms per milliliter of flunixin; or

**(iii)** 51 nanograms per milliliter of ketoprofen; or

**(iv)** class C violations.

**(f)** Third offense in the following levels within a 365-day period in any jurisdiction shall be a minimum \$2,500 fine and a 30-day suspension:

**(i)** 5.1 micrograms per milliliter of phenylbutazone; or

**(ii)** 101 nanograms per milliliter of flunixin; or

**(iii)** 51 nanograms per milliliter of ketoprofen; or

**(iv)** class C violations.

**(6)** Category C penalties will be assessed against a licensed owner for violations due to the presence of a drug carrying a category C penalty and overages for NSAID's and furosemide (all concentrations are for measurements in serum or plasma). Recommended penalties for category C violations, overages for permitted NSAID's and furosemide are as follows.

**(a)** First offense in the following levels within a 365-day period in any jurisdiction the horse may be required to pass commission-approved examination before being eligible to run:

**(i)** 2.1 micrograms per milliliter to 5.0 micrograms per milliliter of phenylbutazone; or

**(ii)** 21 nanograms per milliliter to 100 nanograms per milliliter of flunixin; or

**(iii)** 11 nanograms per milliliter to 50 nanograms per milliliter of ketoprofen; or

**(iv)** 101 nanograms per milliliter of furosemide; or

**(v)** no furosemide when identified as administered.

**(b)** Second offense in the following levels within a 365-day period in any jurisdiction the horse may be required to pass a commission-approved examination before being eligible to run:

**(i)** 2.1 micrograms per milliliter to 5.0 micrograms per milliliter of phenylbutazone; or

**(ii)** 21 nanograms per milliliter to 100 nanograms per milliliter of flunixin; or

**(iii)** 11 nanograms per

milliliter to 50 nanograms per milliliter of ketoprofen; or

**(iv)** 101 nanograms per milliliter of furosemide; or

**(v)** no furosemide when identified as administered.

**(c)** Third offense in the following levels within a 365-day period in any jurisdiction shall be disqualification, loss of purse and horse must pass a commission-approved examination before being eligible to run:

**(i)** 2.1 micrograms per milliliter to 5.0 micrograms per milliliter of phenylbutazone; or

**(ii)** 21 nanograms per milliliter to 100 nanograms per milliliter of flunixin; or

**(iii)** 11 nanograms per milliliter to 50 nanograms per milliliter of ketoprofen; or

**(iv)** 101 nanograms per milliliter of furosemide; or

**(v)** no furosemide when identified as administered.

**(d)** First offense in the following levels within a 365-day period in any jurisdiction shall a loss of purse and horse must pass a commission-approved examination before being eligible to run:

**(i)** 5.1 micrograms per milliliter of phenylbutazone; or

**(ii)** 101 nanograms per milliliter of flunixin; or

**(iii)** 51 nanograms per milliliter of ketoprofen; or

**(iv)** class C violations.

**(e)** Second offense in the following levels within a 365-day period in any jurisdiction shall be a loss of purse and if same horse, that horse will be placed on a veterinarian's list for 45 days and must pass a commission approved examination before being eligible to run:

**(i)** 5.1 micrograms per milliliter of phenylbutazone; or

**(ii)** 101 nanograms per milliliter of flunixin; or

**(iii)** 51 nanograms per milliliter of ketoprofen; or

**(iv)** class C violations.

**(f)** Third offense in the following levels within a 365-day period in any jurisdiction shall be a loss of purse, minimum \$5,000 fine and if same horse that horse shall be placed on veterinarian's list for 60 days and must pass commission-approved examination before being eligible to run:

**(i)** 5.1 micrograms per milliliter of phenylbutazone; or

**(ii)** 101 nanograms per milliliter of flunixin; or

**(iii)** 51 nanograms per milliliter of ketoprofen; or

**(iv)** class C violations.

**(7)** If the trainer has not had more than one violation within the previous two

years, the stewards may issue a warning in lieu of a fine provided the reported level in phenylbutazone is below 3.0 micrograms per milliliter.

(8) After a two-year period, if a licensee has had no further violations, any penalty due to an overage in the 2.0-5.0 micrograms per milliliter in phenylbutazone will be expunged from the licensee's record for penalty purposes.

#### (C.) D. MEDICATION RESTRICTIONS:

(1) A finding by the [official chemist] commission approved laboratory of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include: drugs or medications for which no acceptable levels have been established; therapeutic medications in excess of established acceptable levels; substances present in the horse in excess of levels at which such substances could occur naturally; substances foreign to a horse at levels that cause interference with testing procedures.

(2) Drugs or medications in horses are permissible, provided: the drug or medication is listed by the association of racing commissioners international's drug testing [and quality assurance program] standards and practices program; the maximum permissible urine or blood concentration of the drug or medication does not exceed the published limit.

(3) Except as otherwise provided by this part, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to this part during the 24-hour period before post time for the race in which the horse is entered.

E. NON-STEROIDAL ANTI-INFLAMMATORY DRUGS (NSAIDs): The use of one of three approved NSAIDs shall be permitted under the following conditions.

(a) (1) Phenylbutazone: The use of phenylbutazone shall be permitted under the following conditions: Any horse to which phenylbutazone has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative phenylbutazone level(s) and/or the presence of other drugs which may be present in the blood or urine sample(s). The permitted quantitative test level of phenylbutazone or oxyphenbutazone shall be administered in such dosage amount that the official test sample shall not exceed [5] 2 micrograms per milliliter of plasma.

(b) Furosemide (Salix): furosemide (Salix) may be administered intravenously to a horse, which is entered to compete in a race. Except under the instructions of the official veterinarian for the purpose of removing a horse from the veterinarian's list or to facilitate the collection of a post-race urine sample, furosemide (Salix) shall be permitted only after the trainer enters the horse on the bleeder list by so declaring it as a bleeder on the entry card.

(i) The use of furosemide (Salix) shall be permitted under the following circumstances on association grounds where a detention barn is utilized: furosemide (Salix) shall be administered no less than three hours prior to post time for a quarter horse race for which the horse is entered and no less than four hours prior to post time for a thoroughbred race for which a horse is entered. A horse qualified for a furosemide (Salix) administration must be brought to the detention barn one hour prior to the three-hour or four-hour administration requirement specified above. After treatment, the horse shall be required by the commission to remain in the detention barn in the care, custody and control of its trainer or the trainer's designated representative under association and/or commission security supervision until called to the saddling paddock.

(ii) The use of furosemide (Salix) shall be permitted under the following circumstances on association grounds where a detention barn is not utilized: furosemide (Salix) shall be administered no less than three hours prior to post time for a quarter horse race for which the horse is entered and no less than four hours prior to post time for a thoroughbred race for which a horse is entered; the horse must be logged in at the stable gate with time and location no less than one hour prior to administration; the furosemide (Salix) dosage administered shall not exceed 250 milligrams nor be less than 100 milligrams for horses entered in a quarter horse race and the furosemide (Salix) dosage administered shall not exceed 500 milligrams nor be less than 150 milligrams for horses entered in a thoroughbred race; the trainer of the treated horse shall cause to be delivered to the official veterinarian or his/her designee no later than one hour prior to post time for the race for which the horse is entered the following information under oath on a form provided by the commission: the racetrack name, the date and time the furosemide (Salix) was administered to the entered horse; the dosage amount of furosemide (Salix) administered to the entered horse; the printed name and signature of the attending licensed veterinarian who administered the furosemide (Salix).

(iii) Quantitation of

furosemide in serum or plasma shall be performed when specific gravity of the corresponding urine sample is not measured or if measured below 1.010. Concentrations may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.

(iv) Bleeder List: The official veterinarian shall maintain a bleeder list of all horses, which have been certified as bleeder horses. Such certified horses must have been entered by the trainer as a bleeder to obtain certification.

(v) The confirmation of a bleeder horse must be certified in writing by the official veterinarian or the racing veterinarian and entered on the bleeder list. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. A copy of the bleeder certificate shall be attached to the horse's certificate of registration.

(vi) Every confirmed bleeder, regardless of age, shall be placed on the bleeder list.

(vii) A horse may be removed from the bleeder list only upon the direction of the official veterinarian, who shall certify in writing to the stewards the recommendation for removal and only after remaining on the bleeder list for a minimum of sixty (60) days.

(viii) A horse, which has been placed on a bleeder list in another jurisdiction, may be placed on a bleeder list in this jurisdiction by entering the horse into a race by so declaring it on the entry card as a bleeder in another jurisdiction.]

(c) (2) Flunixin: In addition to phenylbutazone and furosemide, flunixin may be administered in such dosage amount that the official test sample shall not exceed [.05-microgram] 20 nanograms per milliliter of the drug substance, its metabolites, or analogs, per milliliter of blood plasma.

(d) (3) Ketoprofen: In addition to phenylbutazone and furosemide, ketoprofen may be administered in such dosage amount that the official test sample shall not exceed 10 nanograms per milliliter of the drug substance, its metabolites, or analogs, per milliliter of plasma.

(4) These or any other NSAIDs are prohibited to be administered within the 24 hours before post time for the race in which the horse is entered.

(5) The presence of more than one of the three approved NSAIDs, with the exception of phenylbutazone in a concentration below 2 micrograms per milliliter of serum or plasma or any unapproved NSAID in the post-race serum or plasma sample is not permitted. The use of all but one of the approved NSAIDs shall be discontinued at least 48 hours before the post time for the race in which the horse is entered.

(4) The official urine test sample



may contain one of the following drug substances, their metabolites or analogs; in any amount that does not exceed the specified levels:

**(a) Acepromazine:** The use of acepromazine shall be permitted under the following conditions: Any horse to which acepromazine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of acepromazine shall not exceed 25 nanograms per milliliter of urine, or its blood equivalent.

**(b) Albuterol:** The use of albuterol shall be permitted under the following conditions: Any horse to which albuterol has been administered shall be subject to having a blood and urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of albuterol shall not exceed 1 nanogram per milliliter of urine, or its blood equivalent. If albuterol is detected in the urine, it must be confirmed in the blood to be a violation.

**(c) Atropine:** The use of atropine shall be permitted under the following conditions: Any horse to which atropine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of atropine shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

**(d) Benzocaine:** The use of benzocaine shall be permitted under the following conditions: Any horse to which benzocaine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of benzocaine shall not exceed 50 nanograms per milliliter of urine, or its blood equivalent.

**(e) Mepivacaine:** The use of mepivacaine shall be permitted under the following conditions: Any horse to which mepivacaine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of mepivacaine shall not exceed 10

nanograms per milliliter of urine, or its blood equivalent:

**(f) Procaine:** The use of procaine shall be permitted under the following conditions: Any horse to which procaine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of procaine shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

**(g) Promazine:** The use of promazine shall be permitted under the following conditions: Any horse to which promazine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of promazine shall not exceed 25 nanograms per milliliter of urine, or its blood equivalent.

**(h) Salicylates:** The use of salicylates shall be permitted under the following conditions: Any horse to which salicylates have been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of salicylates shall not exceed 750 micrograms per milliliter of urine, or its blood equivalent.

**(i) Androgenic-anabolic steroids:**  
**(i)** No AAS shall be permitted in test sample collected from racing horses except for residues of the major metabolite of **stanozolol**, **nandrolone**, and the naturally occurring substances **boldenone** and testosterone at concentrations less than the indicated thresholds.

**(ii)** Concentrations of these AAS shall not exceed the following urine threshold concentrations for total (i.e., free drug or metabolite and drug or metabolite liberated from its conjugates): a) 16B-hydroxystanozolol (metabolite of stanozolol (Winstrol) - 1 ng/ml in urine for all horses regardless of sex; b) boldenone (Equipose ® is the undecylenate ester of boldenone) in male horses other than geldings - 15 ng/ml in urine; no boldenone shall be permitted in geldings or female horses; c) nandrolone (Durabolin ® is the phenylpropionate ester and Deca-Durabolin ® is the decanoate ester) (in geldings - 1 ng/ml in urine, in fillies and mares - 1 ng/ml in urine); in male horses other than geldings - 45 ng/ml of metabolite, 5 alpha oestrane-3 beta; 17 alpha - diol in urine; d) testosterone (in

geldings - 20 ng/ml in urine, in fillies and mares - 55 ng/ml in urine):

**(iii)** Any other anabolic steroids are prohibited in racing horses.

**(iv)** The presence of more than one of the four AAS identified in Item (ii) of this subparagraph at concentrations greater than the individual thresholds indicated above shall not be permitted:

**(v)** Post-race urine samples collected from intact males must be identified to the laboratory.

**(vi)** Any horse to which an anabolic steroid has been administered in order to assist in the recovery from illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug or metabolite in urine. After the concentration has fallen below the designated threshold for the administered AAS, the horse is eligible to be removed from the list.

**(j) Butorphanol:** The use of butorphanol shall be permitted under the following conditions: Any horse to which butorphanol has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of butorphanol shall be administered in such dosage amount that the official test sample shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

**(k) Detomidine:** The use of detomidine shall be permitted under the following conditions: Any horse to which detomidine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of detomidine shall be administered in such dosage amount that the official test sample shall not exceed 100 nanograms per milliliter of urine, or its blood equivalent.

**(l) Dexamethasone:** The use of dexamethasone shall be permitted under the following conditions: Any horse to which dexamethasone has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of dexamethasone shall be administered in such dosage amount that the official test sample shall not exceed 100 nanograms per milliliter of urine, or its blood equivalent.

**(m) Diclofenac:** The use of diclofenac shall be permitted under the

following conditions: Any horse to which diclofenac has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of diclofenac shall be administered in such dosage amount that the official test sample shall not exceed 500 nanograms per milliliter of urine, or its blood equivalent.

**(n) Dipyrone:** The use of dipyrone shall be permitted under the following conditions: Any horse to which dipyrone has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of dipyrone shall be administered in such dosage amount that the official test sample shall not exceed 1000 nanograms per milliliter of urine, or its blood equivalent.

**(o) DMSO:** The use of DMSO shall be permitted under the following conditions: Any horse to which DMSO has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of DMSO shall be administered in such dosage amount that the official test sample shall not exceed 10,000 nanograms per milliliter of urine, or its blood equivalent.

**(p) Flucort:** The use of flumethasone shall be permitted under the following conditions: Any horse to which flucort has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of flumethasone shall be administered in such dosage amount that the official test sample shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

**(q) Isoxsuprine:** The use of isoxsuprine shall be permitted under the following conditions: Any horse to which isoxsuprine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of isoxsuprine shall be administered in such dosage amount that the official test sample shall not exceed 1000 nanograms per

milliliter of urine, or its blood equivalent.

**(r) Methocarbamol:** The use of methocarbamol shall be permitted under the following conditions: Any horse to which methocarbamol has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of methocarbamol shall be administered in such dosage amount that the official test sample shall not exceed 1000 nanograms per milliliter of urine, or its blood equivalent.

**(s) Naproxen:** The use of naproxen shall be permitted under the following conditions: Any horse to which naproxen has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of naproxen shall be administered in such dosage amount that the official test sample shall not exceed 5000 nanograms per milliliter of urine, or its blood equivalent.

**(t) Pentoxifylline:** The use of pentoxifylline shall be permitted under the following conditions: Any horse to which pentoxifylline has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of pentoxifylline shall be administered in such dosage amount that the official test sample shall not exceed 50 nanograms per milliliter of urine, or its blood equivalent.

**(u) Pyrilamine:** The use of pyrilamine shall be permitted under the following conditions: Any horse to which pyrilamine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of pyrilamine shall be administered in such dosage amount that the official test sample shall not exceed 50 nanograms per milliliter of urine, or its blood equivalent.

**(v) Triamcinalone:** The use of triamcinalone shall be permitted under the following conditions: Any horse to which triamcinalone has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test

level of triamcinalone shall be administered in such dosage amount that the official test sample shall not exceed 2 nanograms per milliliter of urine, or its blood equivalent.

**(w) Ulcer medications, i.e., cimethidine, sucralfate, ranitidine:** The use of ulcer medications shall be permitted until further notice.

**(x) Clenbuterol:** The use of clenbuterol shall be permitted under the following conditions: Any horse to which clenbuterol has been administered shall be subject to having blood and urine samples taken at the direction of the official veterinarian to determine the quantitative level (s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of clenbuterol shall be administered in such dosage amount that the official test sample shall not exceed 5 nanograms per milliliter in urine or 25 picograms per milliliter of serum or plasma.

#### **D. P E N A L T Y RECOMMENDATIONS (in the absence of mitigating circumstances):**

**(1)** A verbal warning to be issued for one positive test within a 12-month period in the following levels (the verbal warning will be recorded in writing):

**(a) only** in a thoroughbred graded stakes race—2.1 micrograms per milliliter to 5.0 micrograms per milliliter in one drug of phenylbutazone or oxyphenbutazone; or

**(b)** .06 micrograms per milliliter to 1.0 micrograms per milliliter of flunixin; or

**(c)** 10.1 to 30.0 nanograms per milliliter of ketoprofen.

**(2)** A written warning for one positive test within a 12-month period in the following levels:

**(a)** 5.1 micrograms per milliliter to 9.9 micrograms per milliliter in one drug of phenylbutazone or oxyphenbutazone; or

**(b)** 1.1 microgram per milliliter to 1.3 microgram per milliliter of flunixin; or

**(c)** 31.0 to 40.0 nanograms per milliliter of ketoprofen.

**(3)** A fine for one positive test within a 12-month period in the following levels:

**(a)** \$200 for 10.0 micrograms per milliliter and above for combined total amount of phenylbutazone and oxyphenbutazone; or

**(b)** \$200 for more than 1.3 micrograms per milliliter of flunixin; or

**(c)** \$300 for 5.1 micrograms per milliliter or more of either phenylbutazone or oxyphenbutazone in combination with 1.3 micrograms or more of flunixin; or

**(d)** \$200 for 5.6 to 5.9 micrograms per milliliter in one drug of phenylbutazone, or oxyphenbutazone, and 1.1 to 1.2 micrograms per milliliter of flunixin;

**(e)** \$200 for more than 40.0

nanograms per milliliter of ketoprofen:

(4) The penalties for a second violation within a twelve-month period are as follows:

(a) a second violation of Paragraph (1) or (2) of this subsection shall be a fine of \$200;

(b) a second violation of Subparagraph (a) or (b) of Paragraph (3) of this subsection shall be a fine of \$400;

(c) a second violation of Subparagraph (c) of Paragraph (3) of this subsection shall be a fine of \$600;

(d) a second violation of Subparagraph (d) of Paragraph (3) of this subsection shall be a fine of \$400;

(e) a second violation of Subparagraph (e) of Paragraph (3) of this subsection shall be a fine of \$400.

(5) The penalties for a third violation within a twelve-month period are as follows:

(a) a third violation of Paragraph (1) or (2) of this subsection shall be a fine of \$400;

(b) a third violation of Subparagraphs (a) or (b) of Paragraph (3) of this subsection shall be a \$400 fine, disqualification, and loss of purse;

(c) a third violation of Subparagraph (c) of Paragraph (3) of this subsection shall be a fine of \$900, disqualification, and loss of purse;

(d) a third violation of Subparagraph (d) of Paragraph (3) of this subsection shall be a fine of \$900, disqualification, and loss of purse;

(e) a third violation of Subparagraph (e) of Paragraph (3) of this subsection shall be a fine of \$900, disqualification, and loss of purse.

(6) The penalties for a fourth violation within a twelve-month period are as follows:

(a) a fourth violation of Paragraph (1) or (2) of this subsection shall be a fine of \$400, disqualification, and loss of purse;

(b) a fourth violation of Subparagraph (a) or (b) of Paragraph (3) of this subsection shall be a fine of \$1,000, loss of purse, disqualification, and a thirty-day suspension;

(c) a fourth violation of Subparagraph (c) of Paragraph (3) of this subsection shall be a fine of \$1,500, loss of purse, disqualification, and a thirty-day suspension;

(d) a fourth violation of Subparagraph (d) of Paragraph (3) of this subsection shall be a fine of \$1,500, loss of purse, disqualification, and a thirty-day suspension;

(e) a fourth violation of Subparagraph (e) of Paragraph (3) of this subsection shall be a fine of \$1,500, loss of purse, disqualification, and a thirty-day suspension.

(7) For the fifth violation within a 12-month period of Paragraph (1) or (2) of this subsection shall be a fine of \$1,000, loss of purse, disqualification, and a thirty-day suspension.

(8) A positive test of two permitted non-steroidal anti-inflammatory drugs found at twice the allowable level or more for two drugs shall carry the penalties of a class IV drug positive for the trainer and attending veterinarian. Additional violations shall carry the same penalties as additional violations of a class IV drug for the trainer and the attending veterinarian.]

#### **F. FUROSEMIDE:**

(1) Furosemide (Salix) may be administered intravenously to a horse, which is entered to compete in a race. Except under the instructions of the official veterinarian for the purpose of removing a horse from the veterinarian's list or to facilitate the collection of a post-race urine sample, furosemide (Salix) shall be permitted only after the trainer enters the horse on the bleeder list by so declaring it as a bleeder on the entry card.

(2) The use of furosemide (Salix) shall be permitted under the following circumstances on association grounds where a detention barn is utilized: furosemide (Salix) shall be administered no less than three hours prior to post time for a quarter horse race for which the horse is entered and no less than four hours prior to post time for a thoroughbred race for which a horse is entered. A horse qualified for a furosemide (Salix) administration must be brought to the detention barn one hour prior to the three-hour or four-hour administration requirement specified above. After treatment, the horse shall be required by the commission to remain in the detention barn in the care, custody and control of its trainer or the trainer's designated representative under association or commission security supervision until called to the saddling paddock.

(3) The use of furosemide (Salix) shall be permitted under the following circumstances on association grounds where a detention barn is not utilized: furosemide (Salix) shall be administered no less than three hours prior to post time for a quarter horse race for which the horse is entered and no less than four hours prior to post time for a thoroughbred race for which a horse is entered; the horse must be logged in at the stable gate with time and location no less than one hour prior to administration; the furosemide (Salix) dosage administered shall not exceed 250 milligrams nor be less than 100 milligrams for horses entered in a quarter horse race and the furosemide (Salix) dosage administered shall not exceed 500 milligrams nor be less than 150 milligrams for horses entered in a thoroughbred race; the trainer of the treated horse shall cause

to be delivered to the official veterinarian or his/her designee no later than one hour prior to post time for the race for which the horse is entered the following information under oath on a form provided by the commission: the racetrack name, the date and time the furosemide (Salix) was administered to the entered horse; the dosage amount of furosemide (Salix) administered to the entered horse; the printed name and signature of the attending licensed veterinarian who administered the furosemide (Salix).

(4) The specific gravity of post race urine samples may be measured to ensure that samples are sufficiently concentrated for proper chemical analysis. The specific gravity shall not be below 1.010. If the specific gravity of the urine is found to be below 1.010 or if a urine sample is unavailable for testing, quantitation of furosemide in serum or plasma shall be performed.

(5) Quantitation of furosemide in serum or plasma shall be performed when specific gravity of the corresponding urine sample is not measured or if measured below 1.010. Concentrations may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.

#### **G. BLEEDER LIST:**

(1) The official veterinarian shall maintain a bleeder list of all horses, which have been certified as bleeder horses. Such certified horses must have been entered by the trainer as a bleeder to obtain certification.

(2) The confirmation of a bleeder horse must be certified in writing by the official veterinarian or the racing veterinarian and entered on the bleeder list. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. A copy of the bleeder certificate shall be attached to the horse's certificate of registration.

(3) Every confirmed bleeder, regardless of age, shall be placed on the bleeder list.

(4) A horse may be removed from the bleeder list only upon the direction of the official veterinarian, who shall certify in writing to the stewards the recommendation for removal and only after remaining on the bleeder list for a minimum of 60 days.

(5) A horse, which has been placed on a bleeder list in another jurisdiction, may be placed on a bleeder list in this jurisdiction by entering the horse into a race by so declaring it on the entry card as a bleeder in another jurisdiction.

#### **H. PERMISSIBLE MEDICATIONS WITH ACCEPTABLE LEVELS:**

The official urine test sample may contain one of the following drug substances, their metabolites or analogs, in any amount that does not exceed the specified levels.

(1) **Acepromazine:** The use of



acepromazine shall be permitted under the following conditions: any horse to which acepromazine has been administered shall be subject to having a blood sample, or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of acepromazine shall not exceed 25 nanograms per milliliter of urine, or its blood equivalent.

**(2) Albuterol:** The use of albuterol shall be permitted under the following conditions: any horse to which albuterol has been administered shall be subject to having a blood and urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of albuterol shall not exceed 1 nanogram per milliliter of urine, or its blood equivalent. If albuterol is detected in the urine, it must be confirmed in the blood to be a violation.

**(3) Atropine:** The use of atropine shall be permitted under the following conditions: any horse to which atropine has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of atropine shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

**(4) Benzocaine:** The use of benzocaine shall be permitted under the following conditions: any horse to which benzocaine has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of benzocaine shall not exceed 50 nanograms per milliliter of urine, or its blood equivalent.

**(5) Mepivacaine:** The use of mepivacaine shall be permitted under the following conditions: any horse to which mepivacaine has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of mepivacaine shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

**(6) Procaine:** The use of procaine shall be permitted under the following conditions: any horse to which procaine

has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of procaine shall not exceed 50 nanograms per milliliter of urine, or its blood equivalent.

**(7) Promazine:** The use of promazine shall be permitted under the following conditions: any horse to which promazine has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of promazine shall not exceed 25 nanograms per milliliter of urine, or its blood equivalent.

**(8) Salicylates:** The use of salicylates shall be permitted under the following conditions: any horse to which salicylates have been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of salicylates shall not exceed 750 micrograms per milliliter of urine, or its blood equivalent.

**(9) Butorphanol:** The use of butorphanol shall be permitted under the following conditions: any horse to which butorphanol has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of butorphanol shall be administered in such dosage amount that the official test sample shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

**(10) Detomidine:** The use of detomidine shall be permitted under the following conditions: any horse to which detomidine has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of detomidine shall be administered in such dosage amount that the official test sample shall not exceed 100 nanograms per milliliter of urine, or its blood equivalent.

**(11) Dexamethasone:** The use of dexamethasone shall be permitted under the following conditions: any horse to which dexamethasone has been administered shall

be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of dexamethasone shall be administered in such dosage amount that the official test sample shall not exceed 100 nanograms per milliliter of urine, or its blood equivalent.

**(12) Diclofenac:** The use of diclofenac shall be permitted under the following conditions: any horse to which diclofenac has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of diclofenac shall be administered in such dosage amount that the official test sample shall not exceed 500 nanograms per milliliter of urine, or its blood equivalent.

**(13) Dipyrone:** The use of dipyrone shall be permitted under the following conditions: any horse to which dipyrone has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of dipyrone shall be administered in such dosage amount that the official test sample shall not exceed 1000 nanograms per milliliter of urine, or its blood equivalent.

**(14) DMSO:** The use of DMSO shall be permitted under the following conditions: any horse to which DMSO has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of DMSO shall be administered in such dosage amount that the official test sample shall not exceed 10,000 nanograms per milliliter of urine, or its blood equivalent.

**(15) Flucort:** The use of flumethasone shall be permitted under the following conditions: any horse to which flucort has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of flumethasone shall be administered in such dosage amount that the official test sample shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

**(16) Isoxsuprine:** The use of isoxsuprine shall be permitted under the following conditions: any horse to which isoxsuprine has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of isoxsuprine shall be administered in such dosage amount that the official test sample shall not exceed 1000 nanograms per milliliter of urine, or its blood equivalent.

**(17) Methocarbamol:** The use of methocarbamol shall be permitted under the following conditions: any horse to which methocarbamol has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of methocarbamol shall be administered in such dosage amount that the official test sample shall not exceed 1000 nanograms per milliliter of urine, or its blood equivalent.

**(18) Naproxen:** The use of naproxen shall be permitted under the following conditions: any horse to which naproxen has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of naproxen shall be administered in such dosage amount that the official test sample shall not exceed 5000 nanograms per milliliter of urine, or its blood equivalent.

**(19) Pentoxifylline:** The use of pentoxifylline shall be permitted under the following conditions: any horse to which pentoxifylline has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of pentoxifylline shall be administered in such dosage amount that the official test sample shall not exceed 50 nanograms per milliliter of urine, or its blood equivalent.

**(20) Pyrilamine:** The use of pyrilamine shall be permitted under the following conditions: any horse to which pyrilamine has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative

test level of pyrilamine shall be administered in such dosage amount that the official test sample shall not exceed 50 nanograms per milliliter of urine, or its blood equivalent.

**(21) Triamcinalone:** The use of triamcinalone shall be permitted under the following conditions: any horse to which triamcinalone has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of triamcinalone shall be administered in such dosage amount that the official test sample shall not exceed 2 nanograms per milliliter of urine, or its blood equivalent.

**(22) Ulcer medications, i.e., cimetidine, sucralfate, ranitidine:** The use of ulcer medications shall be permitted until further notice.

**(23) Clenbuterol:** The use of clenbuterol shall be permitted under the following conditions: any horse to which clenbuterol has been administered shall be subject to having blood and urine samples taken at the direction of the official veterinarian to determine the quantitative level (s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of clenbuterol shall be administered in such dosage amount that the official test sample shall not exceed 5 nanograms per milliliter in urine or 25 picograms per milliliter of serum or plasma.

#### **I. ANDROGENIC - ANABOLIC STEROIDS:**

**(1)** No AAS shall be permitted in test sample collected from racing horses except for residues of the major metabolite of **stanozolol, nandrolone**, and the naturally occurring substances **boldenone** and **testosterone** at concentrations less than the indicated thresholds.

**(2)** Concentrations of these AAS shall not exceed the following urine threshold concentrations for total (i.e., free drug or metabolite and drug or metabolite liberated from its conjugates): a) 16B-hydroxystanozolol (metabolite of stanozolol (Winstrol) - 1 ng/ml in urine for all horses regardless of sex; b) boldenone (Equipose ® is the undecylenate ester of boldenone) in male horses other than geldings - 15 ng/ml in urine; no boldenone shall be permitted in geldings or female horses; c) nandrolone (Durabolin ® is the phenylpropionate ester and Deca-Durabolin ® is the decanoate ester) (in geldings - 1 ng/ml in urine, in fillies and mares - 1 ng/ml in urine); in male horses other than geldings-45 ng/ml of metabolite, 5 alpha oestrane-3 beta, 17 alpha - diol in urine; d) testosterone (in geldings - 20 ng/ml in urine, in fillies and mares - 55 ng/ml in urine).

**(3)** Any other anabolic steroids are prohibited in racing horses.

**(4)** The presence of more than one of the four AAS identified in Paragraph (2) of this subsection at concentrations greater than the individual thresholds indicated above shall not be permitted.

**(5)** Post-race urine samples collected from intact males must be identified to the laboratory.

**(6)** Any horse to which an anabolic steroid has been administered in order to assist in the recovery from illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug or metabolite in urine. After the concentration has fallen below the designated threshold for the administered AAS, the horse is eligible to be removed from the list.

#### **[E:] J. MEDICAL LABELING:**

**(1)** No person on association grounds where horses are lodged or kept, excluding licensed veterinarians, shall have in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labeled in accordance with this subsection. This restriction includes, but is not limited to, locations on the association grounds where that person occupies, in that person's personal property, effects or vehicle.

**(2)** Any drug or medication which is used or kept on association grounds and which, by federal or state law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following: the name of the product; the name, address and telephone number of the veterinarian prescribing or dispensing the product; the name of each patient (horse) for whom the product is intended/prescribed; the dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; the name of the person (trainer) to whom the product was dispensed.

**[F:] K. ALKALINIZING SUBSTANCES:** The use of agents that elevate the horses TCO<sub>2</sub> or base excess level above those existing naturally in the untreated horse at normal physiological concentrations is prohibited. The following levels also apply to blood gas analysis:

**(1)** The regulatory threshold for TCO<sub>2</sub> is 37.0 millimoles per liter of plasma/serum plus the measurement uncertainty of the laboratory analyzing the sample, or a base excess level of 10.4 millimoles per liter of plasma/serum;

**(2)** The decision level to be



used for the regulation of TCO<sub>2</sub> is 37.0 millimoles per liter of plasma/serum plus the measurement uncertainty of the laboratory analyzing the sample, or a base excess level of 10.4 millimoles per liter of plasma/serum;

(3) Such violation is that of a class 4 drug and shall be the maximum penalty - 60 days suspension, \$1,000 fine and loss of purse.

**[G:] L. OUT OF COMPETITION TESTING:**

(1) A horse may be subject to out of competition testing without advance notice if the horse is:

(a) on the grounds of a racetrack or training center under the jurisdiction of the commission;

(b) under the care or control of a trainer or owner licensed by the commission; or

(c) any horse whose papers are filed in the racing office; or

(d) has been nominated to a stakes race.

(2) This rule applies to prohibited substances, practices and procedures are as follows;

(a) class 1, class II and class III drugs as listed with the New Mexico racing commission;

(b) blood doping agents including, but not limited to, erythropoietin (EP), darbepoetin, oxylglobin, hempure, aranasep or any substance that abnormally enhances the oxygenation of body tissues; and

(c) gene doping agents or the non-therapeutic use of genes, genetic elements, or cells that have the capacity to enhance athletic performance or produce analgesia.

(3) The permitted quantitative test level of clenbuterol for out of competition horses shall be administered in such dosage amount that the official test sample shall not exceed 300 picograms per milliliter of serum or plasma.

(4) Horses to be tested may be selected at random, with probable cause or as determined by the commission or an agent of the commission.

(5) The commission veterinarian, or any licensed veterinarian or licensed veterinary technician authorized by the commission, may at any time take a urine, blood or hair sample from a horse for this purpose.

(6) Split samples shall be collected in accordance with Paragraphs (3) and (4) of Subsection B of 15.2.6.10 NMAC and shall be secured and made available for further testing in accordance with Subsection C of 15.2.6.10 NMAC.

(7) All horses selected for testing must report to the test barn within 24 hours, unless the trainer or owner provides verification of an extenuating circumstance that makes it impossible.

(8) Any licensee who does not

comply with the rule or the commission veterinarian for a sample may be subject to disciplinary action.

(9) Cooperation with the commission veterinarian, or any licensed veterinarian or licensed veterinary technician authorized by the commission, includes:

(a) assisting in the immediate location and identification of the horse selected for out of competition testing; and

(b) assisting the veterinarian in properly procuring the samples.

(10) Out of competition samples will be sent to the official laboratory of the commission, or another laboratory as designated by the commission, with reports made in accordance with the provisions of the medication rules and the penalty provisions therefore.

**[H:] M. OUT OF COMPETITION PENALTY RECOMMENDATIONS: ~~(in absence of mitigating circumstances):~~**

(1) The penalty for any horse not presented for testing at the association's test barn within 24 hours of notification is a maximum suspension of 120 days.

(2) The penalty for the trainer of a horse not presented for testing at the association's test barn within 24 hours of notification is a maximum suspension of 180 days.

(3) The penalty for any horse with a positive test is a maximum suspension of 120 days and the horse's papers will be removed from the racing office.

(4) The penalty for the trainer of a horse with a positive test is a maximum \$1,500 fine and a maximum suspension of 180 days.

**[I:] N. CONTRABAND:**

(1) No person on association grounds where horses are lodged or kept, excluding licensed veterinarians, shall have in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labeled in accordance with Subsection E of 15.2.6.9 NMAC. This restriction includes, but is not limited to, locations on the association grounds where that person occupies, in that person's personal property, effects or vehicle.

(2) The New Mexico racing commission may confiscate any contraband named in Paragraph (1) of Subsection H of 15.2.6.9 NMAC and any drug or illegal substance that is found on association premises which a licensed trainer occupies or has the right to occupy, or in that trainer's personal property, effects or vehicle in that trainer's care, custody or control.

(3) Upon finding a violation of this subsection the stewards shall consider the classification level of the violation as it is listed in the uniform classification

guidelines and recommended penalties of foreign substances as promulgated by the association of racing commissioners international and impose penalties and disciplinary measures adopted by the New Mexico racing commission.

(4) If the contraband is required to be tested by the official laboratory, payment of all costs for testing shall be borne by the licensee upon final decision by the stewards that the substance is prohibited pursuant to these rules.

**[J:] O. ENVIRONMENTAL SUBSTANCES:** Although the following environmental contaminants or substances may be found in the horse, no sample or specimen shall exceed the following levels when tested: benzoyllecgonine - 150 nanograms per milliliter in urine; caffeine - 100 nanograms per milliliter in plasma/serum; cathinone - 10 nanograms per milliliter in urine; hydrocortisone - 1000 nanograms per milliliter in urine; lidocaine - 50 nanograms per milliliter in urine; morphine/morphine glucuronides - 100 nanograms per milliliter in urine; scopolamine - 75 nanograms per milliliter in urine; strychnine - 100 nanograms per milliliter in urine; theobromine - 2000 nanograms per milliliter in urine; and, theophylline - 400 nanograms per milliliter in urine.

**[K:] P. SUSPENSION OF AUTHORIZED MEDICATION:**

(1) After a public meeting that has been noticed in accordance with the Open Meetings Act, Sections 10-15-1 through 10-15-4 NMSA, 1978, the commission may, for any cause, temporarily suspend the authorized administration to a horse entered to race of any drug, substance or medication that is otherwise permitted under Subsection C of 15.2.6.9 NMAC.

(2) The temporary suspension of the authorized administration of a drug, substance or medication may be for a race, breed, or race meeting, provided all horses in the same race compete under the same conditions.

(3) The commission shall notify in writing the racing association, the trainer's organization, and licensed veterinarians of any temporary suspension of authorization to administer a drug, substance or medication to a horse entered to race. The written notification shall at minimum:

(a) state the authorized medication whose use is temporarily suspended,

(b) the period of time for which the use of the authorized medication is temporarily suspended, and

(c) whether the temporary suspension is for a specific breed or a race meeting.

(4) A suspension of authorization to administer a drug, substance or medication to a horse entered to race shall not exceed 12

months.

[15.2.6.9 NMAC - Rp, 15 NMAC 2.6.9, 04/13/2001; A, 08/30/2001; A, 07/15/2002; A, 08/15/2002; A, 09/29/2006; A, 10/31/2006; A, 08/30/2007; A, 01/31/2008; A, 03/01/2009; A, 06/15/2009; A, 06/30/2009; A, 09/15/2009; A, 12/15/2009; A, 03/16/2010; A, 07/05/2010; A, 09/01/2010; A, 12/01/2010; A, 11/01/2011; A, 02/15/2012; A, 04/30/2012; A, 07/31/2012]

**15.2.6.10 TESTING:  
A. REPORTING TO  
THE TEST BARN:**

(1) The official winning horse, or any other ~~[horse or both]~~ horses ordered by the commission ~~[and/or]~~ or the stewards shall be taken to the test barn to have a ~~[blood and/or urine sample]~~ blood sample or a urine sample or both taken at the direction of the official veterinarian.

(2) Random or extra testing may be required by the stewards or the commission at any time on any horse.

(3) Unless otherwise directed by the stewards or the official veterinarian, a horse that is selected for testing must be taken directly to the test barn.

(4) A track security guard shall monitor access to the test barn area during and immediately following each racing performance. All persons who wish to enter the test barn area must be a minimum of 18-years-old, be currently licensed by the commission, display their commission identification badge and have a legitimate reason for being in the test barn area.

**B. S A M P L E  
COLLECTION:**

(1) Sample collection shall be done in accordance with the RCI drug testing and quality assurance program external chain of custody guidelines, or other guidelines and instructions provided by the official veterinarian.

(2) The official veterinarian shall determine a minimum sample requirement for the primary testing laboratory. A primary testing laboratory must be accredited by ~~[the association of racing commissioners international]~~ AAVLD or ISO:17025 and approved by the commission.

(3) If the specimen obtained from a horse is less than the minimum sample requirement, the entire specimen shall be sent to the primary testing laboratory.

(4) If a specimen obtained is greater than the minimum sample requirement but less than twice that amount, the portion of the sample that is greater than the minimum sample requirement shall be secured as the split sample.

(5) If a specimen obtained is greater than twice the minimum sample requirement, a portion of the sample approximately equal to the amount provided

for the primary testing laboratory shall be secured as the split sample.

(6) No split samples will be collected for determination of TCO2 levels.

**C. ALKALINIZING  
SUBSTANCES:**

(1) Blood samples for TCO2 and base excess testing should be collected 45 minutes (+ or - 15 min) pre-race and approximately three hours after furosemide administration. The samples must be handled in a consistent manner and cannot be frozen. If samples are obtained pre-furosemide a lower regulatory threshold is necessary and the horse must be kept in a secure barn until race time.

(2) The provisions of this rule pertaining to sample collection shall not apply to blood samples drawn for TCO2 analysis.

(3) Blood samples must be processed and tested within 120 hours using standardized, reproducible, validated procedures.

**[E:] D. STORAGE AND  
SHIPMENT OF SPLIT SAMPLES:**

(1) Split samples obtained in accordance with Paragraphs (3) and (4) Subsection B, of 15.2.6.10 NMAC above shall be secured and made available for further testing. A split sample shall be secured in the test barn under the same manner as the portion of the specimen acquired for shipment to a primary laboratory until such time as specimens are packed and secured for shipment to the primary laboratory. Split samples shall then be transferred to a freezer at a secure location as provided by state statute or approved by the commission.

(2) A trainer, owner or designee of a horse having been notified that a written report from a primary laboratory states that a prohibited substance has been found in a specimen obtained pursuant to these rules may request that a split sample corresponding to the portion of the specimen tested by the primary laboratory be sent to another ~~[laboratory]~~ testing laboratory that is accredited by AAVLD or ISO:17025 and approved by the commission. The request must be made and confirmed with the commission not later than 48 hours excluding weekends and holidays after the trainer of the horse receives written notice of the findings of the primary laboratory. The trainer's first choice, second choice and third choice of laboratories, for the split sample to be sent to, shall be listed within that 48 hours and kept on file with the horsemen's association. Any request not received within the specified deadline shall be considered a positive test. Any split sample so requested must be shipped within seven (7) working days after the trainer's 48 hour deadline or the New Mexico horsemen's association may be subject to disciplinary action.

(3) The owner, trainer or designee

requesting testing of a split sample shall be responsible for the cost of shipping and testing. Failure of the owner, trainer or designee to appear at the time and place designated by the ~~[official veterinarian]~~ commission or the commission's designee shall constitute a waiver of all rights to split sample testing. Prior to shipment, the ~~[commission]~~ New Mexico horsemen's association shall confirm the split sample laboratory's willingness to provide the testing requested, the laboratory's willingness to send results to both the person requesting the testing and the commission, and arrangements for payment satisfactory to the split sample laboratory. A split sample testing laboratory must be accredited by ~~[the association of racing commissioners international]~~ AALVD or ISO:17025 and approved by the commission. If ~~[an association of racing commissioners international]~~ a reference laboratory will accept split samples, that laboratory must be included among the laboratories approved for split sample testing.

(4) Prior to opening the split sample freezer, the commission shall provide a split sample chain of custody verification form that shall provide a place for recording the following information and such other information as the commission may require. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample.

(5) Split sample chain of custody form requirements: the date and time the sample is removed from the split sample freezer; the sample number; the address where the split sample is to be sent; the name of the carrier and the address where the sample is to be taken for shipment; verification of retrieval of the split sample from the freezer; verification of each specific step of the split sample packaging in accordance with the recommended procedure verification of the address of the split sample laboratory on the split sample package; verification of the condition of the split sample package immediately prior to transfer of custody to the carrier; the date and time custody of the sample is transferred to the carrier.

(6) A split sample shall be removed from the split sample freezer by a commission representative in the presence of a representative of the horsemen's association.

(7) The owner, trainer or designee shall pack the split sample for shipment in the presence of the representative of the commission, in accordance with the packaging procedures recommended by the commission. A form shall be signed by both the horsemen's representative and the commission representative to confirm the packaging of the split sample. The exterior of the package shall be secured and identified with initialed tape, evidence tape

or other means to prevent tampering with the package.

(8) The package containing the split sample shall be transported in a manner prescribed by the commission to the location where custody is transferred to the delivery carrier charged with delivery of the package to the commission-approved laboratory selected by the owner or trainer.

(9) The owner, trainer or designee and the commission representative shall inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(10) The split sample chain of custody verification form shall be completed and signed by the representatives of the commission and the owner or trainer. A commission representative shall keep the original and provide a copy for the owner or trainer.

**[D:] E. OFFICIAL STATE RACING CHEMIST:** The state racing commission may hire or contract with a qualified chemist to act as the official state racing chemist. The duties of the official state racing chemist [shah] may include, but shall not be limited to the following:

(1) review and evaluate [ah] scientific data submitted by the official testing laboratory concerning any race horse's positive drug test;

(2) submit a written report to the agency director of the racing commission concerning [each] a positive test, certifying the positive test as such, or that the test does not constitute a positive test based on the scientific data submitted by the official testing laboratory; if the test does not constitute a positive test it may be referred back to the laboratory for further testing;

(3) in the event that a split sample is sent for independent testing and the result of that test does not confirm with the results of the primary testing laboratory, the official state racing chemist shall review all scientific data submitted by the laboratory which tested the split and make recommendations to the agency director;

(4) appear before the racing commission as an expert witness, as needed in matters concerning chemical testing for drugs and medications;

(5) consult with the racing commission in matters concerning chemical testing for drugs and medication as the need arises;

(6) [at least once each year] at the request of the commission, inspect the official testing laboratory and the racetrack collection facilities to insure their compliance with, and use of, proper scientific techniques and procedures.

[15.2.6.10 NMAC - Rp, 15 NMAC 2.6.10, 04/13/2001; A, 03/30/2007; A, 09/01/10; A, 07/31/2012]

**15.2.6.11 TRAINER RESPONSIBILITY:** The purpose of this subsection is to identify responsibilities of the trainer that pertain specifically to the health and well being of horses in [his/her] their care.

**A.** The trainer is responsible for the condition of horses entered in an official workout or race and is responsible for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable level, in such horses. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable level, as reported by a Commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer is responsible.

**B.** A trainer shall prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

**C.** A trainer whose horse has been claimed remains responsible for any violation of rules regarding that horse's participation in the race in which the horse is claimed.

**D.** The trainer is responsible for: maintaining the assigned stable area in a clean, neat and sanitary condition at all times; using the services of those veterinarians licensed by the commission to attend horses that are on association grounds.

**E.** Additionally, with respect to horses in [his/her] their care or custody, the trainer is responsible for:

(1) the proper identity, custody, care, health, condition and safety of horses;

(2) having each horse in [his/her] their care that is racing, or is stabled on association grounds, tested for equine infectious anemia (EIA) and for filing evidence of such negative test results with the racing secretary as required by the commission;

(3) immediately reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(4) promptly reporting to the racing secretary and the official veterinarian when a posterior digital neurectomy (heel nerving) is performed and ensuring that such fact is designated on its certificate of registration;

(5) promptly notifying the official veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in [his/her] their charge;

(6) promptly reporting the serious injury [and/or] or death of any horse at locations under the jurisdiction of the commission to the stewards and the official veterinarian and compliance with the rules in this part governing postmortem

examinations;

(7) maintaining knowledge of the medication record and status;

(8) immediately reporting to the stewards and the official veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;

(9) ensuring the fitness to perform creditably at the distance entered;

(10) ensuring that every horse [he/she has] entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed in this part;

(11) ensuring proper bandages, equipment and shoes;

(12) presence in the paddock at least 20 minutes before post time or at a time otherwise appointed before the race in which the horse is entered;

(13) personally attending in the paddock and supervising the saddling thereof, unless excused by the stewards;

(14) attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so;

(15) immediately reporting to the stewards any administration of any medication or drugs, except as provided, within twenty-four (24) hours of post time of the race in which the horse has been entered;

(16) immediately submitting to the official veterinarian and the racing secretary the necessary forms to scratch any horse treated with any medication, or drug, within twenty-four (24) hours of the post time of the race in which the horse has been entered unless such treatment is permitted herein.

[15.2.6.11 NMAC - Rp, 15 NMAC 2.6.11, 04/13/2001; A, 08/30/2007; A, 07/31/2012]

### **15.2.6.12 PHYSICAL INSPECTION OF HORSES:**

#### **A. ASSESSMENT OF RACING CONDITION:**

(1) Every horse entered to participate in an official race may be subjected to a veterinary inspection prior to starting in a race for which it is entered.

(2) The inspection shall be conducted by the official veterinarian or the racing veterinarian.

(3) The agency or the association employing the examining veterinarian(s) should provide a staffing level of not less than two (2) veterinarians.

(4) The trainer of each horse or a representative of the trainer must present the horse for inspection as required by the examining veterinarian. Horses presented for examination must have bandages removed and the legs must be clean. Prior to examination horses may not be placed in ice nor shall any device or substance be applied that impedes veterinary clinical assessment.

(5) The assessment of a horse's racing condition shall be based on the



recommendations of the American association of equine practitioners and shall include: proper identification of each horse inspected; observation of each horse in motion; manual palpation and passive flexion of both forelimbs; clinical observation in the paddock and saddling area, during the parade to post and at the starting gate; any other inspection deemed necessary by the official veterinarian and the racing veterinarian or the stewards.

(6) Every horse shall be observed by the racing veterinarian during and after the race.

(7) The official veterinarian or the racing veterinarian shall maintain a permanent continuing health and racing soundness record of each horse inspected.

(8) The official veterinarian or the racing veterinarian are authorized access to any and all horses housed on association grounds regardless of entry status.

(9) If, prior to starting, a horse is determined to be unfit for competition, or if the veterinarian is unable to make a determination of racing soundness, the veterinarian will recommend to the stewards the horse be scratched.

(10) Horses scratched upon the recommendation of the official veterinarian or the racing veterinarian, are to be placed on the veterinarian's list.

(11) All pre-race examination reports on each horse selected for a pre-race examination will be submitted to the commission on a monthly basis. In addition, these reports will be made available to the commission upon request within a 48-hour period.

#### **B. VETERINARIAN'S LIST:**

(1) The racing veterinarian shall maintain a list of all horses which are determined to be unfit to compete in a race due to physical distress, unsoundness, infirmity or medical condition. Horses so listed are ineligible to enter to race in any jurisdiction until released by the racing veterinarian.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the racing veterinarian, the horse has satisfactorily recovered the capability of competing in a race.

#### **C. POSTMORTEM EXAMINATION:**

(1) The commission may require a postmortem examination of any horse that dies or is euthanized on association grounds.

(2) The commission may require a postmortem examination of any horse that dies or is euthanized at recognized training facilities within this jurisdiction.

(3) If a postmortem examination is to be conducted, the commission shall take possession of the horse upon death for a postmortem examination. All shoes and

equipment on the horse's legs shall be left on the horse.

(4) If a postmortem examination is to be conducted, the commission or its representative shall collect blood, urine, bodily fluids, or other biologic specimens immediately, if possible before euthanization. The commission may submit blood, urine, bodily fluid, or other biologic specimens collected during a postmortem examination for testing analysis. The presence of a prohibited substance in a specimen collected during the postmortem examination may constitute a violation.

(5) Requests for each postmortem examination shall be filed with the official veterinarian by the owner's or trainer's veterinarian within one hour of the death and shall be submitted on a necropsy submission form entitled New Mexico racing commission necropsy submission form, hereby incorporated by reference and which is available at all official veterinarian offices and all stable gates. The trainer or their designee is responsible to supply all information to complete this form.

(6) All licensees shall be required to comply with postmortem examination requirements as a condition of licensure. In proceeding with a postmortem examination the commission or its designee shall coordinate with the owner or the owner's authorized agent to determine and address any insurance requirements.

(7) Postmortem examinations shall be conducted according to the most recent edition of the American association of equine practitioners' guidelines for the necropsy of racehorses.

(8) Upon completion of the postmortem examination the diagnostic laboratory shall file a written report with the racing commission's agency director and official veterinarian.

(9) The owner or the owner's authorized agent will be responsible for all costs of a postmortem examination, i.e., testing fees, transportation of the horse, disposal, etc, when the results of a postmortem examination constitute a violation of the New Mexico racing commission rules.

[15.2.6.12 NMAC - Rp, 15 NMAC 2.6.12, 04/13/2001; A, 09/01/2010; A, 12/01/2010; A, 11/01/2011; A, 02/15/2012; A, 07/31/2012]

## **NEW MEXICO REGULATION AND LICENSING DEPARTMENT**

The Regulation and Licensing Department repeals its rule entitled Sale of Recycled Metals, 12.2.15 NMAC (filed 12/23/10) and replaces it with 12.2.15 NMAC entitled Sale of Recycled Metals, effective 8/12/12.

## **NEW MEXICO REGULATION AND LICENSING DEPARTMENT**

### **TITLE 12      T R A D E , COMMERCE AND BANKING CHAPTER 2      C O N S U M E R PROTECTION PART 15      SALE                      OF RECYCLED METALS**

**12.2.15.1      ISSUING AGENCY:**  
New Mexico Regulation and Licensing Department.

[12.2.15.1 NMAC - Rp, 12.2.15.1 NMAC, 8/12/12]

**12.2.15.2      SCOPE:** This part sets forth definitions to the department pursuant to the Sale of Recycled Metals Act, Sections 57-30-1 through 57-30-17 NMSA 1978.

[12.2.15.2 NMAC - Rp, 12.2.15.3 NMAC, 8/12/12]

**12.2.15.3      S T A T U T O R Y  
AUTHORITY:** These rules are promulgated pursuant to the Sale of Recycled Metals Act, Sections 57-30-1 through 57-30-17 NMSA 1978.

[12.2.15.3 NMAC - Rp, 12.2.15.2 NMAC, 8/12/12]

**12.2.15.4      D U R A T I O N :**  
Permanent.

[12.2.15.4 NMAC - Rp, 12.2.15.4 NMAC, 8/12/12]

**12.2.15.5      EFFECTIVE DATE:**  
August 12, 2012 unless a later date is cited at the end of a section.

[12.2.15.5 NMAC - Rp, 12.2.15.5 NMAC, 8/12/12]

**12.2.15.6      OBJECTIVE:** The purpose of this part is to define language required pursuant to Sale of Recycled Metals Act, Sections 57-30-1 through 57-30-17 NMSA 1978.

[12.2.15.6 NMAC - Rp, 12.2.15.6 NMAC, 8/12/12]

**12.2.15.7      DEFINITIONS:**

A. Secondhand metal dealer: means a scrap metal processor in the business of operating or maintain a scrap metal yard in a physical location in which scrap metal or cast-off regulated material is purchased for shipment, sale or transfer.

B. Aluminum material: means a product made from aluminum, an aluminum alloy or an aluminum byproduct. Aluminum material includes an aluminum beer keg but does not include other types of aluminum cans used to contain a food or beverage.

C. Bronze material: means

a cemetery vase, receptacle or memorial made from bronze; bronze statuary; or material readily identifiable as bronze.

D. Copper or brass material: means insulated or noninsulated copper wire, hardware or cable of the type used by a public utility, commercial mobile radio service carrier or common carrier that consists of at least twenty-five percent copper; or a copper or brass item of a type commonly used in construction or by a public utility, commercial mobile radio service carrier or common carrier.

E. Business day: means any calendar day except Sunday and following holidays: New Year's day, Washington's birthday, Memorial day, Independence day, Labor day, Columbus day, Veterans' day, Thanksgiving day, Christmas day, Martin Luther King Jr.'s birthday and any other legal public holiday of the state of New Mexico or the United States.

F. Department: means the regulation and licensing department.

G. Superintendent: means the superintendent of the regulation and licensing.

H. Peace officer: means any full-time salaried and commissioned or certified law enforcement officer of a police or sheriff's department that is part of or administered by the state or a political subdivision of the state.

I. Personal identification document: means a driver's license; a military identification card; or a passport issued by the United States or by another country and recognized by the United States.

J. Regulated material: means aluminum material; bronze material; copper or brass material; steel material; a utility access cover; a water meter cover; a road or bridge guard rail; a highway or street sign; a traffic directional or control sign or signal or a catalytic converter that is not part of an entire motor vehicle.

K. Steel material: means a product made from an alloy of iron, chromium, nickel or manganese, including stainless steel beer kegs.

[12.2.15.7 NMAC - Rp, 12.2.15.7 NMAC, 8/12/12]

**HISTORY OF 12.2.15 NMAC: [RESERVED]**

**History of Repealed Material:** 12.2.15 NMAC, Sale of Recycled Metals, filed 12-23-10 - Repealed, effective 8-12-12.

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT**

**TITLE 12 T R A D E ,  
COMMERCE AND BANKING  
CHAPTER 2 C O N S U M E R  
PROTECTION  
PART 16 APPLICATION FOR  
REGISTRATION**

**12.2.16.1 ISSUING AGENCY:** New Mexico Regulation and Licensing Department.  
[12.2.16.1 NMAC - N, 8/12/12]

**12.2.16.2 SCOPE:** This part sets forth application procedures to the department pursuant to the Sale of Recycled Metals Act, Sections 57-30-1 through 57-30-17 NMSA 1978.  
[12.2.16.2 NMAC - N, 8/12/12]

**12.2.16.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the Sale of Recycled Metals Act, Sections 57-30-1 through 57-30-17 NMSA 1978.  
[12.2.16.3 NMAC - N, 8/12/12]

**12.2.16.4 DURATION:** Permanent.  
[12.2.16.4 NMAC - N, 8/12/12]

**12.2.16.5 EFFECTIVE DATE:** August 12, 2012 unless a later date is cited at the end of a section.  
[12.2.16.5 NMAC - N, 8/12/12]

**12.2.16.6 OBJECTIVE:** The purpose of this part is to register secondhand metal dealers pursuant to 57-30-14 NMSA 1978.  
[12.2.16.6 NMAC - N, 8/12/12]

**12.2.16.7 DEFINITIONS:** [Reserved]  
[12.2.16.7 NMAC - N, 8/12/12]

**12.2.16.8 APPLICATION REQUIREMENTS:**

A. Effective July 1, 2012, all secondhand metal dealers shall not buy or sell regulated material without a valid registration issued by the department.

B. Applications for registration shall be completed on a form provided by the department.

C. Electronic signatures will be acceptable for applications submitted pursuant to section 14-16-1 through section 14-16-19 NMSA 1978.

D. Information submitted shall include:

(1) the full name and business address of the applicant;

(2) a list of all locations at which the applicant engages or will engage in the business of buying or selling regulated material;

(3) a non-refundable registration fee as set forth in 12.2.16.9 NMAC;

(4) affirmation of compliance with all federal requirements;

(5) affirmation of registration with metal theft alert system as described in Paragraph (3) of Subsection A of 12.2.18.8 NMAC.

[12.2.16.8 NMAC - N, 8/12/12]

**12.2.16.9 FEES:**  
A. The fee for application registration is twenty-five dollars (\$25.00).  
B. The fee for renewal of registration is twenty-five dollars (\$25.00).  
[12.2.16.9 NMAC - N, 8/12/12]

**12.2.16.10 RENEWAL REQUIREMENTS:**

A. Original and renewed registrations shall be valid for a period of three years from the date of issuance, unless the registration is suspended or revoked.

B. Prior to the expiration of the license, all registered secondhand metal dealers shall apply for registration renewal and shall pay the renewal fee as set forth in 12.2.16.9 NMAC.

C. A current registration shall be posted in the business of operation.  
[12.2.16.10 NMAC - N, 8/12/12]

**HISTORY OF 12.2.16 NMAC: [RESERVED]**

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT**

**TITLE 12 T R A D E ,  
COMMERCE AND BANKING  
CHAPTER 2 C O N S U M E R  
PROTECTION  
PART 17 R E P O R T I N G  
REQUIREMENTS**

**12.2.17.1 ISSUING AGENCY:** New Mexico Regulation and Licensing Department.  
[12.2.17.1 NMAC - N, 8/12/12]

**12.2.17.2 SCOPE:** This part sets forth reporting procedures to the department pursuant to the Sale of Recycled Metals Act, Sections 57-30-1 through 57-30-13 NMSA 1978.  
[12.2.17.2 NMAC - N, 8/12/12]

**12.2.17.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the Sale of Recycled Metals Act,



Sections 57-30-1 through 57-30-13 NMSA 1978.

[12.2.17.3 NMAC - N, 8/12/12]

**12.2.17.4 DURATION:** Permanent.

[12.2.17.4 NMAC - N, 8/12/12]

**12.2.17.5 EFFECTIVE DATE:** August 12, 2012 unless a later date is cited at the end of a section.

[12.2.17.5 NMAC - N, 8/12/12]

**12.2.17.6 OBJECTIVE:** The purpose of this part is to standardize the reporting procedures to the department required pursuant to 57-30-8 NMSA 1978.

[12.2.17.6 NMAC - N, 8/12/12]

**12.2.17.7 DEFINITIONS:** [Reserved]

[12.2.17.7 NMAC - N, 8/12/12]

**12.2.17.8 REPORTING REQUIREMENTS:**

A. All secondhand metal dealers are required to report all transactions of regulated material. Reports of such transaction shall be uploaded to the database maintained by the department.

B. Reports shall be in English and shall include:

(1) the place and date of the purchase;

(2) the name and address of each person from whom the regulated material is purchased or obtained;

(3) the identifying number of the personal identification document of each person from whom the regulated material is purchased or obtained;

(4) the year, make, model and license plate number of the motor vehicle used to transport the regulated material;

(5) a description made in accordance with the custom of the trade of the type and quantity of regulated material purchased; and

(6) affirmation that the seller has signed a written statement that he or she is the legal owner of or is lawfully entitled to sell the regulated material offered for sale as required by Paragraph (2) of Subsection A of Section 4 (57-30-4 NMSA 1978) of the Sale of Recycled Metals Act.

C. Electronic submission of data by secondhand metal dealers to the department prior to January 2014 will be done via the department's file transfer protocol (FTP) site or other similar system maintained by the department in an excel or equivalent format.

D. After January 2014 secondhand metal dealers will be required to submit their data in the format(s) specified by the department for direct loading into its database.

E. The department will specify the acceptable format(s) of data for electronic submission to the department's database. Data submitted electronically after January 2014 will be transferred directly into the department's database via a web interface or other electronic system developed and maintained by the department.

F. Secondhand metal dealers will be responsible for correcting any formatting errors or data validation errors that occur during the transfer of data or the loading of data into the database. Secondhand metal dealers will be responsible for re-submitting corrected data to the department.

G. A secondhand metal dealer shall comply with the waiting period for disposal of regulated material.

(1) Secondhand metal dealer shall not process or permit regulated material to be removed from the dealer's premises until at least twenty-four hours have elapsed since the dealer acquired the regulated material.

(2) A person shall not with intent to deceive display to a secondhand metal dealer a false or invalid personal identification document in connection with the person's attempted sale of regulated material.

H. A secondhand metal dealer may take a digital photograph, with a date and time stamp, of:

(1) the seller of the regulated material, and

(2) the regulated material in the form in which it was purchased or obtained by the secondhand metal dealer.

[12.2.17.8 NMAC - N, 8/12/12]

**12.2.17.9 RESTRICTED TRANSACTIONS:**

A. A secondhand metal dealer shall not purchase any of the following without written documentation indicating that the seller is the rightful owner or has permission from the rightful owner or that the material was otherwise lawfully obtained.

B. Infrastructure grade regulated material that has been burned to remove insulation unless the seller can produce written proof that the regulated material was lawfully burned.

C. Regulated material where the manufacturer's make, model, serial or personal identification number or other identifying marks engraved or etched upon the material have been conspicuously removed or altered.

D. Regulated material marked with the name initials or otherwise identified as the property of an electrical company, telephone company, cable company, water company or other utility company, a railroad or a governmental entity to include: a utility access cover; a water meter cover; a road or bridge guard rail; a

highway or street sign; a traffic directional or control sign; a metal beer keg that is clearly marked as being the property of the beer manufacturer; or a catalytic converter that is not part of an entire motor vehicle.

E. An additional form will be required to be completed by all second hand metal dealers who purchase material listed in 12.2.17.9 NMAC.

[12.2.17.9 NMAC - N, 8/12/12]

**HISTORY OF 12.2.17 NMAC: [RESERVED]**

## NEW MEXICO REGULATION AND LICENSING DEPARTMENT

### TITLE 12 TRADE, COMMERCE AND BANKING CHAPTER 2 CONSUMER PROTECTION PART 18 DUTIES AND RESPONSIBILITIES

**12.2.18.1 ISSUING AGENCY:** New Mexico Regulation and Licensing Department.

[12.2.18.1 NMAC - N, 8/12/12]

**12.2.18.2 SCOPE:** This part sets forth application procedures to the department pursuant to the Sale of Recycled Metals Act, Sections 57-30-1 through 57-30-17 NMSA 1978.

[12.2.18.2 NMAC - N, 8/12/12]

**12.2.18.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the Sale of Recycled Metals Act, Sections 57-30-1 through 57-30-17 NMSA 1978.

[12.2.18.3 NMAC - N, 8/12/12]

**12.2.18.4 DURATION:** Permanent.

[12.2.18.4 NMAC - N, 8/12/12]

**12.2.18.5 EFFECTIVE DATE:** August 12, 2012 unless a later date is cited at the end of a section.

[12.2.18.5 NMAC - N, 8/12/12]

**12.2.18.6 OBJECTIVE:** The purpose of this part is to facilitate compliance of all registered secondhand metal dealers pursuant to 57-30-1 through 57-30-17 NMSA 1978.

[12.2.18.6 NMAC - N, 8/12/12]

**12.2.18.7 DEFINITIONS:** [Reserved]

[12.2.18.7 NMAC - N, 8/12/12]

**12.2.18.8 DUTIES:** Effective

July 1, 2012, all secondhand metal dealers shall maintain a valid registration issued by the department.

A. A current registration certificate must be posted in the business of operation or posted in a physical location of a registrant who maintains a scrap metal yard in which scrap metal or cast-off regulated material is purchased for shipment, sale or transfer.

B. Comply with all federal requirements for scrap metal dealers, including maintain storm water permits.

C. Register for the metal theft alert system, maintained by the institute of scrap recycling industries or its successor organization.

[12.2.18.8 NMAC - N, 8/12/12]

### 12.2.18.9 RESPONSIBILITIES:

A. A secondhand metal dealer who becomes aware that the dealer is in possession of regulated material that was stolen or unlawfully obtained shall not remove the material from the dealer's premises and shall report the same to a local law enforcement agency within twenty-four hours.

B. A secondhand metal dealer must inform all employees who are involved in the purchasing or receiving of regulated material of alerts received on theft of regulated material in the geographic area.

C. A secondhand metal dealer maintain an accurate and legible written record, in a form approved by the department, of each purchase made in the course of the dealer's business of the following:

- (1) copper or brass material;
- (2) bronze material;
- (3) aluminum material in excess of ten pounds;
- (4) steel material in excess of one ton, and

(5) written record shall be kept of each purchase of a stainless steel beer keg.

D. The records shall be in English and shall include:

(1) the place and date of the purchase;

(2) the name and address of each person from whom the regulated material is purchased or obtained;

(3) the identifying number of the personal identification document of each person from whom the regulated material is purchased or obtained;

(4) the year make, model and license plate number of the motor vehicle used to transport the regulated material;

(5) a description made in accordance with the custom of the trade of the type and quantity of regulated material purchased.

E. A secondhand metal dealer may take a digital photograph with a

date and time stamp of:

(1) the seller of the regulated material;

(2) the regulated material in the form in which it was purchased or obtained by the secondhand metal dealer.

[12.2.18.9 NMAC - N, 8/12/12]

### 12.2.18.10 RETENTION OF RECORDS:

A. A secondhand metal dealer shall preserve each record required until the first anniversary of the date the record was made.

B. A secondhand metal dealer shall produce to a peace officer upon request the requested record of purchase.

[12.2.18.10 NMAC - N, 8/12/12]

### 12.2.18.11 CIVIL PENALTY, SUSPENSION OR REVOCATION OF REGISTRATION:

A. A person who violates any provision of the Sale of Recycled Metals Act may be assessed a civil penalty by the superintendent not to exceed one thousand dollars (\$1,000) per violation.

B. The superintendent may suspend or revoke the registration of a secondhand metal dealer when the superintendent finds that the dealer has intentionally violated a provision of the Sale of Recycled Metals Act.

C. Prior to the imposition of a civil penalty or the suspension or revocation of a registration, the superintendent shall provide notice and an opportunity to be heard pursuant to the pertinent notice and hearing provisions of the Uniform Licensing Act.

[12.2.18.11 NMAC - N, 8/12/12]

### HISTORY OF 12.2.18 NMAC: [RESERVED]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.242 NMAC, Sections 7 through 16 effective 7/31/2012.

### 3.2.242.7 DEFINITIONS:

A. ~~[As used in Laws 2005, Chapter 104, Section 25]~~ As used in Section 7-9-95 NMSA 1978 "standard classroom" means a classroom that:

(1) is located in a school;

(2) is configured for a general education curriculum; and

(3) does not contain specialized equipment such as scientific laboratory equipment or musical instruments.

B. ~~[As used in Laws 2005, Chapter 104, Section 25]~~ As used in Section 7-9-95 NMSA 1978 "school supplies

normally used by students in a standard classroom for educational purposes" means implements and materials used by typical students of a general education curriculum. These include notebooks, paper, writing instruments, crayons, art supplies, paper clips, staples, staplers, scissors, and rulers valued at under ~~[\$15]~~ \$30 per unit, ~~[and]~~ book bags, backpacks, ~~[handheld calculators,]~~ maps and globes valued at under \$100 per unit, ~~and~~ handheld calculators valued under \$200. The items that qualify as school supplies for the deduction under ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978 do not have to be used for school; they only have to be items normally used by students in a standard classroom setting.

[3.2.242.7 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.8 **ITEMS NORMALLY SOLD AS A UNIT:** Articles normally sold as a unit must be sold that way during the time period specified in ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978 to qualify for the deduction. They cannot be priced separately and sold as individual items to qualify for the deduction. For example, shoes normally sold in a pair for \$180 cannot be sold singly for \$90 each to qualify for the deduction.

[3.2.242.8 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.9 **PURCHASES USING A RAIN CHECK:** A "rain check" is an assurance to a customer that an item on sale that is sold out or out of stock may be purchased later at the sale price. Receipts from qualified purchases of tangible personal property made with a rain check during the time period specified in ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978 are deductible. Purchases made after this time period with a rain check regardless of when the rain check was issued are not deductible.

[3.2.242.9 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.10 **LAYAWAY SALES:** A retailer performs a service when holding merchandise on a layaway plan at the request of the customer.

A. The initiation of a layaway plan does not constitute a sale even if the customer makes a deposit to the retailer. A sale of the merchandise under the layaway plan occurs only when the final payment is made and the merchandise is delivered to the customer.

B. If the final payment on a layaway plan and delivery of merchandise occur at a time other than during the time period specified in ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978, the receipts from the sale are not deductible under ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978.

C. If the final payment on a layaway plan and delivery of merchandise occur during the time period specified in [~~Laws 2005, Chapter 104, Section 25~~] Section 7-9-95 NMSA 1978, the receipts are deductible under [~~Laws 2005, Chapter 104, Section 25~~] Section 7-9-95 NMSA 1978 if the other requirements of the section are met. [3.2.242.10 NMAC - N, 8/15/05; A, 7/31/12]

### 3.2.242.11 EXCHANGES AND REFUNDS:

A. The exchange after the time period specified in [~~Laws 2005, Chapter 104, Section 25~~] Section 7-9-95 NMSA 1978 of tangible personal property that was purchased during the time period specified in [~~Laws 2005, Chapter 104, Section 25~~] Section 7-9-95 NMSA 1978 remains deductible if there is no additional charge for the exchange.

B. If an item of tangible personal property purchased during the time period specified in [~~Laws 2005, Chapter 104, Section 25~~] Section 7-9-95 NMSA 1978 and deductible under [~~Laws 2005, Chapter 104, Section 25~~] Section 7-9-95 NMSA 1978 is exchanged at a later time for an item of different value, the receipts from the subsequent sale are subject to gross receipts tax. [3.2.242.11 NMAC - N, 8/15/05; A, 7/31/12]

### 3.2.242.12 INTERNET, MAIL ORDER AND TELEPHONE SALES:

Qualified items sold to purchasers with a New Mexico billing address by mail, telephone, email and internet shall qualify for deduction under [~~Laws 2005, Chapter 104, Section 25~~] Section 7-9-95 NMSA 1978 if:

A. the item is both delivered to and paid for by the customer during the time period specified in [~~Laws 2005, Chapter 104, Section 25~~] Section 7-9-95 NMSA 1978; or

B. the customer orders and pays for the item and the retailer accepts the order during the time period specified in [~~Laws 2005, Chapter 104, Section 25~~] Section 7-9-95 NMSA 1978 for immediate shipment, even if delivery of the item is made after the exemption period. [3.2.242.12 NMAC - N, 8/15/05; A, 7/31/12]

### 3.2.242.13 DOCUMENTING DEDUCTIBLE SALES:

Retailers claiming the deduction under [~~Laws 2005, Chapter 104, Section 25~~] Section 7-9-95 NMSA 1978 are required to maintain in their records the type of item sold, the date sold and the sales price of deductible merchandise sold during the time period specified in [~~Laws 2005, Chapter 104, Section 25~~] Section 7-9-95 NMSA 1978.

[3.2.242.13 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.14 **ITEMS THAT DO NOT QUALIFY FOR THE DEDUCTION UNDER [~~LAWS 2005, CHAPTER 104, SECTION 25~~] SECTION 7-9-95 NMSA 1978:** In addition to those items specifically excluded in the statute, the following are ineligible for the deduction:

A. [~~handheld computers, internet, or email devices~~] e-readers that only have the ability to access the internet but that have no other computing functions such as word processing, spreadsheet capabilities, etc.;

B. personal digital assistants (PDAs), MP3 players, cassette players and recorders, cameras, books, magazines and other periodicals;

C. all computer and computer-related equipment not specifically deductible under [~~Laws 2005, Chapter 104, Section 25~~] Section 7-9-95 NMSA 1978 unless bundled with and included in the price of items that qualify for the deduction under [~~Laws 2005, Chapter 104, Section 25~~] Section 7-9-95 NMSA 1978;

D. all computer software unless bundled with and included in the price of items that qualify for the deduction under [~~Laws 2005, Chapter 104, Section 25~~] Section 7-9-95 NMSA 1978;

E. all games including video games, board games, computer games, and handheld gaming devices;

F. musical instruments;

G. materials and equipment used for making, repairing or altering clothing such as cloth, thread, yarn, needles, buttons, zippers, and patterns;

H. athletic and protective gloves, pads, supporters, and helmets;

I. swimwear, cover-ups, and caps;

J. specialized footwear not readily adaptable for wearing on the street, such as ski boots, riding boots, waders, bowling shoes and shoes with cleats or spikes; and

K. briefcases and luggage; prerecorded CDs, DVDs, and cassette tapes; and

L. data storage devices such as CD drives and ZIP drives].

[3.2.242.14 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.15 **RECEIPTS THAT ARE NOT DEDUCTIBLE:** Receipts from the following transactions are not deductible under [~~Laws 2005, Chapter 104, Section 25~~] Section 7-9-95 NMSA 1978:

A. Receipts from performing services on tangible personal property that are deductible under [~~Laws 2005, Chapter 104, Section 25~~] Section 7-9-95 NMSA 1978, such as the alteration or repair of clothing.

B. Receipts from leasing or renting tangible personal property. In order

for the deduction under [~~Laws 2005, Chapter 104, Section 25~~] Section 7-9-95 NMSA 1978 to apply the qualified items must be sold at retail.

[3.2.242.15 NMAC - N, 8/15/05; A, 7/31/12]

### 3.2.242.16 **ITEMS CONSIDERED TO BE COMPUTERS FOR PURPOSES OF THE DEDUCTION UNDER SECTION 7-9-95 NMSA 1978:**

In addition to those computers that are specifically authorized in the statute, the following items are considered to be computers and qualify for the deduction as long as the cost of the item does not exceed the one thousand dollars (\$1,000) threshold set in statute:

A. e-readers that have computing functions such as word processing, spreadsheet capabilities, etc.; and

B. tablet computers.

[3.2.242.16 NMAC - N, 7/31/12]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.5.12 NMAC, Section 9 effective 7/31/2012.

### 3.5.12.9 **PROPERTY FACTOR - VALUATION OF RENTED PROPERTY:**

A. Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for such property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. Subrents are not deducted when the subrents constitute business income because the property which produces the subrents is used in the regular course of a trade or business of the taxpayer when it is producing such income. Accordingly there is no reduction in its value.

B. "Annual rental rate" is the amount paid as rental for property for a twelve-month period (i.e., the amount of the annual rent). Where property is rented for less than a twelve-month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the tax period. However, where a taxpayer has rented property for a term of twelve or more months and the current tax period covers a period of less than twelve months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than twelve months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental

term is on a month-to-month basis.

C. "Annual rent" is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(1) any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or a percentage of sales, profits or otherwise; and

(2) any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc.; if a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

D. "Annual rent" does not include:

(1) incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.; and

(2) royalties based on extraction of natural resources, whether represented by delivery or purchase; for this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property which constitutes a sharing of current or future production of natural resources from such property, irrespective of the method of payment or how such consideration may be characterized, whether as a royalty, advance royalty rental or otherwise.

E. Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor. [1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.12.9 NMAC - Rn & A, 3 NMAC 5.12.9, 6/29/01; A, 7/31/12]

**NEW MEXICO TAXATION  
AND REVENUE  
DEPARTMENT**

This is an amendment to 3.5.19 NMAC, Section 8 effective 7/31/2012.

**3.5.19.8 SPECIAL RULES - IN  
GENERAL:**

A. Section 7-4-19 NMSA 1978 provides that if the allocation and apportionment provisions of Sections 7-4-2 to 7-4-18 NMSA 1978 do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for

or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) separate accounting;

(2) the exclusion of any one or more of the factors;

(3) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

B. Section 7-4-19 NMSA 1978 permits a departure from the allocation and apportionment provisions of Sections 7-4-2 to 7-4-18 NMSA 1978 only in limited and specific cases [~~Section 7-4-19 NMSA 1978 may be invoked only in specific cases where unusual fact situations (which ordinarily will be unique and nonrecurring) produce incongruous results under the apportionment and allocation provisions contained in Sections 7-4-2 to 7-4-18 NMSA 1978~~] where the apportionment and allocation provisions contained in Sections 7-4-2 to 7-4-18 NMSA 1978 produce incongruous results.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.19.8 NMAC - Rn & A, 3 NMAC 5.19.8, 6/29/01; A, 7/31/12]

---

**End of Adopted Rules Section**

---



## 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

The *New Mexico Register* is the official publication for all notices of rule making, 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.nmcpr.state.nm.us/nmregister>.

For further information, call 505-476-7907.