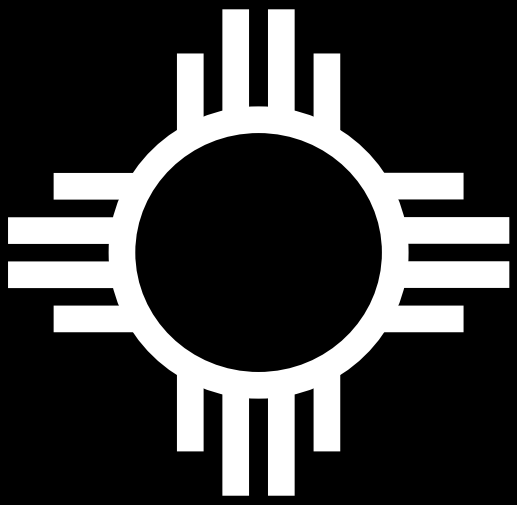
NEW MEXICO REGISTER



Volume XXIV
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New Mexico Register

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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
2013

New Mexico Register

Volume XXIV, Number 2
January 31, 2013

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Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

A=***Amended***, E=***Emergency***, N=***New***, R=***Repealed***, Rn=***Renumbered***

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Notices of Rulemaking and Proposed Rules

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
NOTICE OF HEARING POSTPONEMENT

The hearing scheduled for February 13, 2013, regarding the proposal to repeal current 20.11.41 NMAC, *Authority to Construct*; adopt a proposed replacement 20.11.41 NMAC, *Construction Permits*; and incorporate the replacement 20.11.41 NMAC into the New Mexico State Implementation Plan for air quality (SIP), has been postponed until a future date. Public Notice will be published when the new hearing date has been established.

The Air Quality Control Board (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 Clean Air Act, the New Mexico Air Quality Control Act, local air quality regulations, and to require that local air pollution sources to comply with air quality standards and regulations.

For more information, contact Liz Jones, at ejones@cabq.gov or at (505) 768-2601.

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing on March 4, 2013 at 9:00 am, to receive testimony on a proposed duration language for the New Mexico Extra Help SNAP pilot. The New Mexico Extra Help SNAP is a pilot demonstration project funded through the United States Department of Agriculture Food and Nutrition Services. The Department has received authorization to terminate the pilot effective April 30, 2013. All current New Mexico Extra Help SNAP recipients will receive notice and new applications to assist them in reviewing eligibility for ongoing regular SNAP benefits.

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

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 2 ACUPUNCTURE AND ORIENTAL MEDICINE PRACTITIONERS
PART 18 EXPANDED PRACTICE EDUCATIONAL COURSES

16.2.18.1 ISSUING AGENCY: New Mexico Board of Acupuncture and Oriental Medicine.
[16.2.18.1 NMAC - N, 02-08-13]

16.2.18.2 SCOPE: All doctors of oriental medicine who are certified for expanded practice or who are applicants for certification for expanded practice, as well as all educational courses and applicants for approval of educational courses.
[16.2.18.2 NMAC - N, 02-08-13]

16.2.18.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Section 61-14A-8.1.
[16.2.18.3 NMAC - N, 02-08-13]

16.2.18.4 DURATION: Permanent.
[16.2.18.4 NMAC - N, 02-08-13]

16.2.18.5 EFFECTIVE DATE: February 8, 2013, unless a later date is cited at the end of a section.
[16.2.18.5 NMAC - N, 02-08-13]

16.2.18.6 OBJECTIVE: Part 18 lists the prerequisites, educational course approval requirements, class hours, curriculum knowledge and skills for each of the following expanded practice categories: basic injection therapy, injection therapy, intravenous therapy and bioidentical hormone therapy.
[16.2.18.6 NMAC - N, 02-08-13]

16.2.18.7 EDUCATIONAL COURSE APPROVAL GENERAL REQUIREMENTS: The board shall approve an educational course for a specific category of expanded practice upon completion of the following general requirements and the specific requirements listed for the specific category of expanded practice educational course approval.

A. The educational course shall provide at least the minimum number of hours of education in the areas listed for the specific category of educational course hours. One hour of education shall be equal to that defined by the accreditation commission for acupuncture and oriental medicine (ACAOM). The education shall be in addition to the education required to meet the minimum educational program requirements for licensure as a doctor of oriental medicine.

B. The educational course application shall include a description of the education being provided as required by the educational course general curriculum defined in 16.2.18.10 NMAC and the educational course curriculum defined for the specific category of expanded practice for which the educational course is applying for approval.

C. The educational course application shall include the curriculum vitae for all teachers and all classes shall be taught by qualified teachers approved by the board with the following qualifications:

(1) the education in the pharmacology of the authorized substances shall be taught by a licensed pharmacist, Pharm D or a Ph.D. in pharmacology; and

(2) the education in the clinical therapeutic use of the authorized substances shall be taught by a licensed health care practitioner with appropriate training and a minimum of five years experience using the authorized substances.

D. The educational course application shall include documentation that all required clinical practice hours shall have a teacher to student ratio of at least one teacher to no more than eight students.

E. The educational course application shall include examples of the test questions that students enrolled in the course are required to successfully pass in order to ensure competence in all required areas. Testing methodology shall be approved by the board and testing shall be administered as approved by the board. The educational course shall send all student test scores and evaluation instruments directly to the board.

F. The educational course application shall include an example of the certificate that shall be given for successful completion of the educational course.

G. Each educational course shall be completed within two years of commencement of that course.

H. A student who is allergic or hypersensitive to an authorized substance may be excused from participating in clinical practice when such an authorized substance is being used.

I. The board has the authority to observe, audit and evaluate educational courses. Each educational course applicant shall agree that the educational course may be observed, audited and evaluated by an authorized member of the board or by an agent of the board, prior to approval, after approval or during any educational course classes. A course audit or evaluation may result in denial, suspension or revocation of the course's approval by the board in accordance with law.

J. The educational course shall specify whether the organization offering the educational course is a sole proprietorship, partnership, LLC, corporation or non-profit corporation and shall provide proof of such legal business status.

K. An educational course shall submit a new application on the form approved by the board, pay the appropriate fee defined in 16.2.10 NMAC and comply with all other new application requirements if any of the following changes:

(1) ownership;
(2) faculty; and
(3) curriculum.

L. An educational course shall inform the board in writing, provided that the educational course certifies that all factors defined in Subsection J of 16.2.18.8 NMAC remain unchanged, if any of the following changes:

(1) name;
(2) address; and
(3) phone number.

[16.2.18.7 NMAC - N, 02-08-13]

16.2.18.8 EDUCATIONAL COURSE APPROVAL BOARD REQUIREMENTS:

A. The board shall have final authority for approval of all educational courses including classes and teachers.

B. The board shall notify the applicant in writing by mail postmarked no more than 75 days after the receipt of the initial application as to whether the application is complete or incomplete and missing specified application documentation.

C. The board shall notify the applicant in writing by mail postmarked no more than 75 days after the notice of receipt of the complete application sent out by the board, whether the application is approved or denied.

D. If the application is denied, the notice of denial shall state the reason the application was denied.

E. In the interim between regular board meetings the board's chairman or an authorized representative of the board shall issue an interim temporary educational course approval to a qualified applicant who has filed, with the board, a complete application and complied with all requirements for educational course approval. The interim temporary educational

course approval shall automatically expire on the date of the next regular board meeting and final educational course approval shall only be granted by the board.
[16.2.18.8 NMAC - N, 02-08-13]

16.2.18.9 EDUCATIONAL COURSE PREREQUISITES:

A. Proof of completion of a course in pharmacology from an accredited institution or the equivalent of at least three college or university credit hours (30-45 contact hours) in pharmacology from an accredited college or university. If the applicant prefers they can sit for a pharmacology final exam at an accredited institution:

(1) proof of completion of a four hour American heart association approved CPR or basic life support (BLS) course; a current card will serve as proof; and

(2) proof of completion of a two hour instruction from an approved American heart association provider in the use of inhaled O2 and IM epinephrine for emergency use or inclusion of that education and training in the basic education course curriculum.

B. The basic injection course is a prerequisite to injection therapy certification and intravenous therapy certification.
[16.2.18.9 NMAC - N, 02-08-13]

16.2.18.10 EDUCATIONAL COURSE GENERAL CURRICULUM: The educational program shall provide the doctor of oriental medicine, who successfully completes the program, with the following entry level general knowledge and skills, at the current professional standard of care within the context of an integrative healthcare system, as well as the specific entry level knowledge and skills, at the current professional standard of care within the context of an integrative healthcare system, defined for the specific category of expanded practice educational course approval.

A. Expanded practice and prescriptive authority and oriental medicine: knowledge of how the principles of the developmental system of oriental medicine such as yin, yang, qi and xue apply to the expanded practice certifications.

B. Biomedical knowledge: knowledge of anatomy, physiology, pathology, endocrinology, biochemistry, pharmacology and diagnostic options sufficient to provide a foundation for the knowledge and skills required for the specific category of expanded practice.

C. Pharmacology:

(1) knowledge of the biochemistry, pharmacology, clinical application, safety and handling, side effects, interactions, contraindications, safeguards and emergency procedures for all authorized substances in the formulary defined for the relevant specific category of expanded practice;

(2) knowledge of how to make a differential diagnosis relative to the prescription or administration of authorized substances in the formulary defined for the relevant specific category of expanded practice;

(3) knowledge of the potency and appropriate dosage of single and combined authorized substances in the formulary defined for the relevant specific category of expanded practice;

(4) knowledge of and skill in utilizing appropriate clinic based aseptic technique; and

(5) knowledge of the compounding requirements of the United States pharmacopeia and national formulary (USP-NF) with regard to the authorized substances in the formulary defined for the relevant specific category of expanded practice.

D. Referral:

(1) understanding the limits of their training, knowledge and skill and when it is appropriate to refer; and

(2) knowledge of the options available regarding referral including an understanding of the potential benefit or contraindications of all categories of expanded practice.

E. Emergency care (previous CPR/BLS certification):

(1) knowledge of how to recognize a medical emergency situation arising in the clinic and what emergency outcomes may arise relative to performing the authorized diagnostic and therapeutic procedures and the prescription or administration of the specifically authorized substances, what procedures and substances are best for managing each emergency situation and whom to contact for emergency support and care;

(2) skill in providing first aid until the medical emergency team arrives;

(3) appropriate initial screening for potential allergic or adverse reactions;

(4) skill in identifying and responding to adverse or allergic reactions or mild to severe; vasovagal reactions with knowledge of appropriate support measures depending on the type of reaction:

(a) patient reassurance;

(b) patient positioning;

(c) oral OTC diphenhydramine (benadryl) if appropriate;

(d) inhaled oxygen;

(e) inhaled OTC epinephrine (primatine mist) or IM injected epinephrine if appropriate; and

(f) emergency ambulance transport;

(5) knowledge of the immediate and longer term indications of inadvertent pneumothorax and the appropriate procedure for patient care and guidance in such situations.

F. Record keeping, storage and dispensing of dangerous drugs and controlled substances:

(1) knowledge of the proper storage requirements in the clinic for the drugs, dangerous drugs and controlled substances in the specifically authorized formulary;

(2) knowledge of how to keep accurate records of all authorized drugs, dangerous drugs and controlled substances obtained, stored, compounded, administered or dispensed; and

(3) skill in appropriately handling and using appropriate clean or aseptic technique for all drugs, dangerous drugs and controlled substances in the specifically authorized formulary.

G. Pharmaceutical law:

(1) knowledge of the appropriate areas of New Mexico pharmaceutical law;

(2) knowledge of the appropriate areas of the United States pharmacopeia and national formulary (USP-NF) that relate to compounding of the authorized substances in the formulary defined for the relevant specific category of expanded practice; and

(3) knowledge of drugs, dangerous drugs, and controlled substances and what dangerous drugs or controlled substances that are or are not authorized under the provisions of the specific category or categories of expanded practice for which he is certified.

H. Scope of practice:

(1) knowledge of the areas of the New Mexico Acupuncture and Oriental Medicine Practice Act and the rules of the New Mexico board of acupuncture and oriental medicine that are appropriate to the scope of practice of a doctor or oriental medicine certified for the specific category of expanded practice;

(2) understanding and knowledge of what diagnostic or therapeutic procedures are authorized by the specific category of expanded practice; and

(3) understanding and knowledge of what substances in a specific formulary are authorized for use by doctors of oriental medicine certified for the specific category of expanded practice.
[16.2.18.10 NMAC - N, 02-08-13]

16.2.18.11 BASIC INJECTION THERAPY EDUCATIONAL COURSE APPROVAL: The board shall approve a basic injection therapy educational program upon completion of the following requirements. The educational course shall submit to the board:

A. the completed application form provided by the board;

B. payment of the application fee for expanded practice

educational course approval specified in 16.2.10 NMAC;

C. documentation that it will comply with all educational course approval general requirements defined in 16.2.18.8 NMAC;

D. documentation demonstrating that it will provide the educational course general curriculum defined in 16.2.18.10 NMAC;

E. documentation demonstrating that it will provide the basic injection therapy educational course hours defined in 16.2.18.12 NMAC; and

F. documentation demonstrating that it will provide the basic injection therapy educational course curriculum defined in 16.2.18.13 NMAC;

G. documentation of examination and testing to be administered to each applicant with a passing grade of 70 percent to be required for certification to demonstrate learned knowledge.

[16.2.18.11 NMAC - N, 02-08-13]

16.2.18.12 BASIC INJECTION THERAPY EDUCATIONAL COURSE HOURS: The education shall consist of a minimum total of 56 contact hours with at least the minimum number of hours of education in the areas listed below:

A. a minimum of eight hours in pharmacology and biomedical differential diagnosis relative to the prescription, administration, compounding and dispensing of the authorized substances in the basic injection therapy formulary including homeopathic medicines;

B. a minimum of two hours in the drawing and compounding of the authorized substances intended for injection utilizing approved aseptic technique and proper record keeping, storage and dispensing of substances; at least half of the required hours shall be clinical practice;

C. a minimum of 14 hours in orthopedic and neurological evaluation; at least half of these required hours shall be clinical practice;

D. a minimum of two hours in the theory and practice of vapocoolant spray and stretch techniques using the authorized vapocoolants; at least half of these required hours shall be clinical practice;

E. a minimum of 28 hours in the theory and practice of injection therapy including: 11 hours of trigger point therapy and injection of acupuncture points; 11 hours of basic mesotherapy; six hours of basic neural therapy, and therapeutic injections (vitamins), using the authorized substances in the basic injection therapy formulary; at least half of these required hours shall be clinical practice;

F. a minimum of one hour in pharmaceutical law as provided by the New Mexico board of pharmacy; and

G. a minimum of one in oriental medicine scope of practice relative to the authorized substances and techniques.

[16.2.18.12 NMAC - N, 02-08-13]

16.2.18.13 BASIC INJECTION THERAPY EDUCATIONAL COURSE CURRICULUM: The basic injection therapy educational course curriculum shall provide the doctor of oriental medicine, who successfully completes the course, with the educational course general curriculum knowledge and skills defined in 16.2.18.10 NMAC and the following specific knowledge and skills:

A. orthopedic and neurological physical exam and differential diagnosis:

(1) knowledge of anatomy of the regions to be examined and treated;

(2) knowledge of the most common orthopedic pain differential diagnoses for these areas as well as other medical differential diagnoses that should be ruled out;

(3) skill in interpreting physical exam signs in context as evidence for or against the differential diagnoses;

(4) knowledge of the most important treatment options for these differential diagnoses including but not limited to injection therapy, spray and stretch therapy, exercise, physical medicine, manipulation, manual medicine, acupuncture, moxibustion, medical therapy with herbal medicine, supplements, homeopathic medicines and diet therapy;

(5) knowledge of which basic imaging methods, if any, are useful in the examination of the above differential diagnoses; and

(6) skill in selecting and performing the most appropriate basic orthopedic and neurologic physical examination methods including but not limited to the most basic forms of reflex testing, motor power testing, sensory exam, common orthopedic provocations, ligament stretch testing, accurate palpation and marking of anatomic landmarks, ligament and tendon compression testing and myofascial trigger point compression;

B. general injection therapy:

(1) knowledge of the needles, syringes and other equipment used to perform the various types of injection therapy;

(2) knowledge of appropriate aseptic techniques and clean needle procedures and techniques;

(3) knowledge of the various solutions used in the various styles of injection therapy and skill in properly drawing and compounding into syringes the authorized substances intended for injection, using approved aseptic technique;

(4) knowledge of how to generate and carry out a comprehensive treatment plan that addresses the causative factors leading to pain and dysfunction from the perspective of the understanding of each style of injection therapy, offers post treatment palliation and provides post therapy recommendations to support rehabilitation and prevent recurrence;

(5) knowledge of how to explain to the patient the purpose of the therapy, the expected outcome and possible complications of the therapy that could occur;

(6) understanding that injection therapy techniques authorized for the basic injection therapy certification are limited to intradermal, subcutaneous and intramuscular, injections; and

(7) knowledge of the anatomical locations that are relatively safe for injection therapy, as well as those locations that should be avoided for injection therapy;

C. acupuncture point injection therapy:

(1) knowledge of how acupuncture point injections can complement traditional acupuncture;

(2) knowledge of the conditions that can be treated with acupuncture point injections; and

(3) skill in injecting acupuncture points;

D. trigger point therapy:

(1) knowledge of what a trigger point is, what the causative factors leading to trigger points are, what the most common perpetuating factors are and how to recognize and identify the most common pain referral patterns in the head, back, hip and extremities;

(2) knowledge of how to locate and palpate trigger points; and

(3) skill in locating, injecting and spraying and stretching the most commonly treated trigger points and muscles;

E. neural therapy:

(1) knowledge of the relationship between interference fields, the autonomic nervous system, pain and disease;

(2) skill in identifying common interference fields in the body; and

(3) skill in injecting common neural therapy injection sites such as peripheral nerves, scars, tonsils, intercutaneous and subcutaneous sites;

F. mesotherapy:

(1) knowledge of the mechanism of action of mesotherapy injections for pain and sports medicine and cosmetic treatment; and

(2) skill in injecting using mesotherapy methodology;

G. therapeutic injections:

(1) knowledge of how to evaluate the patient and determine a treatment plan with appropriate dosage, using appropriate

authorized substances; and

(2) skill in performing therapeutic injections at appropriate anatomical locations and depths.

[16.2.18.13 NMAC - N, 02-08-13]

16.2.18.14 - 16.2.18.18 [RESERVED]

16.2.18.19 BIOIDENTICAL HORMONE THERAPY EDUCATIONAL COURSE APPROVAL: The board shall have final authority for approval of a bioidentical hormone educational program upon completion of the following requirements. The educational course shall submit to the board:

A. the completed application form provided by the board;

B. payment of the application fee for expanded practice educational course approval specified in 16.2.10 NMAC;

C. documentation that it will comply with all educational course approval general requirements defined in 16.2.18.8 NMAC;

D. documentation demonstrating that it will provide the educational course general curriculum defined in 16.2.18.10 NMAC;

E. documentation demonstrating that it will provide the bioidentical hormone therapy educational course hours defined in 16.2.18.21 NMAC;

F. documentation demonstrating that it will provide the bioidentical hormone therapy educational course curriculum defined in 16.2.18.22 NMAC; and

G. documentation of examination and testing to be administered to each applicant with a passing grade of 70 percent to be required for certification to demonstrate learned knowledge.

[16.2.18.19 NMAC - N, 02-08-13]

16.2.18.20 BIOIDENTICAL HORMONE THERAPY EDUCATIONAL COURSE HOURS: The bioidentical hormone educational course shall consist of a minimum total of 80 hours of education, with at least 24 hours of practical experience defined in Subsections B, E and F of 16.2.18.21 NMAC in the areas listed below:

A. a minimum of eight hours in the pharmacology of bioidentical hormones;

B. a minimum of 18 hours in an overview of the endocrine system, including the anatomy and interactive physiology of the hypothalamic-pituitary-adrenal-thyroid (HPAT) and gonadal axis, the stress response and normal adrenal and thyroid function; also to include normal male and female sex hormone physiology; at least half of these hours shall be in practice or review of case studies;

C. a minimum of 20 hours in theory and practice of endocrinology including evaluation and treatment of the patient with hormonal dysfunction and imbalances including but not limited to; adrenal fatigue, auto-immune endocrine disorders, hypothyroid, hyperthyroid, men's hormone imbalances and women's hormonal imbalances pre, peri and post menopause and consideration and assessment for treatment with bio-identical hormone replacement therapy, BHRT; at least half of these hours will be in practice or review of case studies;

D. a minimum of 14 hours in blood chemistry analysis including but not limited to; CBC, CMP, LFT, lipids, ferritin, homocysteine, vitamin D, iodine, hs CRP, fibrinogen, ANA, ESR, HgBAIC, insulin antibodies;

E. a minimum of two hours in urine analysis;

F. a minimum of 16 hours in the assessment and treatment of hormone and neurotransmitter imbalances through blood, urine and saliva hormone testing and evaluation; appropriate treatment options for the biomedical differential diagnoses including, but not limited to; adrenal fatigue, thyroid imbalances, andropause, menopausal syndrome, and other male and female hormone imbalances; at least half of these hours shall be in practice or case study review;

G. a minimum of one hour in pharmaceutical law as provided by the New Mexico board of pharmacy; and

H. a minimum of one in oriental medicine scope of practice relative to the prescription or administration of the authorized substances.

[16.2.18.20 NMAC - N, 02-08-13]

16.2.18.21 BIOIDENTICAL HORMONE THERAPY EDUCATIONAL COURSE CURRICULUM: The bioidentical hormone therapy educational course curriculum shall provide the doctor of oriental medicine, who successfully completes the course, with the educational course general curriculum knowledge and skills defined in 16.2.18.10 NMAC and the following specific knowledge and skills:

A. bioidentical hormone therapy;

(1) knowledge of anatomy, physiology, endocrinology, pathology, biochemistry, pharmacology, diagnostic and referral options including imaging, and clinical strategies with a focus on hormone pathways, neurotransmitter imbalances, precursors and intermediaries relevant to bioidentical hormone therapy;

(2) knowledge of how to perform a diagnosis of the various aspects of the endocrine and neurotransmitter system using blood, urine, and saliva testing;

(3) knowledge of the application, clinical use, dosage, dosage adjustment or discontinuation consequences and safety concerns relevant to all modes of administration of the authorized substances; and

(4) knowledge of how to explain to the patient the purpose, expected outcome, risks and possible complications of bioidentical hormone therapy as well as the advantages of bioidentical hormone therapy, relative to non bioidentical hormone therapy;

B. non-hormone therapy:

(1) knowledge of how to optimize hormone balance using authorized substances that are not hormones or are hormone precursors, and the benefits and limits of such therapy; and

(2) knowledge of how to explain to the patient the purpose, expected outcome, risks and possible complications of non-hormone therapy as well as the advantages of non-hormone therapy relative to bioidentical hormone therapy.

[16.2.18.21 NMAC - N, 02-08-13]

HISTORY OF 16.2.18 NMAC: [RESERVED]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.1 NMAC, Section 9, effective 02-08-13.

16.2.1.9 PUBLIC RECORDS: All records kept by the board shall be available for public inspection pursuant to the New Mexico Inspection of Public Records Act, NMSA 1978, Section 14-2-1, et seq., except as provided herein.

A. During the course of the processing and investigation [~~or processing~~] of a complaint, and before the vote of the board as to whether to dismiss the complaint or to issue a notice of contemplated action as provided in the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and in order to preserve the integrity of the investigation of the complaint, records and documents that reveal confidential sources, methods, information or licensees accused, but not charged yet with a violation of the act, shall be confidential and shall not be subject to public inspection. Such records shall include evidence in any form received or compiled in connection with any such investigation of the complaint or of the licensee by or on behalf of the board by any investigating agent or agency.

B. Upon the completion of the processing and investigation [~~or processing~~] of the complaint, and upon the decision of the board to dismiss the complaint or to issue a notice of contemplated action,

the confidentiality privilege conferred by Subsection A of 16.2.1.9 NMAC shall dissolve, and the records, documents or other evidence pertaining to the complaint and to the investigation of the complaint shall be available for public inspection.

C. All tests and test questions by which applicants are tested shall not be available to public inspection, as there is a countervailing public policy requiring that such records remain confidential in order to ensure the integrity of a licensing exam intended to protect the public health, safety and welfare from incompetent practitioners.

D. The board or its administrator may charge a fee not to exceed one dollar per page for documents 11 inches by 17 inches or smaller in size for copying public records.

[3-19-91…7-1-96; 16.2.1.9 NMAC - Rn & A, 16 NMAC 2.1.9, 8-13-01; A, 3-2-03; A, 11-28-09; A, 02-08-13]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.3 NMAC, Sections 10, 11 and 14, effective 02-08-13.

16.2.3.10 INITIAL LICENSURE APPLICATION: Upon approval of an application for licensure that fulfills the requirements listed below, the board shall issue a license that will be valid until July 31 following the initial licensure, except that licenses initially issued after May 1 will not expire until July 31 of the next renewal period as defined in 16.2.8.9 NMAC; the application requirements for a license shall be receipt of the following by the board:

A. the fee for application for licensure specified in 16.2.10 NMAC;

B. an application for licensure that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number, if available;

C. two passport-type photographs of the applicant taken not more than six months prior to the submission of the application;

D. an affidavit as provided on the "initial licensure application" as to whether the applicant:

(1) has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings;

(2) has been a party to litigation in any jurisdiction related to the applicants practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice;

(3) has been convicted of a felony in any jurisdiction, including any finding of guilt by a court or jury, or any plea of guilty, or any plea of nolo contendere or no contest, or plea or disposition of conditional discharge, and including any such proceeding in which a sentence was imposed, suspended or deferred;

(4) is in arrears on a court-ordered child support payment; or

(5) has violated any provision of the act or the rules;

E. an official license history, which is a certificate from each jurisdiction stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice any profession, including health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act;

F. an affidavit as provided on the "initial licensure application" stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection D of 16.2.3.10 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17; and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-2-1, et seq.; and

(2) an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.;

G. an affidavit as provided on the "initial licensure application" stating that the applicant understands that:

(1) the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine;

(2) the license must be renewed annually by July 31; and

(3) the applicant must notify the board within 10 days if the applicant's address changes;

H. a copy of the applicant's certificate or diploma from an educational program evidencing completion of the required program; this copy shall include on it an affidavit certifying that it is a true copy of the original;

I. an official copy of the applicant's transcript that shall be sent directly to the board in a sealed envelope by the educational program from which the applicant received the certificate or diploma, and that shall verify the applicant's satisfactory completion of the required academic and clinical education and that shall designate the completed subjects and the hours of study completed in each subject; this copy of the transcript shall remain in the closed envelope secured with the official seal of the educational program and shall be sent by the applicant to the board along with the applicant's application for licensure; and

J. an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant.

[11-3-81…7-1-96; 8-31-98; 5-15-99, 12-1-99; 16.2.3.13 NMAC - Rn & A, 16 NMAC 2.3.13, 5-20-00; 16.2.3.10 NMAC - Rn, 16.2.3.13 NMAC, 7-27-01; A, 7-27-01; A, 3-2-03; A, 02-15-05; A, 11-28-09; A, 02-08-13]

16.2.3.11 EXAMINATION REQUIREMENTS: The examination requirements specified in 16.2.4 NMAC shall be received at the board office within 12 months of the receipt of the initial application at the board office, with the exception of the national certification commission for acupuncture and oriental medicine (NCCAOM) score requirements which need to be submitted to the board office within 24 months of the initial application.

[11-3-81…7-1-96; 8-31-98; 5-15-99, 12-1-99; 16.2.3.13 NMAC - Rn & A, 16 NMAC 2.3.13, 5-20-00; 16.2.3.11 NMAC - Rn, 16.2.3.13 NMAC, 7-27-01; A, 7-27-01; A, 02-15-05; A, 11-28-09; A, 02-08-13]

16.2.3.14 DEADLINE FOR COMPLETING ALL REQUIREMENTS

FOR LICENSURE: [~~All~~] Documentation required for licensure shall be received at the board office no later than 12 months after the initial application is received at the board office, with the exception of the national certification commission for acupuncture and oriental medicine (NCCAOM) score requirements which need to be submitted to the board office within 24 months of the initial application.

[11-3-81…7-1-96; 4-1-97, 5-15-99; 16.2.3.16 NMAC - Rn & A, 16 NMAC 2.3.16, 5-20-00; 16.2.3.14 NMAC - Rn, 16.2.3.16 NMAC, 7-27-01; A, 7-27-01; A, 11-28-09; A, 02-08-13]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.4 NMAC, Section 13, effective 02-08-13.

16.2.4.13 PAYMENT OF CLINICAL SKILLS EXAMINATION FEE: The non refundable clinical skills examination fee specified in 16.2.10 NMAC [~~(Part 10 of the rules)~~] shall be paid by [~~certified~~] check or money order in U.S. funds and received in the board's office at least [~~15~~] 30 calendar days prior to the next scheduled clinical skills examination.

[11-3-81…7-1-96; 4-1-97; N, 8-31-98, 5-15-99, 2-17-00; 16.2.4.12 NMAC - Rn & A, 16 NMAC 2.4.12, 5-20-00; 16.2.4.13 NMAC - Rn, 16.2.4.12 NMAC, 7-26-01; A, 7-26-01; A, 03-02-03; A, 11-28-09; A, 02-08-13]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.8 NMAC, Sections 9 and 11, effective 02-08-13.

16.2.8.9 L I C E N S I N G PERIOD: The licensing period shall run from August 1[~~st~~] to the following July 31[~~st~~]. A newly licensed doctor of oriental medicine shall be issued a license that shall be required to be renewed on July 31[~~st~~], except that licenses initially issued after May 1 shall not expire until July 31 of the next renewal period.

[16.2.8.9 NMAC - Rp, 16.2.8.9 NMAC, 02-15-05; A, 02-08-13]

16.2.8.11 LATE LICENSE RENEWAL:

A. For a licensee whose late application to renew his or her license is received at the board office during the 60 day grace period provided by Section 61-14A-15 NMSA 1978, the license shall be renewed if the applicant for late license renewal completes the requirements of 16.2.8.10 NMAC and pays the fee for late license renewal specified in 16.2.10 NMAC.

[~~B. With regard to continuing education, if the required correct score on the open book jurisprudence examination required by Subsection D of 16.2.9 8 NMAC is not attained, the applicant will be required to resubmit the open book jurisprudence exam and the license shall not be renewed until the required score is achieved. If the jurisprudence examination with the required correct score is received at the board office during the 60 day grace period, the renewal shall be considered a late license renewal and the applicant must pay the fee for late license renewal prior to license renewal.~~]

[~~C.~~] B. If proof of NCCAOM recertification or equivalent continuing education as defined in 16.2.9.8 NMAC is received at the board office during the 60 day grace period, the renewal shall be considered a late license renewal and the applicant must pay the fee for late license renewal prior to license renewal.

[~~D.~~] C. For doctors of oriental medicine certified for expanded practice, if proof of expanded practice continuing education as defined in 16.2.9.9 NMAC is received at the board office during the 60 day grace period, the renewal shall be considered a late license renewal and the applicant must pay the fee for late license renewal prior to license renewal.

[16.2.8.11 NMAC - Rp, 16.2.8.11 NMAC, 02-15-05; A, 11-28-09; A, 02-08-13]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.9 NMAC, Sections 7, 8 and 9, effective 02-08-13.

16.2.9.7 DEFINITIONS: Refer to definitions in 16.2.1.7 NMAC [~~(Section 7 of Part 1 of the rules)~~].

[16.2.9.7 NMAC - Rp 16 NMAC 2.9.7, 12-1-01; A, 02-15-05: A, 02-08-13]

16.2.9.8 C O N T I N U I N G EDUCATION:

A. A doctor of oriental medicine shall complete continuing education in oriental medicine equivalent to that required by the national certification commission for acupuncture and oriental medicine (NCCAOM). A doctor of oriental medicine shall submit to the board at the time of license renewal either of the following:

(1) proof of continuing NCCAOM recertification in oriental medicine, acupuncture or Chinese herbology; or

(2) proof of completion of 15 hours annually, or every four years, of 60 hours of NCCAOM approved continuing education courses.

B. A doctor of oriental medicine who is a board approved examiner, examiner supervisor, or examiner trainer, for the clinical skills examination, shall be granted continuing education credit [~~for a licensed D.O.M. in oriental medicine,~~] for time spent functioning as an examiner or training to be an examiner. This also applies to an observing board member [~~if they have~~] who has completed the training. The continuing education credit is limited to six hours per year.

C. The board shall annually audit a random 10 percent of continuing education documentation to determine the validity of the documentation.

D. A doctor of oriental medicine who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to [~~the provisions of the act,~~] NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.

E. A doctor of oriental medicine shall maintain an understanding of the current act and rules [~~and shall complete, with a score of 90 percent correct answers, an open book jurisprudence examination covering the act and the rules that contains at least 10 questions and shall submit this to the board at the time of license renewal~~].

[16.2.9.8 NMAC - Rp 16 NMAC 2.9.8, 12-1-01; A, 10-1-03; A, 02-15-05; A, 9-25-06; A, 11-28-09; A/E, 06-15-10; A/E, 06-15-10; Re-pr, 11-28-10; A, 02-08-13]

16.2.9.9 C O N T I N U I N G EDUCATION FOR LICENSEES CERTIFIED FOR EXPANDED PRACTICE: In addition to the continuing education requirements listed in 16.2.9.8 NMAC, doctors of oriental medicine previously certified in expanded practice shall acquire 14 hours of continuing education every two years, beginning August 1, 2009. Beginning August 1, 2013, the following requirements will be in effect:

A. a doctor of oriental medicine certified for expanded practice in one or more areas as defined in 16.2.19 NMAC shall complete continuing education hours as follows:

(1) three hours every three years for recertification in basic injection therapy;

(2) nine hours every three years to be recertified in injection therapy;

(3) nine hours every three years to be recertified in intravenous therapies; and

(4) nine hours every three years to be recertified in bioidentical hormone therapy;

(5) except that a DOM recertifying

in injection therapy or intravenous therapy need not complete an additional three hours in basic injection therapy; and

(6) doctors of oriental medicine previous certified as Rx1 will need nine hours every three years to be recertified in prolotherapy as specified in 16.2.19.16 NMAC;

[~~A.~~] B. [~~A doctor of oriental medicine certified for expanded practice in one or more areas as defined in 16.2.19 NMAC shall complete 14 hours of continuing education every two years in addition to any continuing education required for license renewal specified in 16.2.9.8 NMAC. The initial reporting period will begin August 1, 2009 and the 14 hours for recertification shall be completed prior to July 31, 2011 and each two years thereafter.~~] license holders who are newly certified for expanded practice will be required to complete [~~up to 14 hours of~~] continuing education hours on a prorated basis during the first [~~year(s)~~] year of recertification and then each [~~two~~] three years thereafter;

[~~B.~~] C. the continuing education shall be about substances in the board approved appropriate expanded practice formulary or formularies defined in 16.2.20 NMAC or updated information in improving current techniques or new and advanced techniques that are part of the expanded practice certification as defined in 16.2.19 NMAC;

[~~C.~~] D. continuing education courses, including teachers, shall be approved by the board:

(1) course providers requesting approval for Rx continuing education certification shall be required to submit the following materials to the board for approval no less than 45 days prior to the date of the course offering and the materials shall include:

(a) [~~a $ 50~~] an application fee as defined in Subsection C of 16.2.10.9 NMAC;

(b) course description, including objectives, subject matter, number of hours, date time and location; and

(c) curriculum vitae of the instructor(s) including previous [~~teaching~~] experience of at least five years in subjects they are engaged to teach [~~of at least five years~~];

(2) individual practitioners requesting approval for a specific course that has not already been approved as defined in Paragraph (1) of Subsection D of 16.2.9.9 NMAC, for their own personal continuing education shall submit a copy of the course brochure including a course description, subject matter, contact hours, and curriculum vitae of the instructor 45 days prior to the course offering;

(3) the continuing education committee shall meet each month on or before the 15th to review course materials; electronic review is acceptable;

(4) a doctor of oriental medicine certified for expanded practice in basic injection, injection or intravenous therapies must remain current in basic life support, BLS, and CPR with proof of having completed an American heart association approved course; a current copy of this card shall be submitted to the board at the time of each [~~biennial~~] triennial expanded practice certification renewal; and

[~~D.~~] E. teaching an approved continuing education course shall be equivalent to taking the approved course. Continuing education that is appropriate for regularly licensed doctors of oriental medicine shall not be considered as fulfilling the above requirements for expanded practice continuing education. The board may determine specific mandatory courses that must be completed. Specific mandatory courses shall be noticed at least six months prior to the date of the course. Exceptions to being required to complete a specific mandatory course may be made for good cause.

[16.2.9.9 NMAC - N, 10-1-03; A, 02-15-05; A, 11-28-09; A, 02-08-13]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.10 NMAC, Section 9, effective 02-08-13.

16.2.10.9 FEES CHARGED:

A. All fees shall be paid by check, certified check or money order in US funds unless otherwise specified by rule.

B. No fees paid to the board shall be refunded.

C. The board shall charge the following fees:

(1) application for licensure: $525.00;

(2) application for reciprocal licensure: $750.00;

(3) application for licensure by endorsement: $800.00;

(4) application for temporary licensure: $330.00;

(5) application for limited temporary license: $100.00;

(6) clinical skills examination, not including the cost of any nationally recognized examinations: $500.00;

(7) annual license renewal: $225.00;

(8) late license renewal: an additional $200.00;

(9) expired license renewal: an additional $350.00 plus the renewal and late fees;

(10) temporary license renewal: $100.00;

(11) application for a new annual approval or renewal of approval of an educational program, including the same program offered at multiple campuses: $450.00;

(12) late renewal of approval of an educational program: an additional [~~$225.00~~] $200.00;

(13) application for single instance approval of an educational program: $225.00;

(14) application for initial expanded practice certification: $100.00 per module;

(15) application for [~~biennial~~] triennial expanded practice [~~certification~~] license renewal: an additional $200;

(16) late expanded practice [~~certification~~] license renewal: an additional $125.00 plus the renewal fee;

(17) expired expanded practice [~~certification~~] license renewal: an additional $100.00 plus the renewal and late fees;

(18) application for externship supervisor registration: $225.00;

(19) application for extern certification: $225.00;

(20) continuing education provider course approval application: $50.00;

(21) auricular detoxification specialist certification application: $50.00;

(22) auricular detoxification specialist certification renewal: $30.00;

(23) auricular detoxification specialist certification late renewal: $20.00;

(24) auricular detoxification specialist supervisor registration application: $50.00;

(25) auricular detoxification specialist training program approval application: $100.00;

(26) auricular detoxification specialist training program approval renewal: $50.00;

(27) treatment program approval application: $100.00;

(28) administrative fee for application for approval of an expanded practice educational program: $600.00;

(29) renewal of expanded prescriptive authority course: $200.00;

(30) administrative fee for inactive license application: $125.00;

(31) administrative fee for inactive license renewal: $100.00;

(32) administrative fee for inactive license reinstatement application: $125.00;

(33) administrative fee for each duplicate license: $30.00;

(34) administrative fee for a single transcript or diploma from the former international institute of Chinese medicine, per copy: $50.00;

(35) administrative fees to cover the cost of photocopying, electronic data, lists and labels produced at the board office.

[11-3-81…7-1-96; A, 5-15-99; A, 2-17-00;

16.2.10.9 NMAC - Rn, 16 NMAC 2.10.10, 10-22-00; A, 1-1-01; A, 8-13-01; A, 3-2-03; A, 02-15-05; A, 9-25-06; A, 11-28-09; A, 11-28-10; A, 11-28-10; A, 02-08-13]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.12 NMAC, Section 6, effective 02-08-13.

16.2.12.6 OBJECTIVE: This part clarifies the [~~reasons~~] grounds for which the board may deny, suspend or revoke a license to practice acupuncture and oriental medicine or otherwise discipline a licensee, applicant, temporary licensee, applicant for temporary licensure, extern, extern supervisor or educational program in addition to those reasons listed in the act in Section 61-14A-17 NMSA 1978.

[7-1-96; 16.2.12.6 NMAC - Rn & A, 16 NMAC 2.12.6, 8-13-01; A, 02-08-13]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.15 NMAC, Sections 12, 13, 14 and 15, effective 02-08-13.

16.2.15.12 INACTIVE LICENSE [~~REINSTATMENT~~] REINSTATEMENT GENERAL PROVISIONS: An inactive licensee whose license has been inactive for varying periods up to [~~fifteen (15)~~] 15 years may apply to have [~~his or her~~] the inactive license reinstated. The following provisions apply:

A. [~~Any applicant~~] applicants for inactive license reinstatement who has been subject to any action or proceeding comprehended by Subsection C of 16.2.15.13 NMAC [~~(Part 15 of the rules)~~] may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-2-1, et seq;

B. [~~Any applicant~~] applicants for inactive license reinstatement who provides the board with false information or makes a false statement to the board may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq;

C. the board will not approve an inactive license reinstatement application from an inactive licensee who is under investigation for violations of the act or who has an active complaint pending before the board;

D. the board will not approve an inactive license reinstatement application from an impaired inactive licensee, or an impaired inactive licensee who is currently participating in a rehabilitation plan approved by the board until the rehabilitation plan is successfully completed. Impaired means the inability to practice acupuncture and oriental medicine with reasonable skill and safety to patients as a result of mental illness or habitual or excessive use or abuse of alcohol or drugs as defined in the Controlled Substances Act, Section 30-31-1, et seq., NMSA 1978; and

E. once an inactive license has been reinstated, the licensee may not apply for inactive license status again for five [~~(5)~~] years.

[16.2.15.12 NMAC - Rp, 16.2.15.12 NMAC, 02-15-05; A, 02-08-13]

16.2.15.13 INACTIVE LICENSE [~~REINSTATMENT~~] REINSTATEMENT APPLICATION - 5 YEARS OR LESS: An inactive licensee whose license has been inactive for five [~~(5)~~] years or less may apply to have [~~his or her~~] their license reinstated. Upon approval of an application for inactive license reinstatement that fulfills the requirements listed below, the board shall reinstate the inactive license. The application requirements for inactive license reinstatement shall be receipt of the following by the board:

A. the administrative fee for inactive license reinstatement application specified in 16.2.10 NMAC [~~(Part 10 of the rules)~~] paid by check or money order in U.S. funds; [~~and~~]

B. an inactive license reinstatement application that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number;

C. an affidavit as provided on the inactive license reinstatement application form as to whether the applicant since last renewing his [~~or her~~] license with the board:

(1) has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendancy of disciplinary proceedings or investigation for potential disciplinary proceedings; [~~or~~]

(2) has been a party to litigation in any jurisdiction related to the applicants practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice; [~~or~~]

(3) has been convicted of a felony in any jurisdiction, including any finding of guilt by a court or jury, or any plea of guilty, or any plea of nolo contendere or no contest, or plea or disposition of conditional discharge, and including any such proceeding in which a sentence was imposed, suspended or deferred; [~~or~~]

(4) is in arrears on a court-ordered child support payment; or

(5) has violated any provision of the act or the rules; [~~and~~]

D. an official license history since last renewing his or her license with the board, which is a certificate from each jurisdiction stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice acupuncture, oriental medicine or any other profession, including other health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act; [~~and~~]

E. an affidavit as provided on the inactive license renewal application form stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection C of 16.2.15.13 NMAC [~~(Section 13 of Part 15 of the rules)~~] may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17; and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-2-1, et seq; and

(2) an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.; [~~and~~]

F. an affidavit as provided on the inactive license renewal application form stating that the applicant understands that:

(1) the applicant is responsible for reading, understanding and complying

with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine; [and]

(2) the applicant must notify the board within [ten (10)] 10 days if the applicant's address changes; and

(3) the applicant shall not practice acupuncture and oriental medicine in New Mexico until the applicant receives a new active license issued by the board except as provided in Paragraph (2) of Subsection B of 16.2.15.14 NMAC or Paragraph (2) of Subsection D of 16.2.15.15 NMAC [(Part 15 of the rules); and];

G. an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant; and

H. satisfactory proof as determined by the board of completion of any continuing education requirements established by the board for all years the license was on inactive status.

[16.2.15.13 NMAC - Rp, 16.2.15.13 NMAC, 02-15-05; A, 02-08-13]

16.2.15.14 INACTIVE LICENSE [REINSTATMENT] REINSTATEMENT APPLICATION - 5 TO 10 YEARS: An inactive licensee whose license has been inactive for more than five [(5)] years and less than [ten (10)] 10 years may apply to have [his or her] their inactive license reinstated. Upon approval of an application for inactive license reinstatement that fulfills the requirements listed below, the board shall reinstate the inactive license. The application requirements for inactive license reinstatement shall be receipt of the following by the board:

A. fulfillment of the requirements of 16.2.15.13 NMAC [(Section 13 of Part 15 of the rules)]; and

B. either of the following:

(1) proof of clinical experience, as defined in 16.2.1.7 NMAC [(Section 7 of Part 1 of the rules),] for at least two out of every three years in another jurisdiction were the inactive licensee was licensed, certified, registered or legally recognized to practice acupuncture and oriental medicine, while the license was on inactive status; or

(2) proof of completion of 300 hours of clinical experience as an extern supervised by an externship supervisor as part of an externship as provided in 16.2.14 NMAC [(Part 14 of the rules)].

[16.2.15.14 NMAC - Rp, 16.2.15.14 NMAC, 02-15-05; A, 02-08-13]

16.2.15.15 INACTIVE LICENSE [REINSTATMENT] REINSTATEMENT APPLICATION - MORE THAN 10 YEARS: An inactive licensee whose license has been inactive for more than [ten (10)] 10 years may apply to have [his or her] their inactive license reinstated. Upon approval of an application for inactive license reinstatement that fulfills the requirements listed below, the board shall reinstate the inactive license. The application requirements for inactive license reinstatement shall be receipt of the following by the board:

A. fulfillment of the requirements of 16.2.15.13 NMAC [(Section 13 of Part 15 of the rules); and];

B. passing the clinical skills examination; [and]

C. passing the board approved jurisprudence examination; and

D. either of the following:

(1) proof of clinical experience, as defined in 16.2.1.7 NMAC [(Section 7 of Part 1 of the rules),] for at least two out of every three years in another jurisdiction [were] where the inactive licensee was licensed, certified, registered or legally recognized to practice acupuncture and oriental medicine, while the license was on inactive status; or

(2) proof of completion of 600 hours of clinical experience as an extern supervised by an externship supervisor as part of an externship as provided in 16.2.14 NMAC [(Part 14 of the rules)].

[16.2.15.15 NMAC - Rp, 16.2.15.15 NMAC, 02-15-05; A, 02-08-13]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.16 NMAC, Sections 17 and 18, effective 02-08-13.

16.2.16.17 AURICULAR DETOXIFICATION SPECIALIST SUPERVISOR REQUIREMENTS AND RESPONSIBILITIES:

A. The auricular detoxification specialist supervisor shall:

(1) be a licensed doctor of oriental medicine; [and]

(2) be registered with the board as an auricular detoxification specialist supervisor; [and]

(3) supervise no more than thirty (30) certified auricular detoxification specialists; [and]

(4) be accessible for consultation directly or by telephone to a certified auricular detoxification specialist under his or her supervision; [and]

(5) directly visit each certified auricular detoxification specialist under his [or her] supervision at the treatment program site at intervals of not more than six [(6)] weeks with the first visit occurring not more than two [(2)] weeks after supervision has begun [and] for the first year, then at least once per year thereafter at the supervisor's discretion with regular meetings by electronic methods (telephone, email, teleconferencing as examples) at intervals to be determined by the supervisor;

(6) be responsible for having each certified auricular detoxification specialist under [his or her] their supervision require each patient to complete a written, signed consent form outlining the responsibilities of the certified auricular detoxification specialist, the nature of the treatment, expected outcomes, and the scope and limits of practice; [and]

(7) ensure that the certified auricular detoxification specialist is following a board approved treatment protocol; and

(8) notify the board in writing, within five [(5) days] working days, when a certified auricular detoxification specialist enters into a supervisory relationship with the auricular detoxification specialist supervisor or the supervisory relationship is terminated; and

B. an auricular detoxification specialist supervisor shall be responsible for the delivery of competent, professional services and ensuring that patient consents are obtained; and

C. the auricular detoxification specialist supervisor shall terminate the supervisory relationship if the auricular detoxification specialist supervisor has the reasonable belief that the certified auricular detoxification specialist has violated the act or the rules; in such case the auricular detoxification specialist supervisor shall notify the board and the certified auricular detoxification specialist's employer, in writing, within five (5) working days that the supervisory relationship is terminated and give in writing the reasons for the termination.

[16.2.16.17 NMAC - N, 02-15-05; A, 9-25-06; A, 12-26-08; A, 02-08-13]

16.2.16.18 AURICULAR DETOXIFICATION SPECIALIST SUPERVISOR REGISTRATION APPLICATION: Upon approval of an auricular detoxification specialist supervisor registration application that fulfills the requirements listed below, the board shall issue an auricular detoxification specialist supervisor registration that will be valid until

July 31 following the initial registration. In the interim between regular board meetings, whenever a qualified applicant for auricular detoxification specialist supervisor registration has filed [~~his or her~~] their application and complied with all other requirements of this section, the board's [~~chairman~~] chair or an authorized representative of the board may grant an interim temporary auricular detoxification specialist supervisor registration that will suffice until the next regular meeting of the board. In no event shall the auricular detoxification specialist supervisor begin supervising a certified auricular detoxification specialist until the auricular detoxification specialist supervisor registration or interim temporary auricular detoxification specialist supervisor registration is issued by the board. The application requirements for an auricular detoxification specialist supervisor registration shall be receipt of the following by the board:

A. the auricular detoxification specialist supervisor registration application fee specified in 16.2.10 NMAC [~~(Part 10 of the rules); and~~];

B. proof of successful completion of an official national acupuncture detoxification association (NADA) course, or another board-approved training program, or a CV demonstrating experience, or education in the field of harm reduction and alcoholism, substance abuse and chemical dependency at least equivalent to that provided in a NADA training, and three [~~(3)~~] letters of reference attesting to the applicant's competence and experience in the field of auricular treatment for harm reduction, auricular treatment of alcoholism, substance abuse or chemical dependency; [~~and~~]

C. an application for auricular detoxification specialist supervisor registration that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number; [~~and~~]

D. the names of all certified auricular detoxification specialists certified with the board who are under the supervision of the applicant; [~~and~~]

E. an affidavit as provided on the auricular detoxification specialist supervisor registration application form stating that the applicant understands that:

(1) a certified auricular detoxification specialist is authorized to perform only the following, for the purpose of harm reduction or treating and preventing alcoholism, substance abuse or chemical dependency and only within a board approved substance abuse treatment program that demonstrates experience in disease prevention, harm reduction, or the treatment or prevention of alcoholism, substance abuse or chemical dependency:

(a) auricular acupuncture detoxification using the five auricular point national acupuncture detoxification association (NADA) procedure or other board approved procedure; and

(b) the application to the ear of simple board approved devices that do not penetrate the skin using the five auricular point national acupuncture detoxification association (NADA) procedure and that the board approved devices that do not penetrate the skin are: seeds, grains, stones, metal balls, magnets and any small sterilized, spherical object that in non-reactive with the skin; and

(2) the auricular detoxification specialist supervisor shall not be a member of the certified auricular detoxification specialist's family or a member of the certified auricular detoxification specialist's household or have a conflict of interest with the certified auricular detoxification specialist as defined in 16.2.16.21 NMAC [~~(Section 21 of Part 16 of the rules)~~]; exceptions may be made by the board on an individual basis due to limited availability of certified auricular detoxification specialists or supervisors; and

(3) the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of auricular detoxification and supervision; and

(4) the board may refuse to issue, or may suspend, or revoke any license or auricular detoxification specialist supervisor registration in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in Section 61-14A-17 NMSA 1978 of the act and clarified in 16.2.12 NMAC [~~(Part 12 of the rules)~~]; and

F. an affidavit as provided on the auricular detoxification specialist supervisor registration application form stating that the applicant understands that the auricular detoxification specialist supervisor shall:

(1) be registered with the board as an auricular detoxification specialist supervisor; [~~and~~]

(2) supervise no more than thirty (30) certified auricular detoxification specialists; [~~and~~]

(3) be accessible for consultation directly or by telephone to a certified auricular detoxification specialist under his or her supervision; [~~and~~]

(4) directly visit each certified auricular detoxification specialist under his [~~or her~~] supervision at the treatment program site at intervals of not more than six [~~(6)~~] weeks [~~and~~] for the first year, then at least once per year thereafter at the supervisor's discretion with regular meetings by electronic methods (telephone, email, teleconferencing as examples) at intervals to be determined by the supervisor;

(5) verify that each certified auricular detoxification specialist under his or her supervision has had each patient sign a consent form outlining the responsibilities of the certified auricular detoxification specialist, the nature of the treatment, expected outcomes, and the scope and limits of practice; [~~and~~]

(6) ensure that the certified auricular detoxification specialist is using a board approved treatment protocol; [~~and~~]

(7) notify the board in writing, within five (5) days working days, when a certified auricular detoxification specialist enters into a supervisory relationship with the auricular detoxification specialist supervisor or the supervisory relationship is terminated; [~~and~~]

(8) be responsible for the delivery of competent professional services and ensuring that patient consents have been obtained; [~~and~~]

(9) terminate the supervisory relationship if the auricular detoxification specialist supervisor has the reasonable belief that the certified auricular detoxification specialist has violated the act or the rules or if a conflict of interest arises during the supervision; the auricular detoxification specialist supervisor shall notify the board and the CADS's employer, in writing, within five [~~(5)~~] working days that the supervisory relationship is terminated and give in writing the reasons for the termination; and

(10) notify the board within [~~ten (10)~~] 10 days if the auricular detoxification supervisor's address changes or phone number changes.

[16.2.16.18 NMAC - N, 02-15-05; A, 12-26-08; A, 02-08-13]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.19 NMAC, Section 16 and new Section 17, effective 02-08-13.

16.2.19.16 TRANSITION PROVISIONS:

A. A doctor of oriental medicine, previously certified for extended prescriptive authority including prolotherapy, (Rx1) as of the effective date of this section, shall be automatically certified for basic injection therapy and prolotherapy using previously taught and appropriate injection routes and only substances listed in Paragraph (1) of Subsection F of 16.2.20.8 NMAC under the provisions of 16.2.19.10 NMAC.

B. A doctor of oriental medicine, previously certified for the

expanded prescriptive authority (Rx2) as of the effective date of this section, shall be automatically certified for:

(1) injection therapy under the provisions of 16.2.19.11 NMAC basic injection therapy certification is automatically superseded by injection therapy certification;

(2) intravenous therapy under the provisions of 16.2.19.12 NMAC; and

(3) bioidentical hormone therapy under the provisions of 16.2.19.13 NMAC.

[16.2.19.16 NMAC - N, 11-28-09; A, 02-08-13]

16.2.19.17 LICENSE DESIGNATION: The designation for expanded practice shall follow the license number on the license and shall reflect the respective modules of certification: Rx basic injection, Rx1 basic injection, Rx intravenous, Rx hormones.

[16.2.19.17 NMAC - N, 02-08-13]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.20 NMAC, Section 8, effective 02-08-13.

16.2.20.8 EXPANDED PRACTICE FORMULARIES GENERAL PROVISIONS: The following general provisions shall apply to the expanded practice general formulary and each specific formulary for each specific expanded practice category that follows in this rule:

A. drugs, dangerous drugs and controlled substances are defined in the New Mexico Drug, Device and Cosmetic Act and the New Mexico Controlled Substances Act;

B. all substances from threatened or endangered species, as determined by the convention on the international trade in endangered species of wild fauna and flora and the U.S. fish and wildlife service (http://endangered.fws.gov/), shall be automatically eliminated from expanded practice formularies;

C. definitions from the New Mexico Drug, Device and Cosmetic Act and the New Mexico Controlled Substances Act apply to the appropriate terms in the expanded practice formularies;

D. a doctor of oriental medicine shall comply with all federal and state laws that pertain to obtaining, possessing, prescribing, compounding, administering and dispensing any drug;

E. a substance shall only be approved for use if procured in compliance with all federal and state laws; the various expanded practice formularies do not supersede such laws; and

F. the following drugs, dangerous drugs and controlled substances are authorized in the modes of administration that are specified except as limited or restricted by federal or state law:

(1) **basic injection certification and prescriptive authority:** shall include topical vapocoolants the intradermal intramuscular, and subcutaneous injection of: homeopathic medicines; dextrose; enzymes except urokinase; hyaluronic acid; minerals; sarapin; sodium chloride; sterile water; and vitamins;

(2) **injection certification and prescriptive authority:**

(a) all substances from basic injection module; and

(b) all non-epidural, non intrathecal injection of: alcohol, amino acids, autologous blood and blood products and appropriate anticoagulant, live cell products, ozone, bee venom, beta glucans, caffeine collagenase, dextrose, dimethyl sulfoxide, gammaglobulin, glucose, glucosamine, glycerin, hyaluronidase, methylsulfonylmethane, phenol, phosphatidylcholine, procaine, sodium hyaluronate, sodium morrhuate, therapeutic serum;

(3) **intravenous certification and prescriptive authority:** amino acids, calcium ethylenediaminetetraacetic acid, dextrose, glutathione, homeopathic medicines, lactated ringers, minerals, phosphatidylcholine, sodium bicarbonate sodium chloride, sodium morrhuate, sterile water, water soluble vitamins, autologous blood and blood products with appropriate anticoagulant, live cell products, ozone, and ultraviolet radiation of blood with appropriate anticoagulant except that authority is not provided for total parenteral nutrition;

(4) **non-injectable bioidentical hormone certification and prescriptive authority:** 7-keto dehydroepiandrosterone (7 keto DHEA), cortisone, dehydroepiandrosterone (DHEA), dihydrotestosterone, estradiol (E2), estriol (E3), estrone (E1), hydrocortisone, pregnenolone, progesterone, testosterone, tetraiodothyronine (T4), levothyroxine, thyroxine (T4), & triiodothyronine (T3) combination, triiodothyronine, liothyronine (T3), desiccated thyroid;

G. applicable to any of the four certifications above: subcutaneous or intramuscular injection of epinephrine, inhaled oxygen, and additives necessary to stabilize, preserve or balance pH of approved substances.

[16.2.20.8 NMAC - Rp/E, 16.2.20.8 NMAC, 06/15/2010; Re-pr & A, 11/28/10; A, 02/08/13]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.70 NMAC, Section 7, effective 02/06/13.

20.2.70.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC (definitions), as used in this part the following definitions shall apply.

A. "Acid rain source" has the meaning given to "affected source" in the regulations promulgated under Title IV of the federal act, and includes all sources subject to Title IV of the federal act.

B. "Affected programs" means all states, local air pollution control programs, and Indian tribes and pueblos, that are within 50 miles of the source.

C. "Air pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the administrator has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used. This excludes water vapor, nitrogen (N2), oxygen (O2), and ethane.

D. "Air pollution control equipment" means any device, equipment, process or combination thereof, the operation of which would limit, capture, reduce, confine, or otherwise control regulated air pollutants or convert for the purposes of control any regulated air pollutant to another form, another chemical or another physical state. This includes, but is not limited to, sulfur recovery units, acid plants, baghouses, precipitators, scrubbers, cyclones, water sprays, enclosures, catalytic converters, and steam or water injection.

E. "Applicable requirement" means all of the following, as they apply to a Part 70 source or to an emissions unit at a Part 70 source (including requirements that have been promulgated or approved by the board or US EPA through rulemaking at the time of permit issuance but have future-effective compliance dates).

(1) Any standard or other requirement provided for in the New Mexico state implementation plan approved by US EPA, or promulgated by US EPA through rulemaking, under Title I of the federal act to implement the relevant requirements of the federal act, including any revisions to that plan promulgated in 40 CFR, Part 52.

(2) Any term or condition of any preconstruction permit issued pursuant

to regulations approved or promulgated through rulemaking under Title I, including Parts C or D, of the federal act, unless that term or condition is determined by the department to be no longer pertinent.

(3) Any standard or other requirement under Section 111 of the federal act, including Section 111(d).

(4) Any standard or other requirement under Section 112 of the federal act, including any requirement concerning accident prevention under Section 112(r)(7) of the federal act.

(5) Any standard or other requirement of the acid rain program under Title IV of the federal act or the regulations promulgated thereunder.

(6) Any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the federal act.

(7) Any standard or other requirement governing solid waste incineration under Section 129 of the federal act.

(8) Any standard or other requirement for consumer and commercial products under Section 183(e) of the federal act.

(9) Any standard or other requirement for tank vessels under Section 183(f) of the federal act.

(10) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal act, unless the administrator has determined that such requirements need not be contained in a Title V permit.

(11) Any national ambient air quality standard.

(12) Any increment or visibility requirement under Part C of Title I of the federal act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the federal act.

(13) Any regulation adopted by the board pursuant to the New Mexico Air Quality Control Act, Section 74-2-5(B) NMSA 1978.

F. "CFR" means the Code of Federal Regulations.

G. "Draft permit" means a version of a permit which the department offers for public participation or affected program review.

H. "Emission limitation" means a requirement established by US EPA, the board, or the department, that limits the quantity, rate or concentration, or combination thereof, of emissions of regulated air pollutants on a continuous basis, including any requirements relating to the operation or maintenance of a source to assure continuous reduction.

I. "Emissions allowable under the permit" means:

(1) any state or federally enforceable permit term or condition that establishes an emission limit (including a work practice standard) requested by the applicant and approved by the department or determined at issuance or renewal to be required by an applicable requirement; or

(2) any federally enforceable emissions cap that the permittee has assumed to avoid an applicable requirement to which the source would otherwise be subject.

J. "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any air pollutant listed pursuant to Section 112(b) of the federal act. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the federal act.

K. Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the New Mexico state implementation plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including 40 CFR 51.165 and 40 CFR 51.166.

L. "Final permit" means the version of an operating permit issued by the department that has met all review requirements of 20.2.70.400 NMAC - 20.2.70.499 NMAC.

M. "Fugitive emissions" are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

N. "General permit" means an operating permit that meets the requirements of 20.2.70.303 NMAC.

O. "Greenhouse gas" for the purpose of this part is defined as the aggregate group of the following six gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

P. "Hazardous air pollutant" means an air contaminant that has been classified as a hazardous air pollutant pursuant to the federal act.

Q. "Insignificant activities" means those activities which have been listed by the department and approved by the administrator as insignificant on the basis of size, emissions or production rate.

R. "Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person(s)) in which all of the pollutant emitting activities at such source belong to the same major group (i.e., all have the same two-digit code), as described in the standard industrial classification manual, 1987, and that is described in Paragraphs (1), (2) or (3) below.

(1) A major source under Section 112 of the federal act, which is defined as the following.

(a) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons or more per year of any hazardous air pollutant which has been listed pursuant to Section 112 (b) of the federal act, 25 or more tons per year of any combination of such hazardous air pollutants (including any major source of fugitive emissions of any such pollutant, as determined by rule by the administrator), or such lesser quantity as the administrator may establish by rule. Notwithstanding the preceding sentence, hazardous emissions from any oil or gas exploration or production well (with its associated equipment) and hazardous emissions from any pipeline compressor or pump station shall not be aggregated with hazardous emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

(b) For radionuclides, "major source" shall have the meaning specified by the administrator by rule.

(2) A major stationary source of air pollutants that directly emits or has the potential to emit, 100 or more tons per year of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this paragraph, unless the source belongs to one of the following categories of stationary sources:

(a) coal cleaning plants (with thermal dryers);

(b) kraft pulp mills;

(c) portland cement plants;

(d) primary zinc smelters;

(e) iron and steel mills;

(f) primary aluminum ore reduction plants;

(g) primary copper smelters;

(h) municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) hydrofluoric, sulfuric, or nitric acid plants;

(j) petroleum refineries;

(k) lime plants;

(l) phosphate rock processing plants;

(m) coke oven batteries;

(n) sulfur recovery plants;

(o) carbon black plants (furnace

process);

(p) primary lead smelters;

(q) fuel conversion plant;

(r) sintering plants;

(s) secondary metal production plants;

(t) chemical process plants;

(u) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(v) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) taconite ore processing plants;

(x) glass fiber processing plants;

(y) charcoal production plants;

(z) fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(aa) any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or 112 of the federal act.

(3) A major stationary source as defined in Part D of Title I of the federal act, including:

(a) for ozone non-attainment areas, sources with the potential to emit 100 tons or more per year of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," 50 tons or more per year in areas classified as "serious," 25 tons or more per year in areas classified as "severe," and 10 tons or more per year in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding, under Section 182(f)(1) or (2) of the federal act, that requirements under Section 182(f) of the federal act do not apply;

(b) for ozone transport regions established pursuant to Section 184 of the federal act, sources with the potential to emit 50 tons or more per year of volatile organic compounds;

(c) for carbon monoxide non-attainment areas (1) that are classified as "serious," and (2) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the administrator, sources with the potential to emit 50 tons or more per year of carbon monoxide; and

(d) for particulate matter (PM10) non-attainment areas classified as "serious," sources with the potential to emit 70 tons or more per year of PM10.

S. "Operating permit" or **"permit"** (unless the context suggests otherwise) means any permit or group of permits covering a source that is issued, renewed, modified or revised pursuant to this part.

T. "Operator" means the person or persons responsible for the overall operation of a facility.

U. "Owner" means the person or persons who own a facility or part of a facility.

V. "Part" means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the board.

W. "Part 70 source" means any source subject to the permitting requirements of this part, as provided in 20.2.70.200 NMAC - 20.2.70.299 NMAC.

X. "Permit modification" means a revision to an operating permit that meets the requirements of significant permit modifications, minor permit modifications, or administrative permit amendments, as defined in 20.2.70.404 NMAC.

Y. "Permittee" means the owner, operator or responsible official at a permitted Part 70 source, as identified in any permit application or modification.

Z. "Portable source" means any plant that is mounted on any chassis or skids and which can be moved by the application of a lifting or pulling force. In addition, there shall be no cable, chain, turnbuckle, bolt or other means (except electrical connections) by which any piece of equipment is attached or clamped to any anchor, slab, or structure, including bedrock, that must be removed prior to the application of a lifting or pulling force for the purpose of transporting the unit. Portable sources may include sand and gravel plants, rock crushers, asphalt plants and concrete batch plants which meet this criteria.

AA. "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable. The potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen.

AB. "Proposed permit" means the version of a permit that the department proposes to issue and forwards to the administrator for review in compliance with 20.2.70.402 NMAC.

AC. "Regulated air pollutant" means the following:

(1) nitrogen oxides, total suspended particulate matter, or any volatile organic compounds;

(2) any pollutant for which a national ambient air quality standard has been promulgated;

(3) any pollutant that is subject to any standard promulgated under Section 111 of the federal act;

(4) any class I or II substance subject to any standard promulgated under or established by Title VI of the federal act;

(5) any pollutant subject to a standard promulgated under Section 112 or any other requirements established under Section 112 of the federal act, including Sections 112(g), (j), and (r), including the following;

(a) any pollutant subject to requirements under Section 112(j) of the federal act; if the administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the federal act, any pollutant for which a subject source would be a major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the federal act; and

(b) any pollutant for which the requirements of Section 112(g)(2) of the federal act have been met, but only with respect to the individual source subject to a Section 112(g)(2) requirement; or

(6) any other pollutant subject to regulation as defined in Subsection AL of this section.

AD. "Renewal" means the process by which a permit is reissued at the end of its term.

AE. "Responsible official" means one of the following.

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either a) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), or b) the delegation of authority to such representative is approved in advance by the department.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(3) For a municipality, state, federal or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of US EPA).

(4) For an acid rain source: the designated representative (as defined in Section 402(26) of the federal act) in so

far as actions, standards, requirements, or prohibitions under Title IV of the federal act or the regulations promulgated thereunder are concerned, and for any other purposes under 40 CFR, Part 70.

AF. "Section 502(b)(10) changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

AG. "Shutdown" means the cessation of operation of any air pollution control equipment, process equipment or process for any purpose.

AH. "Solid waste incineration unit" means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). The term "solid waste incineration unit" does not include:

(1) incinerators or other units required to have a permit under Section 3005 of the federal Solid Waste Disposal Act;

(2) materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals;

(3) qualifying small power production facilities, as defined in Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), or qualifying cogeneration facilities, as defined in Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes; or

(4) air curtain incinerators, provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations established by the administrator by rule.

AI. "Startup" means the setting into operation of any air pollution control equipment, process equipment or process for any purpose.

AJ. "Stationary source" or **"source"** means any building, structure, facility, or installation, or any combination thereof that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the federal act.

AK. "Subsidiary" means a business concern which is owned or controlled by, or is a partner of, the applicant or permittee.

AL. "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the act, or a nationally-applicable regulation codified by the administrator in subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(1) "greenhouse gases" (GHGs) shall not be subject to regulation, unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tons per year [~~CO2~~]CO_2e equivalent emissions;

(2) the term "tons per year [~~CO2~~] CO_2e equivalent emissions" ([~~CO2e~~] CO_2e) shall represent the aggregate amount of GHGs emitted by the regulated activity, and shall be computed by multiplying the mass amount of emissions (tons per year), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR part 98 - Global Warming Potentials, and summing the resultant value for each gas; for purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material);

(3) if a federal court stays, invalidates or otherwise renders unenforceable by the US EPA, in whole or in part, the prevention of significant deterioration and Title V greenhouse gas tailoring rule (75 FR 31514, June 3, 2010), the definition "subject to regulation" shall be enforceable by the department only to the extent that it is enforceable by US EPA.

AM. "Temporary source" means any plant that is situated in one location for a period of less than one year, after which it will be dismantled and removed from its current site or relocated to a new site. A temporary source may be semi-permanent, which means that is does not have to meet the requirements of a portable source. Temporary sources may include well head compressors which meet this criteria.

AN. "Title I modification" means any modification under Sections 111 or 112 of the federal act and any physical change or change in method of operations that is subject to the preconstruction regulations promulgated under Parts C and D of the federal act.

[11/30/95; 20.2.70.7 NMAC - Rn, 20 NMAC 2.70.I.107, 06/14/02; A, 11/07/02; A, 09/06/06; A, 01/01/11; A, 02/06/13]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.74 NMAC, Sections 7 and 320, effective 02/06/13.

20.2.74.7 DEFINITIONS: Terms used but not defined in this part shall have the meaning given them by 20.2.2 NMAC (Definitions) (formerly AQCR 100). As used in this part the following definitions shall apply.

A. "Act" means the Federal Clean Air Act, as amended, 42 U. S. C. Sections 7401 et seq.

B. "Actual emissions" means the actual rate of emissions of a regulated new source review pollutant from an emissions unit, as determined in accordance with Paragraphs (2) through (4) of this subsection.

(1) This definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 20.2.74.320 NMAC. Instead, Subsections G and AR of this section shall apply for those purposes.

(2) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(3) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(4) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

C. "Administrator" means the administrator of the U.S. environmental protection agency (EPA) or

an authorized representative.

D. "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the class I federal area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairments and how these factors correlate with the following: 1) times of visitor use of the class I federal area; and 2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas as defined in 40 CFR 51.301 Definitions.

E. "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(1) the applicable standards as set forth in 40 CFR Parts 60 and 61;

(2) the applicable state implementation plan emissions limitation, including those with a future compliance date; or

(3) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

F. "Attainment area" means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling not to exceed any national ambient air quality standard for such pollutant, and is so designated under Section 107 (d) (1) (D) or (E) of the act.

G. "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review pollutant, as determined in accordance with the following.

(1) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraph (b) of this paragraph.

(2) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required either under this part or under a plan approved by the administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).

(d) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraphs (b) and (c) of this paragraph.

(3) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(4) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Paragraph (1) of this subsection, for other existing emissions units in accordance with the procedures contained in Paragraph (2) of this subsection, and for a new emissions unit in accordance with the procedures contained in Paragraph (3) of this subsection.

H. "Baseline area" means all lands designated as attainment or unclassifiable in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: equal to or greater than one microgram per cubic meter (annual average) for sulfur dioxide, nitrogen dioxide, or PM_{10}; or equal or greater than 0.3 microgram per cubic meter (annual average) for $PM_{2.5}$. The major source or major modification establishes the minor source baseline date (see the definition "minor source baseline date" in this part). Lands are designated as attainment or unclassifiable under Section 107(d)(1) (A)(ii) or (iii) of the act within each federal air quality control region in the state of New Mexico. Any baseline area established originally for TSP (total suspended particulates) increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments. A TSP baseline area shall not remain in effect if the department rescinds the corresponding minor source baseline date (see "minor source baseline date" in this part).

I. "Baseline concentration" means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date.

(1) A baseline concentration is determined for each pollutant for which a minor source baseline date is established and

shall include:

(a) the actual emissions, as defined in this section, representative of sources in existence on the applicable minor source baseline date, except as provided in Paragraph (2) of this subsection;

(b) the allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(2) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) actual emissions, as defined in this section, from any major stationary source on which construction commenced after the major source baseline date; and

(b) actual emissions increases and decreases, as defined in Subsection B of this section, at any stationary source occurring after the minor source baseline date.

J. "Begin actual construction" means, in general, initiation of physical onsite construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

K. "Best available control technology (BACT)" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each regulated pollutant which would be emitted from any proposed major stationary source or major modification, which the secretary determines is achievable on a case-by-case basis. This determination will take into account energy, environmental, and economic impacts and other costs. The determination must be achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of such pollutants. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means which achieve equivalent results.

L. "Building, structure, facility, or installation" means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same first two digit code) as described in the standard industrial classification (SIC) manual, 1972, as amended by the 1977 supplement (U. S. government printing office stock numbers 4101-0066 and 003-005-00176-0, respectively) or any superseding SIC manual.

M. "Class I federal area" means any federal land that is classified or reclassified as "class I" as described in 20.2.74.108 NMAC.

N. "Commence" means, as applied to construction of a major stationary source or major modification, that the owner or operator has all necessary preconstruction approvals or permits and has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake and complete, within a reasonable time, a program of actual construction.

O. "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

P. "Continuous emissions monitoring system (CEMS)" means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

Q. "Continuous emissions rate monitoring system (CERMS)" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

R. "Continuous parameter monitoring system (CPMS)" means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O2 or CO2 concentrations), and to record average operational parameter value(s) on a continuous basis.

S. "Department" means the New Mexico environment department.

T. "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

U. "Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated new source review pollutant and includes an electric utility steam generating unit as defined in this section. For purposes of this section, there are two types of emissions units as described in the following.

(1) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

(2) An existing emissions unit is any emissions unit that does not meet the requirements in Paragraph (1) of this subsection. A replacement unit, as defined in this section, is an existing unit.

V. "Federal land manager" means, with respect to any lands in the United States, a federal level cabinet secretary of a federal level department (e.g. interior dept.) with authority over such lands.

W. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including:

(1) those requirements developed pursuant to 40 CFR Parts 60 and 61;

(2) requirements within any applicable state implementation plan;

(3) any permit requirements established pursuant to 40 CFR 52.21; or

(4) under regulations approved pursuant to 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40 CFR 51.166.

X. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

Y. "Greenhouse gas" for the purpose of this part is defined as the aggregate group of the following six gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

Z. "High terrain" means any area having an elevation nine hundred (900) feet or more above the base of a source's stack.

AA. "Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

AB. "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice. But such system would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

AC. "Low terrain" means any area other than high terrain.

AD. "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following:

(1) the most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(2) the most stringent emissions limitation which is achieved in practice by such class or category of stationary source; this limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

AE. "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in this section) of a regulated new source review pollutant (as defined in this section); and a significant net emissions increase of that pollutant from the major stationary source. Any significant emissions increase (as defined in this section) from any emissions units or net emissions increase (as defined in this section) at a major stationary source that is significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

(1) A physical change or change in the method of operation shall not include:

(a) routine maintenance, repair, and replacement;

(b) use of an alternative fuel or raw material by reason of an order under Section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) use of an alternative fuel by reason of an order or rule under Section 125 of the act;

(d) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) use of an alternative fuel or raw material by a stationary source which:

(i) the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166; or

(ii) the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(f) an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166;

(g) any change in ownership at a stationary source;

(h) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(i) the state implementation plan for the state in which the project is located; and

(ii) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;

(i) the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit; this exemption shall apply on a pollutant-by-pollutant basis;

(j) the reactivation of a very clean coal-fired electric utility steam generating unit.

(2) This definition shall not apply with respect to a particular regulated new source review pollutant when the major stationary source is complying with the requirements under 20.2.74.320 NMAC for a PAL for that pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.2.74.320 NMAC shall apply.

AF. "Major source baseline date" means:

(1) in the case of PM_{10} and sulfur dioxide, January 6, 1975;

(2) in the case of nitrogen dioxide, February 8, 1988; and

(3) in the case of $PM_{2.5}$, October 20, 2010.

AG. "Major stationary source" means the following.

(1) Any stationary source listed in table 1 (20.2.74.501 NMAC) which emits, or has the potential to emit, emissions equal to or greater than one hundred (100) tons per year of any regulated new source review pollutant.

(2) Any stationary source not listed in table 1 (20.2.74.501 NMAC) and which emits or has the potential to emit two hundred fifty (250) tons per year or more of any regulated new source review pollutant.

(3) Any physical change that would occur at a stationary source not otherwise qualifying under Paragraphs (1) or (2) of this subsection if the change would constitute a major stationary source by itself.

(4) A major source that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone.

(5) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the stationary source categories found in Table 1 (20.2.74.501 NMAC) or any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the act.

AH. "Mandatory class I federal area" means any area identified in the Code of Federal Regulations (CFR), 40 CFR Part 81, Subpart D. See 20.2.74.108 NMAC for a list of these areas in New Mexico.

AI. "Minor source baseline date" means the earliest date after the trigger date on which the owner or operator of a major stationary source or major modification subject to 40 CFR 52.21 or to this part submits a complete application under the relevant regulations.

(1) The trigger date is:

(a) in the case of PM_{10} and sulfur dioxide, August 7, 1977;

(b) in the case of nitrogen dioxide, February 8, 1988; and

(c) in the case of $PM_{2.5}$, October 20, 2011.

(2) Any minor source baseline date established originally for the TSP (total suspended particulates) increments shall

remain in effect and shall apply for purposes of determining the amount of available PM-10 increments. The department may rescind any TSP minor source baseline date where it can be shown, to the department 's satisfaction, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date, did not result in a significant amount of PM-10 emissions.

AJ. "Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast or coloration.

AK. "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the New Mexico state implementation plan.

AL. "Net emissions increase" means, with respect to any regulated new source review pollutant emitted by a major stationary source, the following.

(1) The amount by which the sum of the following exceeds zero.

(a) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Subsection D of 20.2.74.200 NMAC.

(b) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph shall be determined as provided in Subsection G, except that Subparagraph (c) of Paragraph (1) and Subparagraph (d) of Paragraph (2) of Subsection G of this section shall not apply.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if:

(a) it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs; and

(b) the department has not relied on it in issuing a permit for the source under regulations approved pursuant to this section, which permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(5) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(6) A decrease in actual emissions is creditable only to the extent that:

(a) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) it is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

(c) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(7) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(8) Paragraph (2) of Subsection B of this section shall not apply for determining creditable increases and decreases.

AM. "Nonattainment area" means an area which has been designated under Section 107 of the federal Clean Air Act as nonattainment for one or more of the national ambient air quality standards by EPA.

AN. "Portable stationary source" means a source which can be relocated to another operating site with limited dismantling and reassembly.

AO. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollutant control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitations or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

AP. "Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O2 or CO2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

AQ. "Project" means a physical change in, or change in method of operation of, an existing major stationary source.

AR. "Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated new source review pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated new source review pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source. In determining the projected actual emissions (before beginning actual construction), the owner or operator of the major stationary source:

(1) shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(2) shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

(3) shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Subsection G of this section and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(4) in lieu of using the method set out in Paragraphs (1) through (3) of this subsection, may elect to use the emissions unit's potential to emit, in tons per year, as defined in Subsection AR of this section.

AS. "Regulated new source review pollutant", for purposes of this part, means the following:

(1) any pollutant for which a national ambient air quality standard has been promulgated and any pollutant identified under this paragraph (Paragraph (1) of Subsection AS of 20.2.74.7 NMAC) as a constituent or precursor to such pollutant; precursors identified by the administrator for purposes of NSR are the following:

(a) volatile organic compounds

and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;

(b) sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas;

(c) nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations;

(d) volatile organic compounds are presumed not to be precursors to $PM_{2.5}$ in any attainment or unclassifiable area, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations;

(2) any pollutant that is subject to any standard promulgated under Section 111 of the act;

(3) any class I or II substance subject to a standard promulgated under or established by title VI of the act; or

(4) any pollutant that otherwise is subject to regulation under the act as defined in Subsection AZ of this section;

(5) notwithstanding Paragraphs (1) through (4) of Subsection AS of this section, the term "regulated NSR pollutant" shall not include any or all hazardous air pollutants either listed in Section 112 of the act, or added to the list pursuant to Section 112(b)(2) of the act, and which have not been delisted pursuant to Section 112(b)(3) of the act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the act;

(6) particulate matter (PM) emissions, $PM_{2.5}$ emissions, and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures; on or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, PM2.5 and PM10 in PSD permits; compliance with emissions limitations for PM, PM2.5 and PM10 issued prior to this date shall not be based on condensable particular matter unless required by the terms and conditions of the permit or the applicable implementation plan; applicability determinations made prior to this date without accounting for condensable particular matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particular matter to be included.

AT. "Replacement unit" means an emission unit for which all of the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(1) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(2) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(3) The replacement unit does not change the basic design parameter(s) of the process unit.

(4) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

AU. "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general areas as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

AV. "Secretary" means the cabinet level secretary of the New Mexico environment department or his or her successor.

AW. "Significant" means in reference to a net emissions increase or the potential of a source to emit air pollutants, a rate of emission that would equal or exceed any of the rates listed in table 2 (20.2.74.502 NMAC).

AX. "Significant emissions increase" means, for a regulated new source review pollutant, an increase in emissions that is significant (as defined in Subsection AW of this section) for that pollutant.

AY. "Stationary source" means any building, structure, facility, or installation which emits, or may emit, any regulated new source review pollutant.

AZ. "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the act, or a nationally-applicable regulation codified by the administrator in subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(1) "greenhouse gases (GHGs)" shall not be subject to regulation except as provided in paragraphs AZ(4) and (5) of this section and shall not be subject to regulation if the stationary source maintains its total source-wide emissions below the GHG PAL level, meets the requirements in 20.2.74.320 NMAC, and complies with the PAL permit containing the GHG PAL;

(2) for purposes of Paragraphs (3) through (5) of Subsection AZ of this section, the term "tons per year [~~CO2~~] CO_2 equivalent emissions ([~~CO2e~~] CO_2e)" shall represent an amount of GHGs emitted, and shall be computed as follows:

(a) multiplying the mass amount of emissions (tons per year), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at table A-1 to subpart A of 40 CFR part 98 - Global Warming Potentials; for purposes of this subparagraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material);

(b) sum the resultant value from Subparagraph (a) of Paragraph (2) of Subsection AZ of this section for each gas to compute a tons per year [~~CO2e~~] CO_2e;

(3) the term "emissions increase" as used in Paragraphs (4) and (5) of Subsection AZ of this section shall mean that both a significant emissions increase (as calculated using the procedures in Subsection D of 20.2.74.200 NMAC) and a significant net emissions increase (as defined in Subsections AL, AW and AX of 20.2.74.7 NMAC) occur; for the pollutant GHGs, an emissions increase shall be based on tons per year [~~CO2e~~] CO_2e , and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tons per year [~~CO2e~~] CO_2e instead of applying the value in table 2 of 20.2.74 NMAC;

(4) beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(a) the stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tons per year [~~CO2e~~] CO_2e or more; or

(b) the stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of 75,000 tons per year [~~CO2e~~] CO_2e or more; and

(5) beginning July 1, 2011, in addition to the provisions in Paragraph (4) of this subsection, the pollutant GHGs shall also be subject to regulation:

(a) at a new stationary source that will emit or have the potential to emit 100,000 tons per year [~~CO2e~~] CO_2e ; or

(b) at an existing stationary source that emits of has the potential to emit 100,000 tons per year [~~CO2e~~] CO_2e , when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tons per year [~~CO2e~~] CO_2e or more;

(6) if a federal court stays, invalidates or otherwise renders unenforceable by the US EPA, in whole or in part, the prevention of significant deterioration and Title V greenhouse gas tailoring rule (75 FR 31514, June 3, 2010), the definition "subject to regulation" shall be enforceable by the department only to the extent that it is enforceable by US EPA.

BA. "Temporary source" means a stationary source which changes its location or ceases to exist within two years from the date of initial start of operations.

BB. "Visibility impairment" means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

BC. "Volatile organic compound (VOC)" means any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the administrator designates as having negligible photochemical reactivity.

[7/20/95; 01/01/00; 20.2.74.7 NMAC - Rn, 20 NMAC 2.74.107, 10/31/02; A, 1/22/06; A, 8/31/09; A, 1/1/11; A, 6/3/11; A, 02/06/13]

20.2.74.320 ACTUALS PLANTWIDE APPLICABILITY LIMITS (PALs)

A. Applicability.

(1) The department may approve the use of an actuals PAL, including for GHGs on either a mass basis or a CO_2e basis, for any existing major stationary source or any other existing GHG-only source if the PAL meets the requirements in this section. The term "PAL" shall mean "actuals PAL" throughout this section.

(2) Any physical change in or change in the method of operation of a major stationary source or a GHG-only source that maintains its total source-wide emissions below the PAL level, meets the requirements of this section, and complies with the PAL permit:

(a) is not a major modification for the PAL pollutant;

(b) does not have to be approved through the requirements of this part; and

(c) is not subject to the provisions in Subsection D of 20.2.74.300 NMAC (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major new source review program); and

(d) does not make GHGs subject to regulation as defined by Subsection AZ of 20.2.74.7 NMAC.

(3) Except as provided under Subparagraph (c) of Paragraph (2) of this subsection, a major stationary source or GHG-only source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. Definitions applicable to this section.

(1) Actuals PAL for a major stationary source means a PAL based on the baseline actual emissions (as defined in 20.2.74.7 NMAC) of all emissions units (as defined in 20.2.74.7 NMAC) at the source, that emit or have the potential to emit the PAL pollutant. For a GHG-only source, "actuals PAL" means a PAL based on the baseline actual emissions (as defined in Paragraph (13) of this subsection) of all emissions units (as defined in Paragraph (14) of this subsection) at the source, that emit or have the potential to emit GHGs.

(2) Allowable emissions means "allowable emissions" as defined in 20.2.74.7 NMAC, except as this definition is modified in accordance with the following.

(a) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(b) An emissions unit's potential to emit shall be determined using the definition in 20.2.74.7 NMAC, except that the words "or enforceable as a practical matter" should be added after "federally enforceable".

(3) Small emissions unit means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in Subsection AW of 20.2.74.7 NMAC or in the act, whichever is lower. For a GHG PAL issued on a CO_2e basis, "small emissions unit" means an emissions unit that emits or has the potential to emit less than the amount of GHGs on a CO_2e basis defined as "significant" for the purposes of Paragraph (3) of Subsection AZ of 20.2.74.7 NMAC at the time the PAL permit is being issued.

(4) Major emissions unit means:

(a) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(b) any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the act for nonattainment areas; for example, in accordance with the definition of major stationary source in Section 182(c) of the act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year; or

(c) for a GHG PAL issued on a CO_2e basis, any emissions unit that emits or has potential to emit equal to or greater than the amount of GHGs on a CO_2e basis that would be sufficient for a new source to trigger permitting requirements under Subsection AZ of 20.2.74.7 NMAC at the time the PAL permit is being issued.

(5) Plantwide applicability limitation (PAL) means an emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO_2e for a CO_2e-based GHG emission limitation, for a pollutant at a major stationary source or GHG-only source, that is enforceable as a practical matter and established source-wide in accordance with this section.

(6) PAL effective date generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(7) PAL effective period means the period beginning with the PAL effective date and ending 10 years later.

(8) PAL major modification means, notwithstanding the definitions for major modification [~~and~~], net emissions increase, and subject to regulation in 20.2.74.7 NMAC, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(9) PAL permit means the major new source review permit, the minor new source review permit, or the state operating permit under a program that is approved into the plan, or the title V permit issued by the department that establishes a PAL for a major stationary source or a GHG-only source.

(10) PAL pollutant means the pollutant for which a PAL is established at

a major stationary source or a GHG-only source. For a GHG-only source, the only available PAL pollutant is greenhouse gases.

(11) Significant emissions unit means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in Subsection AW of 20.2.74.7 NMAC or in the act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in Paragraph (4) of this subsection. For a GHG PAL issued on a CO_2e basis, "significant emissions unit" means any emissions unit that emits or has the potential to emit GHGs on a CO_2e basis in amounts equal to or greater than the amount that would qualify the unit as a small emissions unit as defined in Paragraph (3) of this subsection, but less than the amount that would qualify the unit as a major emissions unit as defined in Subparagraph (c) of Paragraph (4) of this subsection.

(12) GHG-only source means any existing station source that emits or has the potential to emit GHGs in the amount equal to or greater than the amount of GHGs on a mass basis that would be sufficient for a new source to trigger permitting requirements for GHGs under Subsection AG of 20.2.74.7 NMAC and the amount of GHGs on a CO_2e basis that would be sufficient for a new source to trigger permitting requirements for GHGs under Subsection AZ of 20.2.74.7 NMAC at the time the PAL permit is being issued, but does not emit or have the potential to emit any other non-GHG regulated new source review pollutant at or above the applicable major source threshold. A GHG-only source may only obtain a PAL for GHG emissions under 20.2.74.320 NMAC.

(13) Baseline actual emissions for a GHG PAL means the average rate, in tons per year CO_2e or tons per year GHG, as applicable, at which the emissions unit actually emitted GHGs during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required under this section or by the department for a permit required by a plan, whichever is earlier. For any existing electric utility steam generating unit, "baseline actual emissions" for a GHG PAL means the average rate, in tons per year CO_2e or tons per year GHG, as applicable, at which the emissions unit actually emitted the GHGs during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding either the date the owner or operator begins actual construction of the project, except that the department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the stationary source must currently comply, had such stationary source been required to comply with such limitations during the consecutive 24-month period.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual GHG emissions and for adjusting this amount if required by Subparagraphs (b) and (c) of Paragraph (13) of this subsection.

(14) Emissions unit with respect to GHGs means any part of a stationary source that emits or has the potential to emit GHGs. For purposes of this section, there are two types of emissions units as described in the following:

(a) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

(b) An existing emissions unit is any emissions unit that does not meet the requirements in subparagraph (a) of this paragraph.

(15) Minor source means any stationary source that does not meet the definition of major stationary source in Subsection AG of 20.2.74.7 NMAC for any pollutant at the time the PAL is issued.

C. Permit application requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source or a GHG-only source shall submit the following information to the department for approval.

(1) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

(2) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Subsection M of this section.

(4) As part of a permit application requesting a GHG PAL, the owner or operator of a major stationary source or a GHG-only source shall submit a statement by the source owner or operator that clarifies whether the source is an existing major source as defined in Paragraphs (1) and (2) of Subsection AG of 20.2.74.7 NMAC or a GHG-only source as defined in Paragraph (12) of Subsection B of this subsection.

D. General requirements for establishing PALs.

(1) The department may establish a PAL at a major stationary source or a GHG-only source, provided that at a minimum, the following requirements are met.

(a) The PAL shall impose an annual emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO_2e, that is enforceable as a practical matter, for the entire major stationary source or GHG-only source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source or GHG-only source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source or GHG-only source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(b) The PAL shall be established in a PAL permit that meets the public participation requirements in Subsection E of this section.

(c) The PAL permit shall contain all the requirements of Subsection G of this section.

(d) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source or GHG-only source.

(e) Each PAL shall regulate emissions of only one pollutant.

(f) Each PAL shall have a PAL effective period of 10 years.

(g) The owner or operator of the major stationary source or GHG-only source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Subsections L through N of this section for each emissions unit under the

PAL through the PAL effective period.

(2) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 40 CFR 51.165(a)(3)(ii) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

E. Public participation requirements for PALs. PALs for existing major stationary sources or GHG-only sources shall be established, renewed, or increased, through a procedure that is consistent with 40 CFR 51.160 and 161. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The department must address all material comments before taking final action on the permit.

F. Setting the 10-year actuals PAL level.

(1) Except as provided in Paragraph (2) of this subsection, the actuals PAL level for a major stationary source or GHG-only source shall be established as the sum of the baseline actual emissions (as defined in 20.2.74.7 NMAC or, for GHGs, Paragraph (13) of Subsection B of 20.2.74.320 NMAC) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under Subsection AW of 20.2.74.7 NMAC or under the act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NOx to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(2) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in Paragraph (1) of this subsection, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

(3) For CO_2e based GHG PAL, the actuals PAL level shall be established as the sum of the GHGs baseline actual emissions (as defined in Paragraph (13) of Subsection B of 20.2.74.320 NMAC) of GHGs for each emissions unit at the source, plus an amount equal to the amount defined as "significant" on a CO_2e basis for the purposes of Subsection AZ of 20.2.74.7 NMAC at the time the PAL permit is being issued. When establishing the actuals PAL level for a CO_2e-based PAL, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level (in tons per year CO_2e) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or New Mexico regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit.

G. Contents of the PAL permit. The PAL permit shall contain, at a minimum, the following information.

(1) The PAL pollutant and the applicable source-wide emission limitation in tons per year or tons per year CO_2e.

(2) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(3) Specification in the PAL permit that if a major stationary source or GHG-only source owner or operator applies to renew a PAL in accordance with Subsection J of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department.

(4) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

(5) A requirement that, once the PAL expires, the major stationary source or GHG-only source is subject to the requirements of Subsection I of this section.

(6) The calculation procedures that the major stationary source or GHG-only source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection C of this section.

(7) A requirement that the major stationary source or GHG-only source owner or operator monitor all emissions units in accordance with the provisions under Subsection M of this section.

(8) A requirement to retain the records required under Subsection M of this section on site. Such records may be retained in an electronic format.

(9) A requirement to submit the reports required under Subsection N of this section by the required deadlines.

(10) Any other requirements that the department deems necessary to implement and enforce the PAL.

(11) A permit for a GHG PAL issued to a GHG-only source shall also include a statement denoting that GHG emissions at the source will not be subject to regulation under Subsection AZ of 20.2.74.7 NMAC as long as the source complies with the PAL.

H. PAL effective period and reopening of the PAL permit.

(1) PAL effective period. The PAL effective period shall be 10 years.

(2) Reopening of the PAL permit.

(a) During the PAL effective period, the department shall reopen the PAL permit to:

(i) correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(ii) reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 CFR 51.165(a)(3)(ii); and

(iii) revise the PAL to reflect an increase in the PAL as provided under Subsection K of this section.

(b) The department may reopen the PAL permit for the following:

(i) to reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(ii) to reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the department may impose on the major stationary source or GHG-only source under the plan; and

(iii) to reduce the PAL if the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an AQRV that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

(c) Except for the permit reopening in Item (i) of Subparagraph (a) of Paragraph (2) of this subsection for the correction of typographical/calculation errors that do not increase the PAL level, all reopenings shall be carried out in accordance with the public participation requirements of Subsection E of this section.

I. Expiration of a PAL. Any PAL that is not renewed in accordance with the procedures in Subsection J of this section shall expire at the end of the PAL effective period, and the following requirements shall apply.

(1) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures.

(a) Within the time frame specified for PAL renewals in Paragraph (2) of Subsection J of this section, the major stationary source or GHG-only source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Paragraph (5) of Subsection J of this section, such distribution shall be made as if the PAL had been adjusted.

(b) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(2) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

(3) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under Subparagraph (b) of Paragraph (1) of Subsection I of this section, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(4) Any physical change or change in the method of operation at the major stationary source or GHG-only source will be subject to major new source review requirements if such change meets the definition of major modification in 20.2.74.7 NMAC.

(5) The major stationary source or GHG-only source owner or operator shall continue to comply with any New Mexico or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to Subsection D of 20.2.74.300 NMAC, but were eliminated by the PAL in accordance with the provisions in Subparagraph (c) of Paragraph (2) of Subsection A of this section.

J. Renewal of a PAL.

(1) The department shall follow the procedures specified in Subsection E of this section in approving any request to renew a PAL for a major stationary source or GHG-only source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the department.

(2) Application deadline. A major stationary source or GHG-only source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source or GHG-only source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(3) Application requirements. The application to renew a PAL permit shall contain the following information.

(a) The information required in Subsection C of this section.

(b) A proposed PAL level.

(c) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

(d) Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

(4) PAL adjustment. In determining whether and how to adjust the PAL, the department shall consider the options outlined in Subparagraphs (a) and (b) of this paragraph. However, in no case may any such adjustment fail to comply with Subparagraph (c) of this paragraph.

(a) If the emissions level calculated in accordance with Subsection F of this section is equal to or greater than 80 percent of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in Subparagraph (b) of this paragraph.

(b) The department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the department in its written rationale.

(c) Notwithstanding Subparagraphs (a) and (b) of this paragraph:

(i) if the potential to emit of the major stationary source or GHG-only source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(ii) the department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source or GHG-only source has complied with the provisions of Subsection K of this section (increasing a PAL).

(5) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

K. Increasing a PAL during the PAL effective period.

(1) The department may increase a PAL emission limitation only if the major stationary source or GHG-only source complies with the following provisions.

(a) The owner or operator of the major stationary source or GHG-only source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary or GHG-only source's emissions to equal or exceed its PAL.

(b) As part of this application, the major stationary source or GHG-only source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s), exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(c) The owner or operator obtains a major new source review permit for all

emissions unit(s) identified in Subparagraph (a) of this paragraph, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major new source review process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

(d) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(2) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with Subparagraph (b) of Paragraph (1) of this subsection), plus the sum of the baseline actual emissions of the small emissions units.

(3) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of Subsection E of this section.

L. Monitoring requirements for PALs.

(1) General requirements.

(a) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time or CO_2e per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(b) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Paragraph (2) of this subsection and must be approved by the department.

(c) Notwithstanding Subparagraph (b) of this paragraph, you may also employ an alternative monitoring approach that meets Subparagraph (a) of this paragraph if approved by the department.

(d) Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

(2) The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in Paragraphs (3) through (9) of this subsection:

(a) mass balance calculations for activities using coatings or solvents;

(b) CEMS;

(c) CPMS or PEMS; and

(d) emission factors.

(3) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(a) provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(b) assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(c) where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(4) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B; and

(b) CEMS must sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.

(5) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) the CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(b) each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(6) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(a) all emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(b) the emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(c) if technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the department determines that testing is not required.

(7) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(8) Notwithstanding the requirements in Paragraphs (3) through (7) of this subsection, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

(a) establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(b) determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(9) Revalidation. All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. Such testing must occur at least once every 5 years after issuance of the PAL.

M. Recordkeeping requirements.

(1) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

(2) The PAL permit shall require an owner or operator to retain a copy of the following records, for the duration of the PAL effective period plus 5 years:

(a) a copy of the PAL permit application and any applications for revisions to the PAL; and

(b) each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

N. Reporting and notification requirements. The owner or operator shall submit semi-annual

monitoring reports and prompt deviation reports to the department in accordance with the applicable title V operating permit program. The reports shall meet the following requirements.

(1) Semi-annual report. The semi-annual report shall be submitted to the department within 30 days of the end of each reporting period. This report shall contain the following information:

(a) the identification of owner and operator and the permit number;

(b) total annual emissions (expressed on a mass-basis in tons per year, or expressed in tons per year CO_2e) based on a 12-month rolling total for each month in the reporting period recorded pursuant to Paragraph (1) of Subsection M of this section;

(c) all data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions;

(d) a list of any emissions units modified or added to the major stationary source or GHG-only source during the preceding 6-month period;

(e) the number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken;

(f) a notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Paragraph (7) of Subsection L of this section; and

(g) a signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(2) Deviation report. The major stationary source or GHG-only source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to Paragraph (2) of Subsection E of 20.2.70.302 NMAC shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing Paragraph (2) of Subsection E of 20.2.70.302 NMAC. The reports shall contain the following information:

(a) the identification of owner and operator and the permit number;

(b) the PAL requirement that experienced the deviation or that was exceeded;

(c) emissions resulting from the deviation or the exceedance; and

(d) a signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(3) Revalidation results. The owner or operator shall submit to the department the results of any revalidation test or method within three months after completion of such test or method.

O. Transition requirements.

(1) The department may not issue a PAL that does not comply with the requirements in this section after the administrator has approved regulations incorporating these requirements into a plan.

(2) The department may supersede any PAL which was established prior to the date of approval of the plan by the administrator with a PAL that complies with the requirements of this section.

[20.2.74.320 NMAC - N, 1/22/06; A, 1/1/11; A, 02/06/13]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.30.13 NMAC, Sections 2, 6, 7 and 8, and adding new Section 11 effective 1-31-2013.

19.30.13.2 SCOPE: Issue permit for the use of artificial light as provided [~~is 17-2-31 E~~] in 17-2-31.D NMSA 1978.

[19.30.13.2 NMAC - N, 11/30/07; A, 1/13/31]

19.30.13.6 OBJECTIVE: To permit, authorize and regulate any person requesting a permit for or using artificial light within New Mexico as exempted [~~17-2-31.E~~] by 17-2-31.D NMSA 1978.

[19.30.13.6 NMAC - N, 11/30/07; A, 1/31/13]

19.30.13.7 DEFINITIONS:

A. "History of violation" means any one court conviction or multiple convictions totaling up to 20 administrative points against a person violating any federal or state hunting law or regulation during the three-year period immediately preceding the application for permitting, provided that the violation committed, if committed in New Mexico, would equal or exceed revocation requirements as found in 19.31.2 NMAC. It shall also include any conviction for any felony, no matter when the felony was committed. It shall include any convictions as an accessory for the described crimes.

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

C. "Division" shall mean the New Mexico department of game and fish, law enforcement division.

D. "Landowner" shall be a person who owns or controls private land in New Mexico.

E. "Permit" shall mean an official document issued by the department for purposes exempted by [~~17-2-31.E~~] 17-2-31.D NMSA 1978.

F. "Department authorization" shall mean approval by the department of game and fish to use artificial light while hunting or taking a protected species as specified in this rule.

[19.30.13.7 NMAC - N, 11/30/07; A, 1/31/13]

19.30.13.8 PERMIT PROCEDURES AND REQUIREMENTS:

A. Application form and permit: Permits to use artificial light as defined in Section 17-2-31 NMSA 1978 and Title 19 Chapter 30 Part 13, shall be made only on forms provided by the department as prescribed and approved by the director.

B. Application deadlines: All applications must be received at least 5 working days before the requested period. All materials will be forwarded to the division for further background checking and processing.

C. Signature: Applications shall be signed by the applicant.

D. Provide verifiable written permission from a landowner(s).

E. Permit fee:

(1) All permit fees shall be submitted with the application.

(2) All permit fees are non refundable.

(3) Each permit fee shall be $15.00.

F. Applicant must be at least 21 years of age.

G. Applicant cannot have a history of violation of any related federal or state game and fish laws or regulations and applicant must give appropriate proof that no conviction exists.

H. A permit shall only be valid for the specified dates and area(s) listed on the permit and only valid on the private land with accompanying written permission. When participating in exemption activities, the permittee must possess a valid permit and valid written, landowner permission and produce both when requested by a conservation officer.

I. A permit shall be valid for maximum of 14 consecutive

days. Permits may be extended only once and extensions are limited to 30 days. Extensions must be based on emergency or exigent circumstances and must be approved by the director.

J. A person may hold more than 1 permit provided that all of the application and permitting process is followed and approved.

[19.30.13.8 NMAC - N, 11/30/07; A, 1/31/13]

19.30.13.11 DEPARTMENT AUTHORIZATION - RACCOON HUNTING: A validly licensed furbearer hunter is authorized by the department to hunt for and take raccoons by use of artificial light while hunting at night with a rim-fire rifle or handgun no greater in size than a .22 caliber, shotgun, bow or crossbow during open season. The artificial light used for raccoon hunting must be a headlamp or hand held flashlight. It is unlawful for any artificial light to be cast from a vehicle while raccoon hunting.

[19.30.13.10 NMAC - N, 1/31/13]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.12 NMAC, Sections 8, 9, 10, 11, 12 and 13 effective 1-31-2013.

19.31.12.8 ADJUSTMENT OF LICENSES, PERMITS, AUTHORIZATIONS, AND HARVEST LIMITS: The director, with the verbal concurrence of the chairman or his designee, may adjust the number of licenses, permits, harvest limits, or authorizations, up or down by no more than 20% to address significant changes in population levels or to address critical department management needs. This adjustment may be applied to any or all of the specific hunt codes for Persian ibex. The director, at his discretion, may adjust the number of oryx licenses and hunt dates on White Sands missile range pending negotiations with White Sands missile range officials. Hunt dates may extend into future hunting seasons. The director may change or cancel all hunts on military lands to accommodate closures on those lands; provided the season length and bag limit shall remain the same as assigned on the original hunt code.

[19.31.12.8 NMAC - Rp, 19.31.12.8 NMAC, 4-1-11; A, 1-31-13]

19.31.12.9 BARBARY SHEEP, ORYX, AND PERSIAN IBEX LICENSE APPLICATION REQUIREMENTS AND RESTRICTIONS:

A. One license per Barbary sheep, oryx, or Persian ibex per year: It shall be unlawful for anyone to hold more than one permit or license for any Barbary sheep, oryx, or Persian ibex during a current license year unless otherwise allowed by rule. [~~Multiple Persian ibex carcass tags are allowed to persons holding an official, valid license for the off-mountain Persian ibex hunt (IBX-1-528).~~]

B. Validity of license or permit: All oryx, Barbary sheep and Persian ibex entry 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~~] permit or license. Licenses shall be valid only for the specified dates, eligibility requirements or restrictions, legal sporting arms, bag limit and area specified by rule or regulation, including those areas designated as public or private land per a current unitization agreement between the department and U. S. bureau of land management, New Mexico state land office or other public land holding entity.

C. Ibex once-in-a-lifetime: It shall be unlawful for anyone to apply for an once-in-a-lifetime ibex license if he or she ever held a once in a lifetime license to hunt ibex. Persian ibex hunts for youth, muzzle-loading rifles, bows, year-round off-mountain hunts, and hunts for female or immature (F-IM) ibex, are not restricted to those persons that never held an once-in-a-lifetime Persian ibex hunting license.

D. Oryx once-in-a lifetime: It shall be unlawful, beginning April 1, 1993, for anyone to apply for a premier, or, once-in-a-lifetime, oryx license if he or she ever held an "once-in-a-lifetime" license to hunt oryx. Once-in-a-lifetime oryx hunts include all premier or trophy on-range, mobility impaired, and Iraq/Afghanistan veteran hunts. Hunts not once-in-a-lifetime include population management, WSMR security badged, broken-horned, youth, and incentive hunts. Anyone may apply for population management, youth, and incentive hunts regardless if they held a license for an once-in-a-lifetime hunt, if they have met the other applicable requirements or restrictions. Those who have held an once-in-a-lifetime oryx hunting license may apply for broken-horned hunts.

E. Mobility impaired (MI) oryx hunts: It shall be unlawful for anyone to apply for a mobility impaired (MI) oryx license, except as allowed by 19.31.3.11 NMAC.

F. Youth only (YO) oryx and Persian ibex hunts: It shall be unlawful for anyone to apply for youth only (YO) oryx or Persian ibex license except as allowed by 19.31.3.11 NMAC.

G. Military only (MO) Barbary sheep and oryx hunts: It shall be unlawful for anyone to apply for a military only Barbary sheep or oryx license, except as allowed by 19.31.3.11 NMAC.

H. Iraq/Afghanistan veterans (I/A) hunts: It shall be unlawful for anyone to apply for an Iraq/Afghanistan veteran oryx license, except as allowed by 19.31.3.11 NMAC.

[19.31.12.9 NMAC - Rp, 19.31.12.9 NMAC, 4-1-11; A, 1-31-13]

19.31.12.10 BARBARY SHEEP, ORYX, AND PERSIAN IBEX MANNER AND METHOD REQUIREMENTS AND RESTRICTIONS:

A. Season and hours: Barbary sheep, oryx or Persian ibex 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.

B. Bag limit: It is unlawful for any person to hunt for or take more than one Barbary sheep, oryx or Persian ibex during a current license year unless otherwise provided by regulation.

C. [~~Tagging:~~

~~**(1)** Any license that permits the taking of Barbary sheep, oryx, or Persian ibex shall be issued with a carcass tag bearing the name of the species.~~

~~**(2)** It shall be unlawful to possess more than one carcass tag per Barbary sheep, oryx or Persian ibex except as permitted by regulation. Multiple Persian ibex carcass tags are allowed to persons holding an official, valid license for the off-mountain Persian ibex hunt (IBX-1-528).~~

~~**(3)** It shall be unlawful for any licensee to fail to tag the Barbary sheep, oryx, or Persian ibex as prescribed below:~~

~~**(a)** Immediately after killing any Barbary sheep, oryx or Persian ibex the licensee killing the game shall notch the proper day and month of kill from the Barbary sheep, oryx or Persian ibex tag.~~

~~**(b)** The tag shall be attached to the carcass of Barbary sheep, oryx or Persian ibex and the tag shall remain attached to the carcass while the carcass is in any vehicle, left unattended in the field, or while it is in camp or at a residence or other place of storage. 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 left in a camp or vehicle.~~

~~**(4)** A Barbary sheep, oryx or Persian ibex tag, when attached to the carcass of legally taken game, shall authorize possession and storage for the period designated on the tag.~~] **[RESERVED]**

D. Seizure: Any conservation officer or other officer authorized to enforce game laws and regulations shall seize the carcasses of Barbary sheep, oryx or Persian ibex that are improperly [~~tagged~~] notched.

E. Proof of sex: It shall be unlawful for anyone to transport or possess the carcass of any Persian ibex without proof of sex. The horns of any Persian ibex shall remain attached to the skull until arriving at a residence, taxidermist, meat processing facility, or place of final storage. The [~~scalp and both ears~~] head of females or immature males of Persian ibex shall accompany the carcass in the same manner.

F. Proof of bag limit: It shall be unlawful for anyone to transport or possess the carcass of any oryx without proof of bag limit. The horns of any oryx taken shall remain attached to the skull until arriving at a residence, taxidermist, meat processing facility, or place of final storage.

G. Use of dogs in hunting: It shall be unlawful to use dogs to hunt any Barbary sheep, oryx or Persian ibex.

H. Use of baits or scents: It shall be unlawful for anyone to take or attempt to take any Barbary sheep, oryx or Persian ibex 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 Barbary sheep, oryx or Persian ibex.

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 Barbary sheep, oryx or Persian ibex.

K. Killing out-of-season: It shall be unlawful to kill any Barbary sheep, oryx or Persian ibex out of their respective hunting seasons.

L. Legal weapon types for oryx are as follows: any center-fire rifle of .24 caliber or larger; any center-fire handgun of .24 caliber or larger; shotguns not smaller than 28 gauge, firing a single slug; muzzle-loading rifles not smaller than .45 caliber; bows and arrows; and crossbows and bolts.

M. Legal weapon types for Barbary sheep and Persian ibex 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.

N. Areas closed to hunting: The following areas shall remain closed to hunting Barbary sheep, oryx, and Persian ibex, except as permitted by regulation: Sugarite canyon state park; Orilla Verde and Wild Rivers recreation areas, including the Taos valley overlook; all wildlife management areas; the Valle Vidal area; and sub-unit 6B (Valles Caldera national preserve).

O. Restricted areas on White Sands missile range: It shall be unlawful:

(1) to drive or ride in a motor vehicle into an area signed *no hunting* or otherwise restricting hunting or as documented on a map or as presented during the hunt's briefing, except if the hunter or driver is escorted by official personnel;

(2) for a licensed hunter to enter an area signed *no hunting* or otherwise restricting hunting except if the hunter is escorted by official personnel; and

(3) for a licensed security badged hunter to hunt or take any oryx in an area other than their TBA area.

P. Mandatory check-in and harvest limit for IBX-1-521: Every hunter or hunter's designee must call the toll free number designated by the department or access the department's web site to determine if the hunt is open within 24 hours prior to hunting each day after opening day. The season will remain open until the harvest limit, as designated in 19.31.12.13 NMAC, is reached or the ending hunt date. It shall be unlawful for a person holding an IBX-1-521 license to hunt after the department designates the hunt as closed. Successful hunters of the over-the-counter (OTC) female-immature Persian ibex hunt (IBX-1-521) must present their ibex head to a department office or department official within five days of take.

[19.31.12.10 NMAC - Rp, 19.31.12.10 NMAC, 4-1-11; A, 1-31-13]

19.31.12.11 BARBARY SHEEP HUNTING SEASONS: Barbary sheep hunts shall be as indicated below, listing the open GMUs or areas, eligibility requirements or restrictions, hunt dates, hunt codes, number of licenses, and bag limit. Public land Barbary sheep licenses for GMUs 29, 30, 31, 32, 34, 36 and 37 are available only through application in the special entry draw. Private land only licenses for GMUs 29, 30, 31, 32, 34, 36 and 37 shall not be issued through the public draw and will only be available from department offices or through the department's web site and shall only be valid on deeded private lands. BBY-1-100 and BBY-1-101 licenses shall also be valid for over-the-counter hunt areas. The department shall issue military only Barbary sheep hunting licenses for McGregor range to full time military personnel providing a valid access authorization issued by Fort Bliss (BBY-1-102).

A. Southeast area public lands entry hunts:

open GMUs or areas	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates	hunt code	lic.	bag limit
31, 32, 34, 36, 37	2/1-2/29	2/1-2/28	2/1-2/28	2/1-2/28	BBY-1-100	600	ES
29, 30	2/1-2/29	2/1-2/28	2/1-2/28	2/1-2/28	BBY-1-101	600	ES
28 McGregor range, **MO**	12/31-1/1	12/29-12/30	12/28-12/29	12/27-12/28	BBY-1-102	5	ES
28 McGregor range	12/31-1/1	12/29-12/30	12/28-12/29	12/27-12/28	BBY-1-103	5	ES

B. Southeast area private land-only hunts: Private land-only licenses shall only be available through department offices or the department's web site.

open GMUs	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates	hunt code	licenses	bag limit
31, 32, 34, 36, 37	2/1-2/29	2/1-2/28	2/1-2/28	2/1-2/28	BBY-1-200	unlimited	ES
30, 29	2/1-2/29	2/1-2/28	2/1-2/28	2/1-2/28	BBY-1-201	unlimited	ES

C. Over-the-counter hunts: The hunt area shall be statewide (including Water canyon WMA in GMU 9) except those GMUs with bighorn sheep (8, 13, 14, 16, 20, 22, 23, 24, 26 and 27), WSMR and Fort Bliss portions of GMU 19, and those GMUs in the southeast area (28, 29, 30 31, 32, 34, 36 and 37).

open GMUs or areas	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates	hunt code	licenses	bag limit
statewide, with restrictions listed above	4/1-3/31	4/1-3/31	4/1-3/31	4/1-3/31	BBY-1-300	unlimited	ES

D. Barbary sheep population management hunts:

(1) The [~~respective area chief~~] director or his designee may authorize population management hunts for Barbary sheep when justified in writing by department personnel.

(2) The [~~respective area chief~~] director or his designee shall designate the sporting arms, season dates, season lengths, bag limits, hunt boundaries, and number of licenses. No qualifying license holder shall take more than one Barbary sheep per license year.

(3) The specific hunt dates, hunt area, the name of the department representative providing the information and the date and time of notification shall be written on the license after notification by telephone.

(4) [~~Application may be made either on-line or through the special hunt application form provided by the department. On-line~~] Applications must be submitted by the deadline date set by the department. [~~Application forms postmarked by the deadline date will be accepted up to five working days after the deadline date.~~]

(5) Applications for licenses may be rejected, and fees returned to an applicant, if such applications are not on the proper form or do not supply adequate information.

(6) In the event that an applicant is not able to hunt on the dates specified, the applicant's name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.

(7) No more than one person may apply under each application.

(8) Population management hunts for Barbary sheep may be anywhere in the state with dates, number of licenses, bag limit, and specific hunt areas to be determined by the department. The hunt code to apply for Barbary sheep population management hunts shall be BBY-5-100.

(9) In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunter's names to the department for licensing consideration. No more than one-half of the total number of licenses authorized shall be available to landowner identified hunters. The balance of prospective hunters shall be identified by the department.

E. Special management properties: For private lands within GMUs 29, 30, 31, 32, 34, 36 and 37, the department may work with interested landowners to develop appropriate bag limits, weapon types, season dates and authorization numbers for private land hunting needed to achieve the proper harvest within the exterior boundaries of participating ranches.

[19.31.12.11 NMAC - Rp, 19.31.12.11 NMAC, 4-1-11; A, 1-31-13]

19.31.12.12 ORYX HUNTING SEASONS:

A. Oryx premier hunts for any legal weapon shall be as indicated below, listing the open areas, eligibility requirements or restrictions, hunt dates, hunt code, number of licenses and bag limit. Two persons may apply on one application. These hunts are restricted; only those who have never held an oryx once-in-lifetime license may apply. Only New Mexico residents returning from military service in Iraq or Afghanistan are eligible to apply for oryx hunts designated as "Iraq/Afghanistan vets" or "I/A vets". Proof of military service in Iraq or Afghanistan must accompany application or, if applying online, forwarded to the department by the application deadline date, pursuant to 19.31.3.11 NMAC.

open GMUs or areas	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates	hunt code	lic.	bag limit
Rhodes canyon **YO**	9/8-9/10	9/7-9/9	9/6-9/8	9/5-9/7	ORX-1-100	30	ES
Rhodes canyon **MI**	9/8-9/10	9/7-9/9	9/6-9/8	9/5-9/7	ORX-1-101	20	ES
Stallion range	9/23-9/25	9/21-9/23	9/20-9/22	9/19-9/21	ORX-1-102	70	ES
Stallion range **I/A vets**	9/23-9/25	9/21-9/23	9/20-9/22	9/19-9/21	ORX-1-103	5	ES
Rhodes canyon	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ORX-1-104	70	ES
Rhodes canyon **I/A vets**	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ORX-1-105	5	ES
Stallion range	11/18-11/20	11/16-11/18	11/15-11/17	11/14-11/16	ORX-1-106	70	ES
Stallion range **I/A vets**	11/18-11/20	11/16-11/18	11/15-11/17	11/14-11/16	ORX-1-107	5	ES
Rhodes canyon	12/2-12/4	11/30-12/2	11/29-12/1	11/28-11/30	ORX-1-108	70	ES
Rhodes canyon **I/A vets**	12/2-12/4	11/30-12/2	11/29-12/1	11/28-11/30	ORX-1-109	5	ES
Stallion range	1/13-1/15	1/11-1/13	1/10-1/12	1/9-1/11	ORX-1-110	70	ES
Stallion range **I/A vets**	1/13-1/15	1/11-1/13	1/10-1/12	1/9-1/11	ORX-1-111	5	ES
Rhodes canyon	1/27-1/29	1/25-1/27	1/24-1/26	1/23-1/25	ORX-1-112	70	ES
Rhodes canyon **I/A vets**	1/27-1/29	1/25-1/27	1/24-1/26	1/23-1/25	ORX-1-113	5	ES
Stallion range	2/10-2/12	2/8-2/10	2/7-2/9	2/6-2/8	ORX-1-114	70	ES
Stallion range **I/A vets**	2/10-2/12	2/8-2/10	2/7-2/9	2/6-2/8	ORX-1-115	5	ES
Rhodes canyon	2/24-2/26	2/22-2/24	2/21-2/23	2/20-2/22	ORX-1-116	70	ES
Rhodes canyon **I/A vets**	2/24-2/26	2/22-2/24	2/21-2/23	2/20-2/22	ORX-1-117	5	ES

B. Oryx restricted on-range hunts, shall be as indicated below or as specific dates and hunt areas are determined by the department. The following hunts have restrictions that must be met prior to application. These hunts are not once-in-a-lifetime oryx hunts. Oryx WSMR security-badged hunts are available only to personnel with official valid security badges, or their guests, in accordance with White Sands missile range provisions and pursuant to 19.31.3.11 NMAC. Youth hunters must provide hunter education certificate number on application. Only military personnel stationed at WSMR can apply for the military only (MO) security badged hunt.

open areas	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates	hunt code	lic.	bag limit
WSMR security badged: TBA/**MO**	TBD	TBD	TBD	TBD	ORX-1-118	15	ES
WSMR security badged: TBA	8/1-8/31	8/1-8/31	8/1-8/31	8/1-8/31	ORX-1-119	30	ES
WSMR security badged: TBA	9/1-9/30	9/1-9/30	9/1-9/30	9/1-9/30	ORX-1-120	30	ES
WSMR security badged: TBA	10/1-10/31	10/1-10/31	10/1-10/31	10/1-10/31	ORX-1-121	30	ES
WSMR security badged: TBA	11/1-11/30	11/1-11/30	11/1-11/30	11/1-11/30	ORX-1-122	30	ES
WSMR security badged: TBA	12/1-12/31	12/1-12/31	12/1-12/31	12/1-12/31	ORX-1-123	30	ES
WSMR security badged: TBA	1/1-1/31	1/1-1/31	1/1-1/31	1/1-1/31	ORX-1-124	30	ES
WSMR security badged: TBA	2/1-2/29	2/1-2/28	2/1-2/28	2/1-2/28	ORX-1-125	30	ES
WSMR security badged: TBA	3/1-3/31	3/1-3/31	3/1-3/31	3/1-3/31	ORX-1-126	30	ES
Stallion range	9/23-9/25	9/21-9/23	9/20-9/22	9/19-9/21	ORX-1-127	10	BHO
Rhodes canyon	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ORX-1-128	10	BHO
Stallion range	11/18-11/20	11/16-11/18	11/15-11/17	11/14-11/16	ORX-1-129	10	BHO
Rhodes canyon	12/2-12/4	11/30-12/2	11/29-12/1	11/28-11/30	ORX-1-130	10	BHO
Stallion range	1/13-1/15	1/11-1/13	1/10-1/12	1/9-1/11	ORX-1-131	10	BHO
Rhodes canyon	1/27-1/29	1/25-1/27	1/24-1/26	1/23-1/25	ORX-1-132	10	BHO
Stallion range	2/10-2/12	2/8-2/10	2/7-2/9	2/6-2/8	ORX-1-133	10	BHO
Rhodes canyon	2/24-2/26	2/22-2/24	2/21-2/23	2/20-2/22	ORX-1-134	10	BHO

C. Oryx hunts off of White Sands missile range shall be as indicated below, listing the open areas, eligibility requirements or restrictions, hunt dates, hunt code, number of licenses and bag limit. The department shall issue military only oryx hunting licenses for McGregor range to full time military personnel providing a valid access authorization issued by Fort Bliss (McGregor range MO).

open areas	2011-12 hunt dates	2012-13 hunt dates	2013-14 hunt dates	2014-15 hunt dates	hunt code	lic.	bag limit
statewide, off-range	6/1-6/30	6/1-6/30	6/1-6/30	6/1-6/30	ORX-1-204	60	ES
statewide, off-range, **YO**	6/1-6/30	6/1-6/30	6/1-6/30	6/1-6/30	ORX-1-205	18	ES
statewide, off-range	7/1-7/31	7/1-7/31	7/1-7/31	7/1-7/31	ORX-1-206	60	ES
statewide, off-range, **YO**	7/1-7/31	7/1-7/31	7/1-7/31	7/1-7/31	ORX-1-207	18	ES
statewide, off-range	8/1-8/31	8/1-8/31	8/1-8/31	8/1-8/31	ORX-1-208	60	ES
statewide, off-range, **YO**	8/1-8/31	8/1-8/31	8/1-8/31	8/1-8/31	ORX-1-209	18	ES
statewide, off-range	9/1-9/30	9/1-9/30	9/1-9/30	9/1-9/30	ORX-1-210	60	ES
statewide, off-range, **YO**	9/1-9/30	9/1-9/30	9/1-9/30	9/1-9/30	ORX-1-211	18	ES
statewide, off-range	10/1-10/31	10/1-10/31	10/1-10/31	10/1-10/31	ORX-1-212	60	ES
statewide, off-range, **YO**	10/1-10/31	10/1-10/31	10/1-10/31	10/1-10/31	ORX-1-213	18	ES
statewide, off-range	11/1-11/30	11/1-11/30	11/1-11/30	11/1-11/30	ORX-1-214	60	ES
statewide, off-range, **YO**	11/1-11/30	11/1-11/30	11/1-11/30	11/1-11/30	ORX-1-215	18	ES
statewide, off-range	12/1-12/31	12/1-12/31	12/1-12/31	12/1-12/31	ORX-1-216	60	ES
statewide, off-range, **YO**	12/1-12/31	12/1-12/31	12/1-12/31	12/1-12/31	ORX-1-217	18	ES
statewide, off-range	1/1-1/31	1/1-1/31	1/1-1/31	1/1-1/31	ORX-1-218	60	ES
statewide, off-range, **YO**	1/1-1/31	1/1-1/31	1/1-1/31	1/1-1/31	ORX-1-219	18	ES
statewide, off-range	2/1-2/29	2/1-2/28	2/1-2/28	2/1-2/28	ORX-1-220	60	ES

statewide, off-range, **YO**	2/1-2/29	2/1-2/28	2/1-2/28	2/1-2/28	ORX-1-221	18	ES
statewide, off-range	3/1-3/31	3/1-3/31	3/1-3/31	3/1-3/31	ORX-1-222	60	ES
statewide, off-range, **YO**	3/1-3/31	3/1-3/31	3/1-3/31	3/1-3/31	ORX-1-223	18	ES
McGregor range	1/7-1/8	1/12-1/13	1/11-1/12	1/10-1/11	ORX-1-224	25	ES
McGregor range, **MO**	1/7-1/8	1/12-1/13	1/11-1/12	1/10-1/11	ORX-1-225	25	ES
McGregor range	12/10-12/11	12/8-12/9	12/7-12/8	12/6-12/7	ORX-1-226	25	ES
McGregor range, **MO**	12/10-12/11	12/8-12/9	12/7-12/8	12/6-12/7	ORX-1-227	25	ES

D. Private land-only oryx hunts: Private land-only oryx licenses shall be valid only on deeded private land and restricted to the season dates, eligibility requirements or restrictions, sporting arms type, and bag limit that corresponds to the public land hunt codes listed 19.31.12.12 NMAC above. Hunts on private land for April and May are restricted to the season dates, eligibility requirements or restrictions, sporting arms type, and bag limit that corresponds to the hunt codes listed below. The number of private land-only oryx licenses shall be unlimited and available only through department offices or department's web site.

open areas	2012-13 hunt dates	2013-14 hunt dates	2014-15 hunt dates	hunt code	bag limit
statewide, off-range	4/1-4/30	4/1-4/30	4/1-4/30	ORX-1-2000	ES
statewide, off-range	5/1-5/31	5/1-5/31	5/1-5/31	ORX-1-2020	ES

E. Oryx population management hunts:

(1) The [~~respective area chief~~] director or his designee may authorize population management hunts for oryx when justified in writing by department personnel.

(2) The [~~respective area chief~~] director or his designee shall designate the sporting arms, season dates, season lengths, bag limits, hunt boundaries, and number of licenses. No qualifying license holder shall take more than one oryx per license year.

(3) The specific hunt dates, hunt area, the name of the department representative providing the information and the date and time of notification shall be written on the license after notification by telephone.

(4) [~~Application may be made either on-line or through the special hunt application form provided by the department. On-line~~] Applications must be submitted by the deadline date set by the department. [~~Application forms postmarked by the deadline date will be accepted up to five working days after the deadline date.~~]

(5) Applications for licenses may be rejected, and fees returned to an applicant, if such applications are not on the proper form or do not supply adequate information.

(6) In the event that an applicant is not able to hunt on the dates specified, the applicant's name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.

(7) No more than one person may apply under each application.

(8) Population management hunts for oryx may be anywhere in the state with dates, number of licenses, bag limit, and specific hunt areas to be determined by the department. [~~The hunt codes to apply for oryx population management hunts shall be as indicated in the table below.~~]

~~[open areas~~	~~hunt dates~~	~~hunt code~~	~~licenses~~	~~bag limit~~
~~standard management hunt, TBA~~	~~TBA~~	~~ORX-5-510~~	~~250~~	~~ES~~
~~Fort Bliss (west of US highway 54) management hunt, TBA~~	~~TBA~~	~~ORX-5-511~~	~~30~~	~~ES~~]

(9) Military only hunters must be full time active military and proof of military status must accompany application or, if applying online, forwarded to the department by the application deadline date.

(10) [~~The oryx population management hunt ORX-5-511 is restricted to Fort Bliss military personnel only. Proof of assignment to Fort Bliss must accompany application or, if applying online, forwarded to the department by the application deadline.~~

~~**(11)**~~**]** In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunter's names to the department for licensing consideration. No more than one-half of the total number of licenses authorized shall be available to landowner identified hunters. The balance of prospective hunters shall be identified by the department.

F. Oryx incentive authorizations: The director may annually allow up to two oryx authorizations to be issued by drawing [~~to elk and deer hunters reporting their prior year's harvest information as well as trappers reporting their trapping activities by the published deadline using the department's established website. These incentives may also be available~~] for deer and elk hunters submitting their legally harvested animal for CWD testing. Authorization certificates to purchase the license may be used either by the applicant or any individual of the selected applicant's choice and may be transferred through sale, barter, or gift. Oryx incentive hunts shall be any one premier oryx season (excluding population management hunts) of the hunter's choice. Bag limit shall be either sex with the legal sporting arms and hunt area of the selected hunt.

G. Wounded warrior project oryx hunt: The department shall annually issue three authorizations [~~to the wounded warrior project~~] for hunting by injured service men and women as identified by the wounded warrior project on White Sands missile range. Authorization as used in this subsection shall mean the document or number generated by the department that authorizes the holder to purchase a specified license to hunt oryx. Hunt dates for each authorization to be determined annually.

[19.31.12.12 NMAC - Rp, 19.31.12.12 NMAC, 4-1-11; A, 2-15-12; A/E, 4-19-12; A, 1-31-13]

19.31.12.13 PERSIAN IBEX HUNTING SEASONS: Persian ibex hunts shall be as indicated below, listing the open GMUs or

areas, eligibility requirements or restrictions, hunt dates, hunt code, number of available licenses and bag limit. The IBX-1-525 hunt is restricted to only those who have never held an ibex once-in-lifetime license. Youth, muzzle-loading rifle, bow, year-long off-mountain, and female or immature (F-IM) ibex hunts are not restricted; anyone may apply, regardless if they have ever held an ibex once-in-a-lifetime license. The bag limit for IBX-1-521 hunt is two F-IM ibex. The IBX-1-526 hunt is restricted to applicants who were successful harvesting two F-IM ibex during the IBX-1-521 hunt from the previous year and have presented their ibex heads within five days of harvest to a department office or department official for confirmation that they are eligible to enter a drawing for this hunt. Holders of the off-mountain license (IBX-1-528) may apply for any Florida mountain ibex hunt (IBX-1-500, IBX-1-520, IBX-1-525, IBX-2-535, IBX-2-536 or IBX-3-540) unless otherwise restricted by rule. The off-mountain (IBX-1-528) license holders need only submit the application fee and their license number along with their application. Any valid Persian ibex license shall be valid during the off-mountain (IBX-1-528) hunts. Holders of [~~an off-mountain (IBX-1-528) license have an unlimited number of tags available upon request at any department office~~] a valid ibex license may take an unlimited number of ibex for the year-long off mountain hunt. Any person that kills an off mountain ibex must notch the license according to instructions on the license. Hunt codes for Persian ibex hunts allowing "any legal weapon type" shall be designated IBX-1. Hunt codes for Persian ibex hunts allowing the "bow only" weapon type shall be designated as IBX-2. Hunt codes for Persian ibex hunts allowing the "muzzle loading rifles or bow" weapon type shall be designated as IBX-3. The Florida mountain hunt is that portion of GMU 25 bounded by interstate 10 on the north, U.S.-Mexico border on the south, NM 11 on the west and the Dona Ana-Luna county line on the east. The year-long off-mountain hunt area is any public land open for hunting and private lands with written permission outside the Florida mountain hunt area, including Big Hatchet WMA. Youth hunters must provide hunter education certificate number on application.

open GMUs or areas	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates	hunt code	licenses/ bag limit
Florida mountains, **YO**	9/24-10/2	9/22-9/30	[~~9/21-9/29~~] 12/27-1/9	[~~9/20-9/28~~] 12/27-1/9	IBX-1-500	[~~30/ES~~] 15/ES
[~~Florida mountains~~	~~10/1-10/31~~	~~10/1-10/31~~	~~10/1-10/31~~	~~10/1-10/31~~	~~IBX-1-520~~	~~100/F-IM~~]
Florida mountains	11/26-12/12	11/24-12/10	[~~11/23-12/9~~] 11/15-11/28	[~~11/22-12/8~~] 11/15-11/28	IBX-1-525	[~~15/ES~~] 25/ES
Florida mountains: only qualified IBX-1-521 hunters are eligible			2/7-2/20	2/7-2/20	IBX-1-526	10/ES
Florida mountains: OTC, unlimited licenses available, harvest limit of 125 F-IM		2/21-3/31	2/21-3/31	2/21-3/31	IBX-1-521	unlimited, OTC/2 F-IM
Florida mountains	1/1-1/15	1/1-1/15	[~~1/1-1/15~~] 10/1-10/14	[~~1/1-1/15~~] 10/1-10/14	IBX-2-535	100/ES
Florida mountains	1/16-1/31	1/16-1/31	[~~1/16-1/31~~] 1/17-1/30	[~~1/16-1/31~~] 1/17-1/30	IBX-2-536	100/ES
Florida mountains	2/11-2/19	2/9-2/17	[~~2/8-2/16~~] 12/6-12/19	[~~2/7-2/15~~] 12/6-12/19	IBX-3-540	[~~50/ES~~] 25/ES
off-mountain hunt area, OTC, unlimited licenses available	4/1-3/31	4/1-3/31	4/1-3/31	4/1-3/31	IBX-1-528	unlimited/ES

[19.31.12.13 NMAC - Rp, 19.31.12.13 NMAC, 4-1-11; A, 1-31-13]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.4 NMAC, Section 8, effective February 14, 2013.

16.10.4.8 HOURS REQUIRED:

A. Seventy-five hours of continuing medical education are required for all medical licenses during each triennial renewal cycle. CME may be earned at any time during the licensing period, July 1 through June 30 immediately preceding the triennial renewal date.

B. One hour of required CME must be earned by reviewing the New Mexico Medical Practice Act and these board rules. Physicians must certify that they have completed this review at the time they submit their triennial renewal application.

C. Continuing medical education is not required for federal emergency, telemedicine, postgraduate training, public service, temporary teaching or youth camp or school licenses.

D. The five hours of CME in pain management continuing education set forth in Subsections A and B of 16.10.14.11 NMAC may apply toward the 75 hours required in Subsection A of this section and may be included as part of the required CME hours in pain management in either the triennial cycle in which these hours are completed, or the triennial cycle immediately thereafter. Each subsequent triennial renewal cycle shall include five hours of CME hours in pain management.

[16.10.4.8 NMAC - Rp 16 NMAC 10.4.8, 4/18/02; A, 4/3/05; A, 9/27/07; A, 2/14/13]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.5 NMAC, Sections 7, 9 and 12, effective February 14, 2013.

16.10.5.7 DEFINITIONS:

A. "License" means a document granting legal permission to a physician, a physician assistant, [~~or an~~] anesthesiologist assistant, genetic counselor, or a polysomnographic technologist to practice in the state of New Mexico.

B. "Licensee" means a physician, physician assistant, anesthesiologist assistant, genetic counselor, or a polysomnographic technologist who has been granted permission to practice in the state of New Mexico.

[16.10.5.7 NMAC - Rp 16 NMAC 10.5.7, 4/18/02; A, 1/1/09; A, 2/14/13]

16.10.5.9 REVOCATION OF LICENSE:

A. Action prior to revocation. Prior to revoking any license for any violation of the Medical Practice Act, or the Impaired Health Care Provider Act, the board shall give the licensee written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act.

B. Terms of revocation. A licensee whose license is revoked may not practice in any manner under that license.

C. [~~Relicensing after~~] Revocation under the Medical Practice Act. All revocations pursuant to the Medical Practice Act are permanent and no such license revoked shall be reinstated. Persons seeking licensure after revocation under the Medical Practice Act shall file a new application for licensure with the board, under the rules for new applicants[~~, only if permitted in the revocation order~~].

D. Relicensing after revocation under the Impaired Health Care Provider Act. A physician or physician assistant whose license has been revoked pursuant to the Impaired Health Care Provider Act may petition for reinstatement pursuant to section 61-7-9 NMSA 1978.

[16.10.5.9 NMAC - Rp 16 NMAC 10.5.10, 4/18/02; A, 1/1/09; A, 2/14/13]

16.10.5.12 CENSURE AND REPRIMAND: The board may issue a letter of censure or reprimand to a licensee for any ***minor*** violation of the Medical Practice Act [~~If the board intends to issue a letter of censure or reprimand, the licensee shall be notified in writing~~] pursuant to section 61-1-3 of the Uniform Licensing Act.

[16.10.5.12 NMAC - Rp 16 NMAC 10.5.14, 4/18/02; A, 2/14/13]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.10 NMAC, Sections 7, 9, 10 and 13, effective February 14, 2013.

16.10.10.7 DEFINITIONS:

A. "Adversely affecting" means reducing, restricting, suspending, revoking, denying, or failing to renew clinical privileges, or membership in a health care entity to include: terminating employment for cause, or without cause when based on incompetency or behavior affecting patient care and safety, or physician being allowed to resign rather than being terminated for such reasons. [~~This docs~~] These actions do not include those instances in which a peer review entity requires supervision of a physician for purposes of evaluating that physician's professional knowledge or ability.

B. "Clinical privileges" include privileges, membership on the medical staff, employment, and other circumstances under which a physician or physician assistant is permitted by a healthcare entity to furnish medical care.

C. "Termination of employment" includes the termination of employment by a healthcare entity for cause, or without cause if related to clinical competence or behavior impacting patient safety/care, or allowing resignation in lieu of termination for such reason.

D. "Health care entity" means:

(1) a hospital, HMO, a physician group or other health care institution that is licensed to provide health care services in New Mexico;

(2) an entity that provides health care services and that follows a formal peer review process for the purpose of furthering quality health care; or

(3) a professional society or a committee or agent thereof, of physicians or physician assistants or other licensed health care practitioners at the national, state or local level, that follows a formal peer review process for the purpose of furthering quality health care, including without limitation a health maintenance organization or other prepaid medical practice which is licensed or determined to be qualified by any state.

E. "Medical malpractice action or claim" means a written claim or demand for compensation based on the furnishing, or failure to furnish, health care services, and includes, without limitation, the filing of a cause of action, based on the law of tort, brought in any court of any state or the United States seeking monetary damages whether resulting in a settlement or in a judgment.

F. "Professional review action" means an action of a health care entity:

(1) taken in the course of professional review activity;

(2) based on the competence, conduct, or impairment of an individual physician or physician assistant or other health care practitioner which affects or could affect adversely the health or welfare of a patient or patients; and,

(3) which adversely affects or may adversely affect the clinical privileges or membership in a professional society of the physician or physician assistant.

G. "Professional review activity" means an activity of a health care entity with respect to an individual physician or physician assistant:

(1) to determine whether the physician or physician assistant may have clinical privileges with respect to, or membership in, the entity;

(2) to determine the scope or conditions of such privileges or membership; or

(3) to change or modify such privileges or membership.

H. "Credentialing discrepancy" means, for the purposes of 16.10.10 NMAC, an error or omission in an application.

[16.10.10.7 NMAC - Rp 16 NMAC 10.10.7, 7/15/01; A, 1/6/12; A, 2/14/13]

16.10.10.9 REPORTING OF ADVERSE ACTIONS ON CLINICAL PRIVILEGES.

A. [~~Actions that must be reported by the health care entity:~~] All health care entities and licensees shall report any actions adversely affecting the licensure of a licensee within thirty days of the date of such action by the health care entity. Such actions shall be reported by the health care entity include, but are not limited to:

(1) any professional review action that adversely affects the clinical privileges of a physician or physician assistant except as provided in Subsection C of this section;

(2) acceptance of the surrender of clinical privileges or any restriction of such privileges while the physician or physician assistant is under investigation by the entity relating to possible incompetency or improper professional conduct; or, in return for not conducting an investigation or proceeding;

(3) in the case of [~~a professional society, when it takes professional review action~~] any professional review action taken by a professional society which adversely affects the membership of a physician or physician assistant in the society;

(4) failure to complete medical records if the failure is related to the physician's professional competence or conduct and adversely affects or could adversely affect a patient's health or welfare;

(5) a positive drug test for illegal substances, alcohol or unprescribed medication and prescription medication not supported by appropriate diagnosis (if physician has voluntarily self reported to the New Mexico monitored treatment program (MTP), the board will not require name of physician, as it will be in a blind report from MTP).

B. Report contents. All adverse actions must:

(1) be reported to the board within thirty days of adverse action taken pursuant to Paragraphs (1) through (5) of Subsection A of this section;

(2) include at a minimum the name, license number, and social security number of the physician or physician assistant; a description of the act(s) or omission(s) or other reasons for the action or for the surrender of privileges; action taken, date of the action and effective date of action; and,

(3) any physician or physician assistant's official addendum to the data bank report shall be reported.

C. The following actions do not require reporting to the board by a health care entity:

(1) actions based on the physician or physician assistant's association, or lack of association, with a professional society or association;

(2) actions based on fees, advertising, or other competitive acts intended to solicit or retain business;

(3) actions based on the physician or physician assistant's participation in prepaid group health plans;

(4) actions based on the physician or physician assistant's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice; or

(5) any other matter that does not relate to the competence or professional conduct of a physician or physician assistant;

(6) failure to complete charts (except to the extent reportable under Paragraph (4) of Subsection A of this part), maintain insurance or perform other administrative obligations that results in a suspension of clinical privileges.

D. Any subsequent disposition of the initial action adversely affecting the licensee, regardless of whether such disposition is favorable, does not alter the requirement to report within thirty days.

[16.10.10.9 NMAC - Rp 16 NMAC 10.10.8.3, 7/15/01; A, 4/18/02; A, 1/6/12; A, 7/2/12; A, 2/14/13]

16.10.10.10 REPORTING OF CREDENTIALING DISCREPANCIES: Any health care entity that has received information from a [physician or physician assistant] licensee where a discrepancy has been identified on an application or re-application that includes a signed attestation of accuracy, [must] shall report the discrepancy to the board within 90 days.

[16.10.10.10 NMAC - N, 7/15/01; A, 4/18/02; A, 2/14/13]

16.10.10.13 LICENSEE REPORTING REQUIREMENTS:

A. Consistent with Section 61-6-15(D)(21) NMSA 1978, in addition to the reporting requirements in Sections [8, 9 and 10] 8 and 9 of this part, a licensee is required to report to the board any [adverse] action adversely affecting the licensee taken by: another licensing jurisdiction; a peer review body; a health care entity; a professional or medical society or association; a governmental agency; a law enforcement agency, including arrests; and any court for acts or conduct similar to acts or conduct that would constitute grounds for action under the Medical Practice Act. Reports shall be received by the board within [45] 30 days from the date the action occurs. For the purpose of this section, the "action occurs" on the date when the entities described in this subsection have taken adverse action. Any [appeal of the adverse action] subsequent disposition of the initial action adversely affecting the licensee, regardless of whether such disposition is favorable, does not alter the requirement to report within [45] 30 days. In the case of an arrest, the arrest shall be reported within [45] 30 days of occurrence. In the case of adverse action taken by a peer review body, health care entity, or professional or medical society or association, refer to Section 9 of this part to determine what action must be reported.

B. Failure to report any adverse action shall constitute unprofessional or dishonorable conduct pursuant to Subsection D of Section 61-6-15 NMSA 1978 of the Medical Practice Act and shall be subject to any penalty that may be imposed pursuant to Section 61-6-15 NMSA 1978.

[16.10.10.13 NMAC - N, 8/6/04; A, 1/6/12; A, 7/2/12; A, 2/14/13]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.14 NMAC, Sections 8, 10, and 11, effective February 14, 2013.

16.10.14.8 REGULATIONS: The following regulations shall be used by the board to determine whether a health care practitioner's prescriptive practices are consistent with the appropriate treatment of pain.

A. The treatment of pain with various medicines or controlled substances is a legitimate medical practice when accomplished in the usual course of professional practice. It does not preclude treatment of patients with addiction, physical dependence or tolerance who have legitimate pain. However, such patients do require very close monitoring and precise documentation.

B. The prescribing, ordering, administering or dispensing of controlled substances to meet the individual needs of the patient for management of chronic pain is appropriate if prescribed, ordered, administered or dispensed in compliance with the following.

(1) A practitioner shall complete a physical examination and include an evaluation of the patient's psychological and pain status. The medical history shall include any previous history of significant pain, past history of alternate treatments for pain, potential for substance abuse, coexisting disease or medical conditions, and the presence of a medical indication or contra-indication against the use of controlled substances.

(2) A practitioner shall be familiar with and employ screening tools as appropriate, as well as the spectrum of available modalities, in the evaluation and management of pain. The practitioner shall consider an integrative approach to pain management.

(3) A written treatment plan shall be developed and tailored to the individual needs of the patient, taking age, gender, culture, and ethnicity into consideration, with stated objectives by which treatment can be evaluated, e.g. by degree of pain relief, improved physical and psychological function, or other accepted measure. Such a plan shall include a statement of the need for further testing, consultation, referral or use of other treatment modalities.

(4) The practitioner shall discuss the risks and benefits of using controlled substances with the patient or surrogate or guardian, and shall document this discussion in the record.

(5) Complete and accurate records of care provided and drugs prescribed shall be maintained. When controlled substances are prescribed, the name of the drug, quantity, prescribed dosage and number of refills authorized shall be recorded. Prescriptions for opioids shall include indications for use. For chronic pain patients treated with controlled substance analgesic(s), the prescribing practitioner shall use a written agreement for treatment with the patient outlining patient responsibilities. As part of a written agreement, chronic pain patients

shall receive all chronic pain management prescriptions from one practitioner and one pharmacy whenever possible.

(6) The management of patients needing chronic pain control requires monitoring by the attending or the consulting practitioner. The practitioner shall periodically review the course of treatment for chronic pain, the patient's state of health, and any new information about the etiology of the chronic pain at least every six months. In addition, a practitioner shall consult, when indicated by the patient's condition, with health care professionals who are experienced (by the length and type of their practice) in the area of chronic pain control; such professionals need not be those who specialize in pain control.

(7) If, in a practitioner's medical opinion, a patient is seeking pain medication for reasons that are not medically justified, the practitioner is not required to prescribe controlled substances for the patient.

C. Pain management for patients with substance use disorders shall include:

(1) a contractual agreement;

(2) appropriate consultation;

(3) drug screening when other factors suggest an elevated risk of misuse or diversion; and

(4) a schedule for re-evaluation at appropriate time intervals at least every six months.

D. The board will evaluate the quality of care on the following basis: appropriate diagnosis and evaluation; appropriate medical indication for the treatment prescribed; documented change or persistence of the recognized medical indication; and, follow-up evaluation with appropriate continuity of care. The board will judge the validity of prescribing based on the practitioner's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors.

E. The board will review both over-prescription and under-prescription of pain medications using the same standard of patient protection.

F. A practitioner who appropriately prescribes controlled substances and who follows this section would be considered to be in compliance with this rule and not be subject to discipline by the board, unless there is some violation of the Medical Practice Act or board rules.

[16.10.14.8 NMAC - N, 1/20/03; A, 4/3/05; A, 9/28/12; A, 2/14/13]

16.10.14.10 PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS: The intent of the New Mexico medical board in requiring participation in the PMP is to assist practitioners in balancing [~~the promotion of~~] the safe use of controlled substances [~~for the provision of medical care and services~~] with the need to impede illegal and harmful activities involving these pharmaceuticals.

A. A health care practitioner who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting.

B. A health care practitioner shall, before prescribing, ordering, administering or dispensing a controlled substance listed in Schedule II, III or IV, obtain a patient PMP report for the preceding 12 months when one of the following situations exists:

(1) the patient is a new patient of the practitioner, [~~except in the setting of urgent or emergent care,~~] in which situation a patient PMP report for the previous 12 months shall only be required when Schedules II, III, and IV drugs are prescribed for a period greater than 10 days; and

(2) during the continuous use of opioids by established patients a PMP shall be requested and reviewed a minimum of once every six months.

[16.10.14.10 NMAC - N, 9/28/12; A, 2/14/13]

16.10.14.11 PAIN MANAGEMENT CONTINUING EDUCATION: This section applies to all New Mexico medical board licensees who hold a federal drug enforcement administration registration and licensure to prescribe opioids. Pursuant to the Pain Relief Act, in order to ensure that all such health care practitioners safely prescribe for pain management and harm reduction, the following rules shall apply.

A. Immediate requirements effective November 1, 2012. Between November 1, 2012 and no later than June 30, 2014, all New Mexico medical board licensees who hold a federal drug enforcement administration registration and licensure to prescribe opioids, shall complete no less than five continuing medical education hours in appropriate courses that [~~may include a review of this rule (16.10.14 NMAC) for treatment of pain. Courses shall include an understanding of the pharmacology and risks of controlled substances, a basic awareness of the problems of abuse, addiction and diversion, and awareness of state and federal regulations for the prescription of controlled substances. The applicability of such courses toward fulfillment of the continuing medical education requirement is subject to medical board approval. Practitioners who have taken continuing medical education hours in these educational elements between July 1, 2011 and November 1, 2012, may apply those hours toward the required five continuing medical education hours described in this subsection.~~] shall include:

(1) an understanding of the pharmacology and risks of controlled substances,

(2) a basic awareness of the problems of abuse, addiction and diversion,

(3) awareness of state and federal regulations for the prescription of controlled substances,

(4) management of the treatment of pain, and

(5) courses may also include a review of this rule (16.10.14 NMAC) the applicability of such courses toward fulfillment of the continuing medical education requirement is subject to medical board approval. Practitioners who have taken continuing medical education hours in these educational elements between July 1, 2011 and November 1, 2012, may apply those hours toward the required five continuing medical education hours described in this subsection.

B. Triennial requirements for physicians. Beginning with the July 1, 2014 triennial renewal date, as part of the 75 continuing medical education hours required during each triennial renewal cycle, all New Mexico medical board physician licensees who hold a federal drug enforcement administration registration and license to prescribe opioids, shall be required to complete and submit five continuing medical education hours. Appropriate courses shall include all of the educational elements described in Subsection A of this section. The applicability of such courses toward fulfillment of the continuing medical education requirement is subject to medical board approval. These hours may be earned at any time during the three-year period immediately preceding the triennial renewal date. The five continuing medical education hours completed prior to July 1, 2014, as defined in Subsection A above, may be included as part of the required continuing medical education hours in pain management in either the triennial cycle in which these hours are completed, or the triennial cycle immediately thereafter.

C. Biennial requirements for physician assistants. Beginning with the July 1, 2014 biennial renewal date, in addition to the NCCPA certification required during each biennial renewal cycle pursuant to 16.10.15.16 NMAC, all New Mexico medical board physician assistant licensees who hold a federal drug enforcement administration registration and license to prescribe opioids, shall be required to complete and submit three continuing

medical education hours. Appropriate courses shall include all of the educational elements described in Subsection A of this section. The applicability of such courses toward fulfillment of the continuing medical education requirement is subject to medical board approval. These hours may be earned at any time during the two-year period immediately preceding the renewal date. Three of the five continuing medical education hours completed prior to July 1, 2014, as defined in Subsection A above, may be included as part of these required three continuing medical education hours in pain management in either the biennial cycle in which these hours are completed, or the biennial cycle immediately thereafter. [~~These three hours~~] Any or all three of these hours may also be applied to satisfy NCCPA requirements for certification.

D. Biennial requirements for anesthesiologist assistants. Beginning with the July 1, 2014 biennial renewal date, all New Mexico medical board anesthesiologist assistant licensees who hold a federal drug enforcement administration registration and license to prescribe opioids, shall be required to complete and submit three continuing medical education hours. Appropriate courses shall include all of the educational elements described in Subsection A of this section. The applicability of such courses toward fulfillment of the continuing medical education requirement is subject to medical board approval. These hours may be earned at any time during the two-year period immediately preceding the renewal date. Three of the five continuing medical education hours completed prior to July 1, 2014, as defined in Subsection A above, may be included as part of these required three continuing medical education hours in pain management in either the biennial cycle in which these hours are completed, or the biennial cycle immediately thereafter.

E. Requirements for new licensees. All New Mexico medical board licensees, whether or not the New Mexico license is their first license, who hold a federal drug enforcement administration registration and license to prescribe opioids, shall complete five continuing medical education hours in pain management during the first year of licensure. These five continuing medical education hours completed prior to the first renewal may be included as part of the hours required in Subsections B, C or D, above.

F. The continuing medical education requirements of this section [~~are~~] may be included in the total continuing medical education requirements set forth at 16.10.4.8 NMAC, 16.10.15.16 NMAC and 16.10.19.15 NMAC.

[16.10.14.11 NMAC - N, 9/28/12; A, 2/14/13]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.15 NMAC, Section 16, effective February 14, 2013.

16.10.15.16 LICENSE EXPIRATION, RENEWAL, CHANGE OF STATUS:

A. Physician assistant licenses expire on March 1 of the year following NCCPA expiration. To avoid additional penalty fees, a completed renewal application, accompanied by the required fees, proof of current NCCPA certification and other documentation must be submitted through the online renewal system, post-marked or hand-delivered on or before March 1 of the expiration year. A New Mexico physician assistant license that has not been renewed by March 1 of the renewal year will remain temporarily active with respect to medical practice until June 1 of the renewal year at which time, at the discretion of the board, the license may be suspended for non-renewal and the status changed to lapsed. The primary supervising physician will be notified.

B. The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to assure the board has accurate address information and to make a timely request for the renewal application if one has not been received prior to license expiration.

C. Renewal applications postmarked or hand-delivered after March 1 but prior to April 15 must be accompanied by the completed renewal application, proof of current NCCPA certification, the renewal fee and late fee indicated in 16.10.9.9 NMAC.

D. Renewal applications postmarked or hand-delivered on or after April 16 but prior to May 30 must be accompanied by the completed renewal application, proof of current NCCPA certification, the renewal fee and late fee indicated in 16.10.9.9 NMAC.

E. A physician assistant who has not passed the NCCPA six year recertification exam prior to the date of license expiration may apply to the board for an emergency deferral of the requirement. A designee of the board may grant deferrals of up to one year.

(1) A physician assistant who is granted an emergency deferral shall pay the renewal fee and additional late fee indicated in 16.10.9.9 NMAC.

(2) The license of a physician assistant who is granted an emergency deferral shall expire two years after the original renewal date, regardless of the duration of the emergency deferral.

F. The board may suspend for non-renewal and change the status to lapsed on June 1 of the renewal year. The license of any physician assistant who has failed within ninety days after the license renewal date to renew their license, or to change the license status, or to pay all required fees, or to comply with NCCPA certification requirements, or to provide required documentation, or to request an emergency deferral.

G. At the time of license renewal a physician assistant may request a status change.

(1) A license that is placed on inactive status requires payment of a fee as defined in 16.10.9.9 NMAC. A license in inactive status is not valid for practice in New Mexico but may be reinstated in accordance with the provisions of 16.10.15.16 NMAC.

(2) On request, a license may be placed on retired status. There is no charge for this change in status. A retired license is not valid for practice in New Mexico and such license may not subsequently be reinstated. A physician assistant with a retired license who chooses to reinstate the license must re-apply as a new applicant.

(3) A physician assistant may inform the board that he does not wish to renew an active license to practice in New Mexico and will voluntarily allow the license to lapse. There is no charge for this change to voluntarily lapsed status. A voluntarily lapsed license is not valid for practice in New Mexico but may be reinstated in accordance with the provisions of 16.10.15.16 NMAC.

H. Re-instatement within two years. An inactive, lapsed, voluntarily lapsed or suspended license may be placed on active status upon completion of a renewal application in which the applicant has supplied all required fees and proof of current NCCPA certification.

I. Re-instatement after two years. An inactive, lapsed, voluntarily lapsed or suspended license may be placed on active status upon completion of a re-instatement application for which the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board. Applicants may be required to personally appear before the board or the board's designee for an interview.

J. All renewal and reinstatement applications will be subject to a one-time nationwide and statewide criminal history screening.

(1) Renewal and reinstatement applications will be processed pending the completion of the statewide criminal history screening and may be granted while the screening still pending.

(2) If the nationwide or statewide criminal background screening reveals a felony or a violation of the Medical Practice

Act, the licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

K. Additional continuing medical education requirements. The specific continuing medical education requirements set forth at 16.10.14 NMAC shall be satisfied for license renewal. Proof of satisfaction of these requirements shall be submitted directly to the board. Any education credits so submitted may also be separately submitted to satisfy NCCPA requirements.

[16.10.15.16 NMAC - N, 7/15/01; A 10/5/03; A, 8/6/04; A, 7/1/06; A, 9/27/07; A, 9/21/09; A, 2/14/13]

NEW MEXICO WATER QUALITY CONTROL COMMISSION

This is an amendment to 20.6.4 NMAC, Sections 113, 121, 136, 137, 138 and 139, effective February 14, 2013.

20.6.4.113 RIO GRANDE BASIN - The Santa Fe river and perennial reaches of its tributaries from the Cochiti pueblo boundary upstream to the outfall of the Santa Fe wastewater treatment facility.

A. Designated uses: irrigation, livestock watering, wildlife habitat, [~~marginal coldwater aquatic life, secondary contact and warmwater aquatic life~~] primary contact and coolwater aquatic life.

B. Criteria: The use-specific criteria in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific [~~criteria apply~~] criterion applies: temperature 30°C (86°F) or less[~~, dissolved oxygen 4.0 mg/L or more, and dissolved oxygen 5.0 mg/L or more as a 24-hour average. Values used in the calculation of the 24-hour average for dissolved oxygen shall not exceed the dissolved oxygen saturation value. For a measured value greater than the dissolved oxygen saturation value, the dissolved oxygen saturation value shall be used in calculating the 24-hour average~~].

[20.6.4.113 NMAC - Rp 20 NMAC 6.1.2110, 10-12-00; A, 10-11-02; A, 05-23-05; A, 12-01-10; A, 02-14-13]

20.6.4.121 RIO GRANDE BASIN - Perennial tributaries to the Rio Grande in Bandelier national monument and their headwaters in Sandoval county and all perennial reaches of tributaries to the Rio Grande in Santa Fe county unless included in other segments and excluding waters on tribal lands.

A. Designated uses: domestic water supply, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact; and public water supply on Little Tesuque creek, the Rio en Medio, and the Santa Fe river [~~and Cerrillos reservoir~~].

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300 µS/cm or less; the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.121 NMAC - Rp 20 NMAC 6.1.2118, 10-12-00; A. 05-23-05; A, 12-01-10; A, 02-14-13]

[**NOTE:** The segment covered by this section was divided effective 05-23-05. The standards for the additional segments are under 20.6.4.126, 20.6.4.127 and 20.6.4.128 NMAC.]

20.6.4.136 RIO GRANDE BASIN - The Santa Fe river from the outfall of the Santa Fe wastewater treatment facility to Guadalupe street.

A. Designated uses: limited aquatic life, wildlife habitat, primary contact, livestock watering, and irrigation.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.136 NMAC - N, 02-14-13]

20.6.4.137 RIO GRANDE BASIN - The Santa Fe river from Guadalupe street to Nichols reservoir.

A. Designated uses: coolwater aquatic life, wildlife habitat, primary contact, livestock watering, and irrigation.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.137 NMAC - N, 02-14-13]

20.6.4.138 RIO GRANDE BASIN - Nichols and McClure reservoirs.

A. Designated uses: high quality coldwater aquatic life, wildlife habitat, primary contact, public water supply and irrigation.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300 µS/cm or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.138 NMAC - N, 02-14-13]

20.6.4.139 RIO GRANDE BASIN - Perennial reaches of Galisteo creek and perennial reaches of its tributaries from Kewa pueblo upstream to 2.2 miles upstream of Lamy.

A. Designated uses: coolwater aquatic life, primary contact, irrigation, livestock watering, domestic water supply and wildlife habitat; and public water supply on Cerrillos reservoir.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.139 NMAC - N, 02-14-13]

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

This is an amendment to 11.2.3 NMAC, Sections 1, 2, 5 through 28, effective January 31, 2013. The part name is also amended.

TITLE 11 LABOR AND WORKERS COMPENSATION
CHAPTER 2 JOB TRAINING
PART 3 S T A T E APPRENTICESHIP [~~COUNCIL~~] POLICY MANUAL

11.2.3.1 ISSUING AGENCY: [~~New Mexico Department of Labor, Labor and Industrial Division State Apprenticeship Council~~] New Mexico Department of Workforce Solutions, State Apprenticeship Agency.

[4-30-97; 11.2.3.1 NMAC - Rn, 11 NMAC 2.3.1, 12-30-02; A, 1-31-13]

11.2.3.2 SCOPE: All apprenticeship programs, sponsors, and apprentices registered with the New Mexico [~~state apprenticeship council~~] state apprenticeship agency.

[4-30-97; 11.2.3.2 NMAC - Rn, 11 NMAC 2.3.2, 12-30-02; A, 1-31-13]

11.2.3.3 S T A T U T O R Y AUTHORITY: Section 50-7-1 to 50-7-4.1, 50-7-7 NMSA, 1978

[12-15-97; 11.2.3.3 NMAC - Rn, 11 NMAC 2.3.3, 12-30-02]

11.2.3.4 D U R A T I O N : Permanent

[4-30-97; 11.2.3.4 NMAC - Rn, 11 NMAC 2.3.4, 12-30-02]

11.2.3.5 EFFECTIVE DATE:

December 15, 1997 unless a [~~different date is written~~] later date is cited at the end of a section [~~or paragraph~~].
[4-30-97, 12-15-97; 11.2.3.5 NMAC - Rn, 11 NMAC 2.3.5, 12-30-02; A, 1-31-13]

11.2.3.6 NEW MEXICO STATE APPRENTICESHIP [~~COUNCIL~~] AGENCY OBJECTIVES:

A. General: To help achieve, through cooperative effort, the training of apprentices in apprenticeable occupations to meet current and future needs for skilled [~~journeymen~~] journeyworker. To help insure that this training stays abreast of technological developments and needs for national security, and to increase the job opportunities, earning ability, and security of the apprentices. In order to provide equal opportunities for all qualified applicants for apprenticeship, hereafter all apprentices shall be selected in accordance with a plan which assures equality of opportunity and which is acceptable to the state apprenticeship council and approved by the state apprenticeship agency.

B. Specific:

(1) To develop and improve techniques which will more accurately measure future apprenticeship requirements on a national, industrial, and community basis.

(2) To promote more widespread use of effective techniques which will assist in the selection and employment of apprentices.

(3) To make available to potential users, information relating to prospective apprenticeship requirements, occupational outlook, counseling techniques, and procedures which will aid:

(a) educational institutions in planning curricula;

(b) management and labor in planning apprenticeship programs;

(c) parents, teachers, and counselors in advising youth;

(d) individuals in their occupational planning.

(4) To encourage communities to survey their apprenticeship needs in order to have a sound basis for providing adequate educational facilities, vocational guidance, selective placement services, and to assist in the development of sound educational and training opportunities for all individuals.

(5) To encourage those responsible for apprenticeship development in all industries to determine their future apprenticeship requirements in order to have a sound basis for action.

(6) To promote effective apprenticeship training by:

(a) studying the quantity and quality of apprenticeship training in industry;

(b) organizing and promoting research on effective apprenticeship training practices;

(c) encouraging the use of methods which have proven to be effective in apprenticeship training;

(d) developing and promoting services to assist management and labor in determining apprenticeship training needs [~~and~~];

(e) developing, organizing, and operating apprenticeship training programs.

(7) To assist other agencies to develop and provide services for apprenticeship programs which are flexible and acceptable to labor and management and with a minimum of regulation.

(8) To stimulate national, state, and local organizations and groups to give active support to effective apprenticeship training programs so that a greater proportion of [~~journeymen~~] journeyworkers in apprenticeable occupations will have achieved their skill through apprenticeship programs.
[6-7-77, 4-30-97; 11.2.3.6 NMAC - Rn, 11 NMAC 2.3.6, 12-30-02; A, 1-31-13]

11.2.3.7 DEFINITIONS:

[~~**A.** Apprentice shall mean a person as defined in the State Apprenticeship Act.~~

~~**B.** Council shall mean the New Mexico state apprenticeship council. It shall consist of three persons known to represent employers, three persons known to represent labor organizations, three public representatives and shall include, as ex-officio members without vote, the director of the labor and industrial division and the state supervisor of trade and industrial education. Persons appointed to the council must be familiar with apprenticeable occupations.~~

~~**C.** Director shall mean the state director of apprenticeship.~~

~~**D.** Sponsor shall mean an individual or group capable of providing adequate training and employment for the apprentice according to apprenticeship standards adopted by this individual or group and approved by the council.~~

~~**E.** Apprentice programs shall mean and include all apprentice training activities carried on by the sponsor.~~

~~**F.** Apprenticeship standards shall mean a document with the requirements, as a minimum, as defined in Section 22 of this manual.~~

~~**G.** BAT shall mean the bureau of apprenticeship and training, U.S. department of labor.~~

~~**H.** Journeyman, as referred to in this policy manual, shall mean a worker who is qualified in a trade or craft. NOTE: In this policy manual, where the masculine gender is used, such use shall equally apply to the feminine gender.~~]

A. "Administrator" means the administrator of the office of apprenticeship, or any person specifically designated by the administrator.

B. "Apprentice" means a worker at least 16 years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn an apprenticeable occupation as provided in 11.2.3.20 NMAC under standards of apprenticeship fulfilling the requirements of 11.2.3.21 NMAC.

C. "Apprenticeship agreement" means a written agreement, complying with NMAC 11.2.3.25, between an apprentice and either the apprentice's program sponsor, or an apprenticeship committee acting as agent for the program sponsor(s), which contains the terms and conditions of the employment and training of the apprentice.

D. "Apprenticeship committee (committee)" means those persons designated by the sponsor to administer the program. A committee may be either joint or non-joint, as follows: (1) A joint committee is composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s); (2) A non-joint committee, which may also be known as a unilateral or group non-joint (which may include employees) committee, has employer representatives but does not have a bona fide collective bargaining agent as a participant.

E. "Apprenticeship program" means a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, as required under this manual, including such matters as the requirement for a written apprenticeship agreement.

F. "Apprenticeship program completion approaches" means the different ways that the term of apprenticeship for completion of a program can be measured. They are defined as follows.

(1) Time based approach is measured by the skill acquisition through the individual apprentice's completion of at least 2,000 hours of on-the-job training as described in a work process schedule.

(2) Competency based approach is measured by the attainment of manual, mechanical or technical skills and knowledge, as specified by an occupational standard and demonstrated by an appropriate written and hands-on proficiency measurement.

(3) Hybrid approach is measured by the individual apprentice's skill acquisition through a combination of a specified minimum number of hours of on-the-job training and the successful demonstration of competency as described in a work process schedule.

G. "Apprenticeship standards" means a document with the

requirements, as a minimum, as defined in 11.2.3.22 NMAC.

H. "Cancellation" means the termination of the registration or approval status of a program at the request of the sponsor, or termination of an apprenticeship agreement at the request of the apprentice.

I. "Certification or certificate" means documentary evidence that:

(1) the OA has approved a set of national guidelines for apprenticeship standards developed by a national committee or organization, joint or unilateral, for policy or guideline use by local affiliates;

(2) the state apprenticeship agency has established that an individual is eligible for probationary employment as an apprentice under a registered apprenticeship program;

(3) the state apprenticeship agency has registered an apprenticeship program as evidenced by a certificate of registration or other written indicia;

(4) the state apprenticeship agency has determined that an apprentice has successfully met the requirements to receive an interim credential; or

(5) the state apprenticeship agreement has determined that an individual has successfully completed apprenticeship.

J. "Completion rate" means the percentage of an apprenticeship cohort who receives a certificate of apprenticeship completion within one year of the projected completion date. An apprenticeship cohort is the group of individual apprentices registered to a specific program during a one-year time frame, except that a cohort does not include the apprentices whose apprenticeship agreement has been cancelled during the probationary period.

K. "Competency" means the attainment of manual, mechanical or technical skills and knowledge, as specified by an occupational standard and demonstrated by an appropriate written and hands-on proficiency measurement.

L. "Director" means the director of the state apprenticeship agency.

M. "Electronic media" means media that utilize electronics or electromechanical energy for the end user (audience) to access the content; and includes, but is not limited to, electronic storage media, transmission media, the internet, extranet, lease lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic media or interactive distance learning.

N. "Employer" means any person or organization employing an apprentice whether or not such person or organization is a party to an apprenticeship agreement with the apprentice.

O. "Equal employment opportunity (EEO) compliance review" means a comprehensive review conducted by the state apprenticeship agency in regards to the EEO aspects of a registered apprenticeship program in accordance with those activities defined in the NMAC equal employment opportunity in apprenticeship state plan.

P. "Federal purposes" means any federal contract, grant, agreement or arrangement dealing with apprenticeship; and any federal financial or other assistance, benefit, privilege, contribution, allowance, exemption, preference or right pertaining to apprenticeship.

Q. "Interim credential" means a credential issued by the state apprenticeship agency, upon request of the appropriate sponsor, as certification of competency attainment by an apprentice.

R. "Journeyworker" means a worker who has attained a level of skill, abilities, and competencies recognized within an industry as having mastered the skills and competencies required for the occupation. (Use of the term may also refer to a mentor, technician, specialist or other skilled worker who has documented sufficient skills and knowledge of an occupation, either through formal apprenticeship or through practical on-the-job experience and formal training).

S. "Office of apprenticeship (OA)" means the office designated by the employment and training administration, United States department of labor, to administer the national apprenticeship system or its successor organization.

T. "Provisional registration" means the one-year initial provisional approval of newly registered programs that meet the required standards for program registration, after which program approval may be made permanent, continued as provisional, or rescinded following a review by the state apprenticeship agency and the state apprenticeship council, as provided for in the criteria described in 11.2.3.18 NMAC.

U. "Quality assurance assessment" means a comprehensive review conducted by the state apprenticeship agency regarding all aspects of an apprenticeship program's performance, including but not limited to, determining if apprentices are receiving: on-the-job training in all phases of the apprenticeable occupation; scheduled wage increases consistent with the registered standards; related instruction through appropriate curriculum and delivery systems; and that the registration agency is receiving notification of all new registrations, cancellations, and completions as required in this part.

V. "Registration agency" means the office of apprenticeship or a recognized state apprenticeship agency that has responsibility for registering apprenticeship programs and apprentices; providing technical assistance; conducting reviews for compliance with 29 CFR parts 29 and 30 and quality assurance assessments.

W. "Registration of an apprenticeship agreement" means the acceptance and recording of an apprenticeship agreement by the state apprenticeship agency as evidence of the apprentice's participation in a particular registered apprenticeship program.

X. "Registration of an apprenticeship program" means the acceptance and recording of such program by the office of apprenticeship, or registration or approval by a recognized state apprenticeship agency, as meeting the basic standards and requirements of the United States department of labor for approval of such program for federal purposes. Approval is evidenced by a certificate of registration or other written indicia.

Y. "Related instruction" means an organized and systematic form of instruction designed to provide the apprentice with the knowledge of the theoretical and technical subjects related to the apprentice's occupation. Such instruction may be given in a classroom, through occupational or industrial courses, or by correspondence courses of equivalent value, electronic media, or other forms of self-study approved by the SAA.

Z. "Sponsor" means any person, association, committee, or organization operating an apprenticeship program and in whose name the program is (or is to be) registered or approved.

AA. "State apprenticeship agency (SAA)" means an agency of a state government that has responsibility and accountability for apprenticeship within the state. The SAA for New Mexico is New Mexico department of workforce solutions.

BB. "State apprenticeship council (SAC)" means the entity established to assist the SAA.

CC. "State office (SO)" means the individual office or division of state government designated as the point of contact for the SAA. The department of workforce solutions shall house the SAA, which shall serve as the point of contact for the state office. The state office shall help to promote apprenticeship programs and the success of apprentices through administration of the act.

DD. "Technical assistance" means guidance provided by SAA staff in the development, revision, amendment, or processing of a potential or current program sponsor's standards of apprenticeship, apprenticeship agreements, or advice or consultation with a program sponsor to further compliance with this part or guidance from the OA to a SAA on how to remedy nonconformity with this part.

EE. "Transfer" means a shift of apprenticeship registration from one program to another or from one employer within a program to another employer within that same program, where there is agreement between the apprentice and the affected apprenticeship committees or program sponsors.

[6-7-77, 8-26-84, 12-15-97; 11.2.3.7 NMAC - Rn, 11 NMAC 2.3.7, 12-30-02; A, 1-31-13]

11.2.3.8 [~~NEW MEXICO STATE APPRENTICESHIP COUNCIL FUNCTIONS.~~

~~A. All policies which are to become part of this policy manual shall first be promulgated pursuant to applicable administrative law, public hearing, and be approved by a majority vote of the nine council members before becoming effective.~~

~~B. The council shall work to effectively encourage the development of, and assist in the establishment of, voluntary apprenticeship training opportunities for eligible persons in industry.~~

~~C. The council shall maintain a register and appropriate records of all apprentices and apprenticeship programs that have approval of the council.~~

~~D. The council through its staff, shall review the activities of apprenticeship programs registered with the council.~~] **DUTIES OF SAA:**

A. The state apprenticeship agency (SAA) has responsibility and accountability for apprenticeship within the state. The SAA is housed in the New Mexico department of workforce solutions.

B. Only the SAA may seek recognition by the OA as an agency which has been properly constituted under an acceptable law or executive order, and authorized by the OA to register and oversee apprenticeship programs and agreements for federal purposes.

C. The SAA shall:

(1) have authority to give final approval in all areas pertaining to the registration of apprenticeship programs and program standards;

(2) maintain a register and appropriate records of all apprentices and apprenticeship programs that have approval of the state apprenticeship agency;

(3) review the activities of apprenticeship programs;

(4) approve and keep record of registered apprentices and apprenticeship agreements;

(5) monitor apprenticeship programs, performance standards, and conduct quality assurance assessments and EEO compliance reviews;

(6) apply for recognition as a registration agency with the OA and maintain national requirements as determined in 29 CFR 29.13 for recognition as a registration agency; the SAA is subject to derecognition by the OA for failure to fulfill or operate inconformity with the requirements of CFR parts 29 and 30;

(7) serve as the registration agency for apprenticeship programs and apprentices;

(8) issue interim credentials to apprentices;

(9) issue certificates of completion to apprentices;

(10) coordinate linkages with the New Mexico workforce investment system;

(11) issue certifications;

(12) issue certificates of registration;

(13) be the highest authority within the division where complaint appeals can be sent.

[6-7-77, 8-26-84, 12-15-97; 11.2.3.8 NMAC - Rn, 11 NMAC 2.3.8, 12-30-02; 11.2.3.8 NMAC - Rn & A, 11.2.3.11 NMAC, 1-31-13]

11.2.3.9 [~~ORGANIZATION OF THE COUNCIL.~~

~~A. Council members shall be appointed as provided for in Section 50-7-3 of the Apprenticeship Act. If a council member misses two (2) consecutive meetings, unless for just cause beyond the member's control, the council shall recommend to the division director that such member be replaced by a person who represents the same interest group.~~

~~B. Officers of the council shall consist of a chairman and a vice-chairman. These officers will be elected annually at the third quarter regular meeting, and shall assume office immediately upon election. The chairman and vice-chairman shall not be selected from the same interest group, and shall not be eligible to succeed themselves. A former chairman or vice-chairman may be elected to the same office after having been out of that office for one year.~~

~~C. Ex-officio members of the council shall consist of the division director and the state supervisor of trade and industrial education. The ex-officio members shall serve without vote.~~

~~D. The New Mexico state director of the BAT and the director of the New Mexico commission on the status of women, or persons serving in these capacities, shall be invited to become consultants to the council and to participate in public council meetings and to serve as special advisors to the council.~~

~~E. Committees may be appointed by the council chairman to study, research, and make recommendations to the council on such matters as may be deemed to be appropriate by the council. Membership of such committees may be composed of council members, other interested persons, or a combination of council members and non-members. The director of apprenticeship shall automatically be an ex-officio member of any such committee.~~] **DUTIES OF THE SAA DIRECTOR:**

A. The director of apprenticeship oversees the registration of apprenticeship programs, apprentices, and all activities associated with the SAA.

B. The director of apprenticeship shall:

(1) encourage apprenticeship training through personal contact with individual employers and labor organizations;

(2) act as liaison and shall coordinate, and cooperate with other state and federal agencies;

(3) assist in the preparation of standards of apprenticeship for presentation to the SAC;

(4) protect the welfare of the apprentices;

(5) devise procedures and keep records and statistics;

(6) handle public relations pertaining to apprenticeship training for the purpose of public education;

(7) carry out the policies approved and assigned by the state office;

(8) notify all apprenticeship program sponsors of new or changed policy adopted by the SAA; and

(9) coordinate the activities and objectives of the SAA and SAC with OA staff assigned to New Mexico.

[6-7-77, 8-26-84, 12-15-97; 11.2.3.9 NMAC - Rn, 11 NMAC 2.3.9, 12-30-02; 11.2.3.9 NMAC - Rn & A, 11.2.3.13 NMAC, 1-31-13]

11.2.3.10 [~~MEETINGS OF THE COUNCIL.~~

~~A. The regular meetings will be held quarterly on the third Thursday of the second month of each quarter, unless otherwise rescheduled within each quarter by the chairman.~~

~~(1) Meetings may be scheduled in any city, town, or village of the state subject to the approval of the division director.~~

~~(2) During a regular meeting at least once each year, the council shall adopt an annual resolution stating its procedure for giving reasonable public notice of regular and special meetings as is required by the State Open Meetings Act.~~

~~B. Meetings may be requested by the director, the chairman, or in his absence, by the vice-chairman, the division director, or on petition by any three members of the council.~~

~~C. Five (5) members of the council shall constitute a quorum, provided at least one member representing management and one member representing labor and one public member is present.~~

~~D. Voting shall be limited to~~

~~the members present at the council meeting. The chairman may vote on all questions and issues, or at his option, may choose to cast his vote only in the case of a tie. The division director and the state supervisor of trade and industrial education shall serve as ex-officio members without vote.~~

~~E. All meetings shall be open to all interested parties and to the public, except that meetings may be closed to the public as provided for in the State Open Meetings Act.~~] **ORGANIZATION OF SAC:** The state apprenticeship council (SAC) may promulgate apprenticeship rules at the direction of the SAA. The SAC provides advice and guidance to the SAA on the operation of the state's apprenticeship system.

A. The SAC shall consist of three persons known to represent employers, three persons known to represent labor organizations, and three public representatives. Persons appointed to the council shall be familiar with apprenticeable occupations.

B. SAC members shall be appointed as provided for in Section 50-7-3 NMSA, 1978. If a SAC member misses two consecutive meetings, unless for just cause beyond the member's control, the SAC shall recommend to the SAA that such member be replaced by a person who represents the same interest group.

C. Officers of the SAC shall consist of a chairman and a vice-chairman. These officers will be elected annually at the third quarter regular meeting, and shall assume office immediately upon election. The chairman and vice-chairman shall not be selected from the same interest group, and shall not be eligible to succeed themselves. A former chairman or vice-chairman may be elected to the same office after having been out of that office for one year.

D. The director of apprenticeship shall serve as executive secretary and as an ex-officio, non-voting member of the SAC and as an ex-officio non-voting member of any committees created pursuant to Subsection E of 11.2.3.10 NMAC.

E. Committees may be appointed by the SAC chairman to study, research, and make recommendations to the SAC on such matters as may be deemed to be appropriate by the SAC. Membership of such committees may be composed of SAC members, other interested persons, or a combination of SAC members and non-members.

[6-7-77, 8-26-84, 12-15-97; 11.2.3.10 NMAC - Rn, 11 NMAC 2.3.10, 12-30-02; 11.2.3.10 NMAC - Rn & A, 11.2.3.9 NMAC, 1-31-13]

11.2.3.11 [~~PARLIAMENTARY PROCEDURE AND ORDER OF BUSINESS.~~

~~A. Roberts Rules of Order, revised, shall govern the proceedings of the council, unless otherwise specified in this Manual.~~

~~B. The order of business for all meetings of the council and its committees shall be:~~

~~(1) reading of minutes of previous meeting;~~

~~(2) communications;~~

~~(3) reports of:~~

~~(a) council members;~~

~~(b) ex-officio council members;~~

~~(c) committees;~~

~~(d) consultants;~~

~~(e) director of apprenticeship;~~

~~(4) unfinished business;~~

~~(5) new business;~~

~~(6) persons wishing to be heard by the council;~~

~~(7) election of officers;~~

~~(8) adjourn.~~] **DUTIES OF SAC:** The SAC shall:

A. work to effectively encourage the development of, and assist in the establishment of, voluntary apprenticeship training opportunities for eligible persons;

B. review all applications for the registration of an apprenticeship program, revisions to an existing apprenticeship program, and other aspects of apprenticeship and provide a final recommendation to the SAA for final action on any such application; and

C. work in cooperation with the SAA to review the activities of all registered apprenticeship programs and all registered apprentices.

[6-7-77; 11.2.3.11 NMAC - Rn, 11 NMAC 2.3.11, 12-30-02; 11.2.3.11 NMAC - Rn & A, 11.2.3.8 NMAC, 1-31-13]

11.2.3.12 [~~FORMULATION OF POLICY.~~

~~A. Under the Act authorizing the functions of the New Mexico state apprenticeship council, the division director is its administrator. By delegation, the director of apprenticeship is its operating head.~~

~~B. Under the same authorization, the council establishes general policies, principles, and standards under which the agency operates and interprets these principles and standards. It authorizes the areas of emphasis to be placed on apprenticeship activities; represents the point of view of management and labor and the public in respect to major state problems in apprenticeship; serves as a liaison with management and labor, and in this capacity helps to promote apprenticeship by participation in conferences and meetings.~~] **MEETINGS OF SAC:**

A. Regular meetings shall be held quarterly on the third Thursday of the second month of each quarter, unless otherwise rescheduled within each quarter by the chairman.

B. Meetings may be scheduled in any city, town, or village of the state.

C. During a regular meeting at least once each year, the SAC shall adopt an annual resolution stating its procedure for giving reasonable public notice of regular and special meetings pursuant to the requirements of the state Open Meetings Act.

D. Meetings may be requested by the chairman, or in the chairman's absence, by the vice-chairman, or on petition by any three members of the SAC. The SAA may also request a meeting.

E. Five members of the SAC shall constitute a quorum, provided at least one member representing employers and one member representing labor, and one public member are present.

F. Voting shall be limited to the members present at the SAC meeting. The chairman may vote on all questions and issues, or may choose to vote only in the case of a tie.

G. All meetings shall be open to all interested parties and to the public, except that meetings may be closed to the public as provided for in the state Open Meetings Act.

[6-7-77, 12-15-97; 11.2.3.12 NMAC - Rn, 11 NMAC 2.3.12, 12-30-02; 11.2.3.12 NMAC - Rn & A, 11.2.3.10 NMAC, 1-31-13]

11.2.3.13 [~~DUTIES OF THE DIRECTOR OF APPRENTICESHIP.~~

~~The director of apprenticeship shall serve as executive secretary of the council without vote. Subject to the general direction and control of the council and the division director, some of his duties shall be as follows:~~

~~A. encourage apprenticeship training through personal contact with management and labor groups;~~

~~B. liaison, coordination, and cooperation with other state agencies and the federal apprenticeship program;~~

~~C. assist in the preparation of standards of apprenticeship for presentation to the council;~~

~~D. protect the welfare of the apprentices;~~

~~E. devise procedures and keep records and statistics;~~

~~F. handle public relations pertaining to apprenticeship training for the purpose of public education;~~

~~G. monitoring of training programs in apprenticeable occupations under the various federal and/or state training and vocational education acts, in cooperation with other state and federal agencies;~~

~~H. carry out the policies approved and assigned by the council;~~

~~I. serve as an ex-officio member of all committees appointed by the council;~~

~~J. solicit the assistance of the state director of BAT in the review of all standards and amendments to standards before presenting such documents to the council;~~

~~K. notify all apprenticeship program sponsors of new or changed policy adopted by the council.~~] **PARLIAMENTARY PROCEDURE AND ORDER OF BUSINESS:**

A. Roberts Rules of Order, revised, shall govern the proceedings of the SAC, unless otherwise specified in this manual.

B. The order of business for all meetings of the SAC and its committees shall be:

(1) approval of minutes for previous meeting;

(2) communications;

(3) reports of:

(a) SAC members;

(b) committees;

(c) consultants;

(d) director of apprenticeship;

(4) unfinished business;

(5) new business;

(6) persons wishing to be heard by the SAC;

(7) election of officers;

(8) adjourn.

[6-7-77, 8-26-84; 11.2.3.13 NMAC - Rn, 11 NMAC 2.3.13, 12-30-02; 11.2.3.13 NMAC - Rn & A, 11.2.3.11 NMAC, 1-31-13]

11.2.3.14 [~~U. S. DEPARTMENT OF LABOR, BUREAU OF APPRENTICESHIPAND TRAINING (BAT).~~ ~~General policy: It shall be the responsibility of the director to coordinate the activities and objectives of the council with those of the staff of the BAT assigned to New Mexico. Mutual understanding and good faith on the part of the state and federal agencies is essential to the advancement of parallel interests of the state and federal governments.~~] **FORMULATION OF POLICY:**

A. The department of workforce solutions shall house the SAA. By delegation, the director of apprenticeship is the SAA's operating head and administrator.

B. The SAC advises on general policies, principles, and standards under which the SAA operates. The SAA interprets, and enforces these policies, principles and standards. SAC advises the areas of emphasis to be placed on apprenticeship activities; represents the point of view of employers and labor and the public in respect to major state problems in apprenticeship; serves as a liaison with employers and labor, and in this capacity helps to promote apprenticeship by participation in conferences and meetings.

[6-7-77, 2-21-78, 8-26-84; 11.2.3.14 NMAC - Rn, 11 NMAC 2.3.14, 12-30-02; 11.2.3.14 NMAC - Rn & A, 11.2.3.12 NMAC, 1-31-13]

11.2.3.15 [~~N A T I O N A L STANDARDS AND POLICY STATEMENTS OF APPRENTICESHIP.~~ ~~General policy: It is basic council policy to cooperate in promoting the development of joint national standards of apprenticeship agreed upon by the appropriate national organizations concerned. When national standards for various reasons cannot be obtained, national policy statements by employer or employee organizations which observe the fundamentals of apprenticeship are recognized as guides by the council in the promotion of apprenticeship among the members of the organizations which formulate the policy.~~] **U.S. DEPARTMENT OF LABOR, OFFICE OF APPRENTICESHIP:** General policy: It shall be the responsibility of the director to coordinate the activities and objectives of the SAA with staff of the OA assigned to New Mexico. Mutual understanding and good faith on part of the state and federal agencies is essential to the advancement of parallel interest of the state and federal governments.

[6-7-77, 2-21-78, 8-26-84; 11.2.3.15 NMAC - Rn, 11 NMAC 2.3.15, 12-30-02; 11.2.3.15 NMAC - Rn & A, 11.2.3.14 NMAC, 1-31-13]

11.2.3.16 [~~APPRENTICESHIP PROGRAMS.~~

~~A. General policy: The terms and conditions of an apprenticeship program must be in written form so that all parties concerned may be informed of its provisions, and so it can be used in the training operations and the administration of the program.~~

~~B. Forms of apprenticeship programs: The apprenticeship program may take the form of one or more of the following:~~

~~(1) a written program between the employer or the employer's association and the employees' organization which describes the terms and conditions of employment and training of apprentices;~~

~~(2) a written program by the employer or employer's association where no employee organization exists which describes the terms and conditions of employment and training of apprentices;~~

~~(3) a written program by the employee organization describing the terms and conditions of employment and training of apprentices in which the employer indicates consent in writing;~~

~~(4) a written program by the employer or employer's association describing the terms and conditions of employment and training of apprentices in which the employee organization indicates consent in writing.~~] **NATIONAL STANDARDS AND POLICY STATEMENTS OF APPRENTICESHIP:** General policy: It is basic SAA policy to cooperate in promoting the development of joint national standards of apprenticeship agreed upon by the appropriate national organizations concerned. When national standards for various reasons cannot be obtained, national policy statements by employer or employee organizations which observe the fundamentals of apprenticeship are recognized as guides by the SAA in the promotion of apprenticeship among the members of the organizations which formulate the policy.

[6-7-77; 11.2.3.16 NMAC - Rn, 11 NMAC 2.3.16, 12-30-02; 11.2.3.16 NMAC - Rn & A, 11.2.3.15 NMAC, 1-31-13]

11.2.3.17 [~~RELATIONSHIP TO BARGAINING AGREEMENTS.~~

~~A. General policy: Because a bargaining agreement is a legal contract between the parties who sign it, its terms and conditions with respect to the employment and training of apprentices are to be fully respected. Any changes from the terms in the bargaining agreement advocated in connection with apprenticeship must be made in conformance with the recognized procedures for amending the bargaining agreement.~~

~~B. A p p r e n t i c e s h i p provisions in bargaining agreements: It is preferable that apprenticeship programs be developed separately from the bargaining agreement to focus greater attention to apprenticeship. Where the parties to the agreement so desire, it is recommended that a clause be inserted in the agreement authorizing the establishment of an apprenticeship program, (or recognizing a program in existence), to conform to the fundamentals or standards of the council.~~

~~C. To be eligible for registration: Both parties to a bargaining agreement must indicate approval in writing before an apprenticeship program affecting employees may be registered. Under a program proposed for registration by an employer or employers' association, where the standards, collective bargaining agreement or other instrument provides for participation by a union in any manner in the operation of the substantive matters of the apprenticeship program, and such participation is exercised, written acknowledgment of union agreement or "no objection" to the registration is required. Where no such participation is evidenced and practiced, the employer or employers'~~

~~association shall simultaneously furnish to the union, if any, which is the collective bargaining agent of the employees to be trained, a copy of its application for registration and of the apprenticeship program. The registration agency shall provide a reasonable time period of not less than 30 days nor more than 60 days for receipt of union comments, if any, before final action on the application for registration and/or approval.~~] **APPRENTICESHIP PROGRAMS:**

A. General policy: The terms and conditions of an apprenticeship program must be in written form so that all parties concerned may be informed of its provisions, and so it can be used in the training operations and the administration of the program.

B. Forms of apprenticeship programs: The apprenticeship program may take the form of one or more of the following:

(1) a written program between the employer or the employer's association and the employees' organization which describes the terms and conditions of employment and training of apprentices;

(2) a written program by the employer or employer's association where no employee organization exists which describes the terms and conditions of employment and training of apprentices;

(3) a written program by the employee organization describing the terms and conditions of employment and training of apprentices in which the employer indicates consent in writing;

(4) a written program by the employer or employer's association describing the terms and conditions of employment and training of apprentices in which the employee organization indicates consent in writing.

[6-7-77, 2-21-78; 11.2.3.17 NMAC - Rn, 11 NMAC 2.3.17, 12-30-02; 11.2.3.17 NMAC - Rn & A, 11.2.3.16 NMAC, 1-31-13]

11.2.3.18 [~~E M P L O Y E E - EMPLOYER COOPERATION~~. ~~General policy: Cooperation between an employer and his skilled employees is essential for the proper training of the apprentice. The employer provides employment for the apprentices and facilities for the apprenticeship program, including supervision. The skilled employees impart their skills and knowledge to the apprentice.~~] **RELATIONSHIP TO BARGAINING AGREEMENTS:**

A. General policy: Because a bargaining agreement is a legal contract between the parties who sign it, its terms and conditions with respect to the employment and training of apprentices are to be fully respected. Any changes from the terms in the bargaining agreement advocated in connection with apprenticeship must be made in conformance with the recognized procedures for amending the bargaining agreement.

B. Apprenticeship provisions in bargaining agreements: It is preferable that apprenticeship programs be developed separately from the bargaining agreement to focus greater attention to apprenticeship. Where the parties to the agreement so desire, it is recommended that a clause be inserted in the agreement authorizing the establishment of an apprenticeship program, (or recognizing a program in existence), to conform to the fundamentals or standards of the SAA.

C. To be eligible for registration: Under a program proposed for registration by an employer or employers' association, where the standards, collective bargaining agreement or other instrument provides for participation by a union in any manner in the operation of the substantive matters of the apprenticeship program, and such participation is exercised, written acknowledgement of union agreement or no objection to the registration is required. Where no such participation is evidenced and practiced, the employer or employers' association must simultaneously furnish to an existing union, which is the collective bargaining agent of the employees to be trained, a copy of its application for registration and of the apprenticeship program. The SAA must provide for receipt of union comments, if any, within 45 days before final action on the application for registration and approval.

[6-7-77; 11.2.3.18 NMAC - Rn, 11 NMAC 2.3.18, 12-30-02; 11.2.3.18 NMAC - Rn & A, 11.2.3.17 NMAC, 1-31-13]

11.2.3.19 [~~METHOD OF RECOGNITION.~~

~~A. General policy: Recognition is a means of publicly acknowledging apprenticeship programs which are considered to have met the fundamentals of apprenticeship.~~

~~B. Method of recognition: Recognition may be accorded New Mexico apprenticeship programs by the council, by registration, when they have met the fundamentals of apprenticeship, and as detailed below. Programs whose registration has been denied shall be given a reason for denial by the council chairman at the point of denial. The state director of apprenticeship shall notify programs of registration and/or denial, with the stated reason of denial within five (5) working days of said action. When a program does not receive approval, council members who voted to deny accreditation shall state the reason for denial vote at the time of their vote.~~

~~C. Recognition of multi-state programs: The council will cooperate with the US department of labor, BAT, in the recognition of multi-state programs registered by BAT.~~

~~D. Registration reciprocity: It is the policy of the bureau of apprenticeship and training, U.S. department of labor, that apprenticeship programs and standards of employers and unions in other than the building and construction industry, which jointly form a sponsoring entity on a multi-state basis and are registered pursuant to all Section 6.4 requirements of 29 CFR 29 by any state apprenticeship agency/ council which is recognized by the bureau of apprenticeship and training, or registered by that bureau, shall be accorded registration or approval reciprocity by any other state apprenticeship agency/council or office of the bureau if such reciprocity is requested by the sponsoring entity. The New Mexico state apprenticeship council will adhere to this policy by affording such registration or approval reciprocity provided no provisions or requirements of such program or standards is in violation of New Mexico law.~~

~~E. Registration of new programs: Any sponsor that can meet the standards described is eligible for program registration:~~

~~(1) the apprenticeship representative, either SAC or BAT, has explained to the potential sponsor the advantages of participating in an ongoing program, and~~

~~(2) if the potential sponsor is unwilling to participate in an existing program, or sponsors of the existing program(s) will not agree to such participation, the apprenticeship representative shall assist in the preparation of standards of apprenticeship for presentation to the council.~~] **EMPLOYEE-EMPLOYER COOPERATION:** General policy: Cooperation between an employer and his skilled employees is essential for the proper training of the apprentice. The employer provides employment for the apprentices. The skilled employees impart their skills and knowledge to the apprentice.

[6-7-77, 2-21-78, 8-26-84, 12-15-97; 11.2.3.19 NMAC - Rn, 11 NMAC 2.3.19, 12-30-02; 11.2.3.19 NMAC - Rn & A, 11.2.3.18 NMAC, 1-31-13]

11.2.3.20 [~~REVIEW OF PROGRAMS.~~ ~~General policy: In order to carry out the provisions of the New Mexico State Apprenticeship Act with regard to safeguarding the welfare of the apprentice, the program provisions under which the apprentice is to be employed should be reviewed for their consistency with current apprenticeship fundamentals and recognized apprenticeship policies and practices of industry.~~] **METHOD OF RECOGNITION:**

A. General policy:

Recognition is a means of publicly acknowledging apprenticeship programs that are considered to have met the fundamentals of apprenticeship. Recognition may be accorded to New Mexico apprenticeship programs by the SAA, by registration, when they have met the fundamentals of apprenticeship, and as detailed below. The director of apprenticeship shall notify programs of registration or denial, with the stated reason of denial within five working days of said action.

B. Eligibility and procedure for registration of an apprenticeship program:

(1) Eligibility for registration of an apprenticeship program is conditioned upon a program's conformity with the apprenticeship program standards published in 11.2.3.21 NMAC. For a program to be determined by the SAA as being in conformity with these published standards, the program must apply for registration and be registered with the SAA. The determination that the program meets the apprenticeship program standards is effectuated only through such registration.

(2) Only an apprenticeship program or agreement that meets the following criteria is eligible for SAA registration:

(a) it is in conformity with the requirements of this part and the training is in an apprenticeable occupation having the characteristics set forth in 11.2.3.20 NMAC and

(b) it is in conformity with the requirements of the United States department of labor regulation on equal employment opportunity in apprenticeship and training in 29 CFR part 30, as amended, and with the 11.2.2 NMAC equal employment opportunity in apprenticeship state plan.

(3) Except as provided under Paragraph (4) of this subsection, apprentices must be individually registered under a registered program. Such individual registration may be accomplished by filing copies of each individual apprenticeship agreement with the SAA:

(a) by filing copies of each individual apprenticeship agreement with the SAA or;

(b) subject to prior SAA approval, by filing a master copy of such agreement followed by a listing of the name, and other required data, of each individual when apprenticed.

(4) The names of persons in probationary employment as an apprentice under an apprenticeship program registered by the SAA, if not individually registered under such program, must be submitted within 45 days of employment to the SAA for certification to establish the apprentice as eligible for such probationary employment.

(5) The SAA must be notified within 45 days of all individuals who have successfully completed apprenticeship programs. The SAA must also be notified and provided a statement of the reasons within 45 days of any individuals who are transferred, suspended or whose apprenticeship agreement is cancelled.

(6) Operating apprenticeship programs approved by the SAA must be accorded registration and approval evidenced by a certificate or other written indicia.

(7) Applications for new programs that the SAA determines meet the required standards for program registration shall be given provisional approval for a period of one year. The SAA must review all new programs for quality and for conformity with the requirements of 11.2.3 NMAC at the end of the first year after registration and make a determination that:

(a) a program that conforms with the requirements of 11.2.3 NMAC shall be made permanent or shall continue to be provisionally approved through the first full training cycle;

(b) a program that is not in operation or does not conform to the regulations during the provisional approval period shall be recommended for deregistration procedures.

(8) The SAA shall review all programs for quality and for conformity with the requirements of 11.2.3 NMAC at the end of the first full training cycle. A satisfactory review of a provisionally approved program shall result in conversion of provisional approval to permanent registration. Subsequent reviews shall be conducted no less frequently than every five years. Programs that are not in operation or that do not conform to the regulations shall be recommended for deregistration procedures.

(9) Any sponsor proposals or applications for modification(s) or change(s) to registered programs must be submitted to the SAA. Within 90 days of the submission of the proposal or application, the SAA shall forward the proposal or application to the SAC for a formal recommendation. Once the SAC issues its formal recommendation, the SAA shall make a final determination on whether to approve the proposal or application. If approved, the modification(s) or change(s) will be recorded and acknowledged. If not approved, the sponsor shall be notified of the reasons for the disapproval and provided the appropriate technical assistance.

(10) Under a program proposed for registration by an employer or employers' association, where the standards, collective bargaining agreement or other instrument provides for participation by a union in any manner in the operation of the substantive matters of the apprenticeship program, and such participation is exercised, written acknowledgement of the union agreement or no objection to the registration is required. Where no such participation is evidenced and practiced, the employer or employers' association shall simultaneously furnish to an existing union, which is the collective bargaining agent of the employees to be trained, a copy of its application for registration and of the apprenticeship program. The SAA shall provide for receipt of union comments, if any, within 45 days before final action on the application for registration and approval. Refer also to 11.2.3.18 NMAC.

(11) Where the employees to be trained have no collective bargaining agreement, an apprenticeship program may be proposed for registration by an employer or group of employers, or an employers' association.

C. Reciprocity of multi-state and out-of-state programs: The SAA will cooperate with the United States department of labor, OA, in the recognition of multi-state or out-of-state programs registered by OA. The SAA shall grant reciprocal approval for federal purposes to apprentices, apprenticeship programs, and standards that are registered in other states by the OA or the SAA if such reciprocity is requested by the apprenticeship program sponsor. Program sponsors seeking reciprocal approval must meet the wage and hour provisions and apprentice ratio standards of the reciprocal state.

[6-7-77; 11.2.3.20 NMAC - Rn, 11 NMAC 2.3.20, 12-30-02; 11.2.3.20 NMAC - Rn & A, 11.2.3.19 NMAC, 1-31-13]

11.2.3.21 [~~APPRENTICEABLE OCCUPATIONS.~~ ~~Criteria for apprenticeable occupations: An occupation, in order to be recognized as apprenticeable by the council, must possess all the following characteristics:~~

~~A. it is customarily learned in a practical way through a structured, systematic program of on-the-job supervised training;.~~

~~B. it is clearly identified and commonly recognized throughout an industry;.~~

~~C. it involves manual, mechanical, or technical skills and knowledge which require a minimum of 2,000 hours of on-the job work experience;.~~

~~D. it requires related instruction to supplement the on-the-job training.~~] **REVIEW OF PROGRAMS PERFORMANCE STANDARDS:**

A. General policy: In order to carry out the provisions of the New Mexico State Apprenticeship Act with regard to safeguarding the welfare of the apprentice, the program provisions under which the apprentice is to be employed should be reviewed for their consistency with current apprenticeship fundamentals

and recognized apprenticeship policies and practices of industry.

B. Every registered apprenticeship program shall have at least one registered apprentice, except for the following specified periods of time, which may not exceed one year:

(1) between the date when a program is registered and the date of registration for its first apprentice(s); or

(2) between the date that a program graduates an apprentice and the date of registration for the next apprentice(s) in the program.

C. The SAA shall evaluate performance of registered apprenticeship programs. The tools and factors to be used shall include, but are not limited to: quality assurance assessments, equal employment opportunity (EEO) compliance reviews, and completion rates. Any additional tools and factors used by the SAA in evaluating program performance must adhere to the goals, policies, and guidance issued by and articulated in 11.2.3.19 NMAC.

D. In order to evaluate completion rates, the SAA shall review a program's completion rates in comparison to the national average for completion rates. Based on the review, the SAA shall provide technical assistance to programs with completion rates lower than the national average. Cancellation of apprenticeship agreements during the probationary period will not have an adverse impact on a sponsor's completion rate.

[6-7-77, 2-21-78, 8-17-78; 11.2.3.21 NMAC - Rn, 11 NMAC 2.3.21, 12-30-02; 11.2.3.21 NMAC - Rn & A, 11.2.3.20 NMAC, 1-31-13]

11.2.3.22 [~~STANDARDS OF APPRENTICESHIP.~~

~~A. General policy: It is the objective of the council to encourage the development and continuance of apprenticeship programs adequate to produce qualified skilled workers. Labor and management will be encouraged to jointly develop adequate standards of apprenticeship, and it is the policy of the council to render any assistance needed by these groups in the development of such standards. Apprenticeship program sponsors shall submit their standards to the council for registration. After registration, the sponsor shall provide the director of apprenticeship with such documentation as may be requested concerning the operation of the program.~~

~~B. Development of standards: In order to promote good apprenticeship policies and procedures the council requires that each apprenticeship program sponsor, who desires registration by the council, formulate, adopt, and submit to the council for review and registration a set of apprenticeship standards. The purpose of these standards is to provide rules for the operation of the apprenticeship program. An apprenticeship program, to be eligible for registration by the council shall conform to the following standards:~~

~~(1) The program is an organized, written plan embodying the terms and conditions of employment, training, and supervision of one or more apprentices in the apprenticeable occupation, as defined in this manual and subscribed to by a sponsor who has undertaken to carry out the apprentice training program.~~

~~(2) The program standards contain the equal opportunity pledge prescribed in the council plan for equal employment opportunity in apprenticeship, and when applicable, an affirmative action plan and selection procedure as required by this plan, and provision concerning the following:~~

~~(a) the employment and training of the apprentice in a skilled trade;~~

~~(b) a term of apprenticeship, not less than 2,000 hours of work experience, consistent with training requirements as established by industry practice; all apprentices must serve a minimum of one (1) year, or 2000 on-the-job training hours, in a registered apprenticeship program, in order to be recognized as a graduate of apprenticeship by the council;~~

~~(c) an outline of the work processes in which the apprentice will receive supervised work experience and training on the job, and the allocation of the approximate time to be spent in each major process;~~

~~(d) provisions which will ensure the apprentice of organized related and supplemental instruction in technical subjects related to the trade; a minimum of 144 hours of related instruction for each year is required; such instruction may be given in a classroom through trade and industrial courses or by correspondence courses of equivalent value, or other forms of self-study approved by the council; such instruction will not be the financial responsibility of the apprentice with the possible exception of the purchase of books;~~

~~(e) a progressively increasing schedule of wages to be paid the apprentice consistent with the skill acquired; the entry wage shall not be less than the minimum wage prescribed by the Fair Labor Standards Act, where applicable, unless a higher wage is required by other applicable federal law, state law, respective regulations, or by collective bargaining agreement;~~

~~(f) periodic review and evaluation of the apprentice's progress in job performance and related instruction; and the maintenance of appropriate progress records;~~

~~(g) the numeric ratio of apprentices to journeymen consistent with established industry practices, proper supervision, training, safety, and continuity of employment, and applicable provisions in collective bargaining agreements except where such ratios are expressly prohibited by the collective bargaining agreements; the ratio language shall be specific and clear as to application in terms of job site, work force, department or plant; for all apprenticeship programs in the building and construction industry, the maximum allowable ratio of apprentices to journeymen shall not exceed 1:1 on a job or an employer's total workforce;~~

~~(h) a probationary period reasonable in relation to the full apprenticeship term, with full credit given for such period toward completion of apprenticeship;~~

~~(i) adequate and safe equipment and facilities for training and supervision, and safety training for apprentices on the job and in related instruction, which will include at least 5 hours of special classroom training in accident prevention and job safety practices;~~

~~(j) the minimum qualifications required by a sponsor for persons entering the apprenticeship program, with an eligible starting age not less than 16 years;~~

~~(k) the placement of an apprentice under a written apprenticeship agreement; such agreement shall directly, or by reference, incorporate the standards of the program as part of the agreement;~~

~~(l) the granting of advanced standing or credit for previously acquired experience, training or skills for all applicants equally with commensurate wages for any progression step so granted; all credit, which is to be granted, shall be reported to the office of the council in accordance with adopted procedures and guidelines;~~

~~(m) in multi-employer programs, transfer of the employer's training obligation, when the employer is unable to fulfill his obligation, under the apprenticeship agreement, to another employer under the same program with consent of the apprentice and apprenticeship committee or program sponsor;~~

~~(n) assurance of qualified training personnel and adequate supervision on the job;~~

~~(o) recognition for successful completion of apprenticeship evidenced by an appropriate certificate;~~

~~(p) identification of the council as the registration agency;~~

~~(q) provision for the registration, cancellation and deregistration of the program; and requirement for the prompt submission of any modification or amendment thereto;~~

~~(r) provision for registration of apprenticeship agreements, modifications, and amendments; notice to the registration office of persons who have successfully~~

~~completed apprenticeship programs, and notice of cancellations, suspensions and terminations of apprenticeship agreements and causes therefore;~~

~~(s) authority for the termination of an apprenticeship agreement during the probationary period by either party without stated cause;~~

~~(t) a statement that the program will be conducted, operated, and administered in conformity with applicable provisions of the council plan for equal employment opportunity in apprenticeship;~~

~~(u) name and address of the appropriate authority under the program to receive, process, and make disposition of complaints;~~

~~(v) recording and maintenance of all records concerning apprenticeship as may be required by the council and other applicable law;~~

~~(w) all standards registered with the council shall contain a provision which states that the director of apprenticeship or his designee selected from BAT or SAC staff shall be an ex-officio member, without vote, of any committee which functions to administer the apprenticeship program;~~

~~(x) all standards which are presented to the council for registration shall contain a provision which clearly states that the director of apprenticeship or his designated representative shall have the right to visit all job sites where apprentices may be employed, and apprentice related instruction classes, in order to determine compliance with apprenticeship standards;~~

~~(y) all standards which are approved by the council shall be registered for a specific period only, such period not to exceed two years.~~

~~(i) When such period of registration expires, the period of registration shall be automatically renewed for another two years if no evidence has been presented to the council which alleges that the sponsor has not conducted the program according to the standards, of that the program is not in compliance with rules and regulations contained in the council policy manual.~~

~~(ii) If evidence has been presented to the council which alleges that the sponsor had not operated the program in accordance with the standards or that the program is not in compliance with the council policy manual, the council may extend the registration period in order to investigate the allegation or to allow the sponsor sufficient time to correct any deficiencies, or the council may instruct the director to inform the sponsor that the program registration will not be renewed unless the sponsor is able to show cause why the registration should be continued in a hearing before the council. Notice of opportunity for a hearing shall be sent to the sponsor by registered or certified mail, return receipt requested. This notice shall include the deficiencies which exist, or are alleged to exist, in the program and shall state that registration will not be renewed unless, within 15 days of receipt of the notice the sponsor requests a hearing by registered or certified mail, return receipt requested. If the sponsor does not request a hearing within the allotted time, the director shall discontinue the registration of the program. If the sponsor requests a hearing, the director shall submit to the council chairman all the documentation which supports the allegation/s/ of noncompliance. The council chairman may convene a special council meeting in order to allow the sponsor a hearing or such hearing may be held during the next council meeting. The director shall send a notice to the sponsor by registered or certified mail, return receipt requested, informing him of the time and place of the council meeting during which the hearing will be held. Such notice shall also include a statement of the provision of this manual pursuant to which the hearing will be held. The sponsor shall also be informed that the council chairman shall regulate the course of the hearing and that the hearing will be informally conducted. Every party shall have the right to counsel, and a fair opportunity to present his/her case including such cross-examination as may be appropriate in the circumstances. The council shall make a decision, based upon the evidence presented during the hearing, if registration is to be renewed or such renewal is to be denied. All benefits of registration shall be extended to the sponsor after the expiration of registration of his program until a final decision is made by the council to deny registration of the program, except that no new apprentices will be registered during this period.~~

~~(iii) During the specified period of registration, the council may deregister any program in accordance with Paragraph (1) of Subsection D of 11.2.3.27 NMAC, or Paragraph (2) of Subsection D of 11.2.3.27 NMAC, of this policy manual.~~

~~(z) a requirement that, should either federal or state regulations or any other applicable regulation allow the employment of "helpers" on construction projects for which wages have been predetermined, no employer who participates in the apprenticeship program covered by standards shall employ any "helper" on any construction project unless the full maximum allowable ratio of apprentices are employed and physically present on such project; this requirement shall apply to all construction projects, whether or not wages have been predetermined for the project.~~]

APPRENTICEABLE OCCUPATIONS:

Criteria for apprenticeable occupations: An industry specific occupation, in order to be recognized as apprenticeable by the SAA, must possess all the following characteristics:

A. it involves skills that are customarily learned in a practical way through a structured, systematic program of on-the-job supervised training;

B. it is clearly identified and commonly recognized throughout an industry;

C. it involves the progressive attainment of manual, mechanical, or technical skills and knowledge which, in accordance with the industry standard for the occupation, would require the completion of a minimum of 2,000 hours of on-the job training; and

D. it requires of the completion of related instruction to supplement the on-the-job training.

[6-7-77, 2-21-78, 8-26-84; 11.2.3.22 NMAC - Rn & A, 11 NMAC 2.3.22, 12-30-02; A, 8-13-04; 11.2.3.22 NMAC - Rn & A, 11.2.3.21 NMAC, 1-31-13]

11.2.3.23 [~~WORK PROCESSES.~~

~~A. General policy: An apprenticeship program should contain a sufficiently broad schedule of work processes for the acquirement of reasonable competency in the trade.~~

~~B. Development of work processes: Work process schedules should be developed by those responsible for the training of apprentices and in sufficient detail to serve as an outline of the basic elements of the trade to be learned.~~] **STANDARDS OF APPRENTICESHIP:**

A. General policy: It is the objective of the SAA and the SAC to encourage the development and continuance of apprenticeship programs adequate to produce qualified skilled workers. Labor and employers will be encouraged to jointly develop adequate standards of apprenticeship, and it is the policy of the SAA and SAC to render any assistance needed by these groups in the development of such standards. Apprenticeship program sponsors shall submit their standards to the SAA for registration. After registration, the sponsor shall provide the director of apprenticeship with such documentation as may be requested concerning the operation of the program.

B. Development of standards: In order to promote good apprenticeship policies and procedures each apprenticeship program sponsor, who desires registration by the SAA, shall formulate, adopt, and submit to the SAA for review a set of apprenticeship standards. The purpose of these standards is to provide rules for the operation of the apprenticeship program. An apprenticeship program, to be eligible for registration by the SAA shall conform to the following standards:

(1) The program shall have an organized, written plan embodying the terms

and conditions of employment, training, and supervision of one or more apprentices in the apprenticeable occupation, as defined in 11.2.3 NMAC and subscribed to by a sponsor who has undertaken to carry out the apprentice training program.

(2) The program standards shall contain provisions that address:

(a) the employment and training of the apprentice in a skilled occupation;

(b) the term of apprenticeship, which for an individual apprentice may be measured either through the completion of the industry standard for on-the-job training (at least 2,000 hours) (time-based approach), the attainment of competency (competency-based approach), or a blend of the time-based and competency-based approaches (hybrid approach);

(i) the time-based approach measures skill acquisition through the individual apprentice's completion of at least 2,000 hours of on-the-job training as described in a work process schedule;

(ii) the competency-based approach measures skill acquisition through the individual apprentice's successful demonstration of acquired skills and knowledge, as verified by the program sponsor; programs utilizing this approach shall still require apprentices to complete an on-the-job training component of registered apprenticeship; the program standards shall address how on-the-job training will be integrated into the program, describe competencies, and identify an appropriate means of testing and evaluation for such competencies;

(iii) the hybrid approach measures the individual apprentice's skill acquisition through a combination of specified minimum number of hours of on-the-job training and the successful demonstration of competency as described in a work process schedule;

(iv) the determination of the appropriate approach for the program standards is made by the program sponsor, subject to approval by the SAA of the determination as appropriate to the apprenticeable occupation for which the program standards are registered;

(c) an outline of the work processes in which the apprentice will receive supervised work experience and training on the job, and the allocation of the approximate amount of time to be spent in each major process;

(d) provisions which will ensure the apprentice of organized related and supplemental instruction in technical subjects related to the trade; a minimum of 144 hours of related instruction for each year is required; such instruction may be given in a classroom through occupation and industrial courses or by correspondence courses of equivalent value, electronic media, or other instruction reviewed by the SAC and approved by the SAA; such instruction will not be the financial responsibility of the apprentice with the possible exception of the purchase of books;

(e) every apprenticeship instructor shall:

(i) meet the state department of education's requirements for a vocational-technical instructor in the state of registration, or be a subject matter expert, which is an individual, such as a journeyworker, who is recognized within an industry as having expertise in a specific occupation; and

(ii) have training in teaching techniques and adult learning styles, which may occur before or after the apprenticeship instructor has started to provide the related technical instruction;

(f) a progressively increasing schedule of wages to be paid to the apprentice consistent with the skill acquired; the entry wage shall not be less than the minimum wage prescribed by the Fair Labor Standards Act, where applicable, unless a higher wage is required by other applicable federal law, state law, respective regulations, or by collective bargaining agreement;

(g) periodic review and evaluation of the apprentice's progress in job performance and related instruction; and the maintenance of appropriate progress records;

(h) the ratio of apprentices to journeyworkers consistent with established industry practices, proper supervision, training, safety, and continuity of employment, and applicable provisions in collective bargaining agreements except where such ratios are expressly prohibited by the collective bargaining agreements; the ratio language shall be specific and clearly described as to its application to the job site, workforce, department or plant; for all apprenticeship programs in the building and construction industry, the maximum allowable ratio of apprentices to journeyworker shall not exceed 1:1;

(i) a probationary period reasonable in relation to the full apprenticeship term, with full credit given for such period toward completion of apprenticeship; the probationary period cannot exceed 25 percent of the length of the program, or one year, whichever is shorter;

(j) adequate and safe equipment and facilities for training and supervision, and safety training for apprentices on the job and in related instruction;

(k) the minimum qualifications required by a sponsor for persons entering the apprenticeship program, with an eligible starting age not less than 16 years;

(l) the placement of an apprentice under a written apprenticeship agreement; such agreement shall directly, or by reference, incorporate the standards of the program as part of the agreement;

(m) the granting of advanced standing or credit for previously acquired experience, training or skills for all applicants equally with commensurate wages for any progression step so granted; all credit, which is to be granted, shall be reported to the office of the SAA in accordance with adopted procedures and guidelines;

(n) the transfer of an apprentice between apprenticeship programs and within an apprenticeship program shall be based on agreement between the apprentice and the affected apprenticeship committees or program sponsors, and shall comply with the following requirements:

(i) the transferring apprentice shall be provided a transcript of related instruction and on-the-job training by the committee or program sponsor;

(ii) transfer shall be to the same occupation; and

(iii) a new apprenticeship agreement shall be executed when the transfer occurs between program sponsors;

(o) assurance of qualified training personnel and adequate supervision on the job;

(p) recognition for successful completion of apprenticeship evidenced by an appropriate certificate issued by the SAA;

(q) program standards that utilize the competency-based or hybrid approach for progression through an apprenticeship and that choose to issue interim credentials shall clearly identify the interim credentials, demonstrate how these credentials link to the components of the apprenticeable occupation, and establish the process for assessing an individual apprentice's demonstration of competency associated with the particular interim credential; further, interim credentials shall only be issued for recognized components of an apprenticeable occupation, thereby linking interim credentials specifically to the knowledge, skills, and abilities associated with those components of the apprenticeable occupation;

(r) identification of the SAA;

(s) provision for the registration, cancellation and deregistration of the program; and for the prompt submission of any program standard modification or amendment to the SAA;

(t) provision for the registration of apprenticeship agreements, modifications, and amendments; notice to the SAA of persons who have successfully completed apprenticeship programs; and notice of transfers, suspensions, and cancellations of apprenticeship agreements and a statement of the reasons therefore;

(u) authority for the cancellation of an apprenticeship agreement during

the probationary period by either party without stated cause; cancellation during the probationary period will not have an adverse impact on the sponsor's completion rate;

(v) a statement that the program will be conducted, operated, and administered in conformity with applicable provisions of 29 CFR 30 and the SAA's plan for equal employment opportunity in apprenticeship;

(w) contact information (name, address, telephone number, and e-mail address if appropriate) for the appropriate individual with authority under the program to receive, process and make disposition of complaints;

(x) recording and maintenance of all records concerning apprenticeship as may be required by the OA or recognized SAA and other applicable law;

(y) all standards registered with the SAA shall contain a provision which states that the director of the SAA or his or her designee selected from OA or SAA staff shall be an ex-officio member, without vote, of any committee which functions to administer the apprenticeship program; and

(z) provision which clearly states that the director of the SAA or his or her designee selected from OA or SAA shall have the right to visit all job sites where apprentices may be employed, and apprentice related instruction classes, in order to determine compliance with apprenticeship standards.

[6-7-77; 11.2.3.23 NMAC - Rn, 11 NMAC 2.3.23, 12-30-02; 11.2.3.23 NMAC - Rn & A, 11.2.3.22 NMAC, 1-31-13]

11.2.3.24 [~~APPRENTICE WAGES.~~

~~A. General policy: Wages for apprentices should be calculated so that training, rather than production, is the principal criterion.~~

~~B. Apprentice wages under bargaining agreement: Wage rates established for the apprentice under a bargaining agreement shall be recognized.~~

~~C. Beginning apprentice rates: The beginning apprentice rates shall equal or exceed those customarily paid the other beginning apprentices in the trade in the locality.~~

~~D. Expressing wage rates: Apprentice wage rates may be expressed in terms of cents per hour but preferably in percentages of the journeyman's rate. The journeyman's hourly rate as of the effective date of the program shall be reported when submitting programs for review and registration. Where the journeyman's rate is shown as a weekly or monthly wage, the standard workweek hours also shall be shown.~~

~~E. Coverage under state and federal wage and hour acts: If sponsors of apprenticeship program are uncertain as to their coverage under state and federal wage and hour acts and they propose to set up rate schedules under which the apprentice would be paid less than the minimum wages established by these acts, they should be advised to check with their attorney, or with the state or federal agency responsible for the administration of these acts. The director shall not make any interpretation or determination in respect to these acts.~~]

WORK PROCESSES:

A. General policy: An apprenticeship program should contain a sufficiently broad schedule of work processes for the acquirement of reasonable competency in the trade.

B. Development of work processes: Work process schedules should be developed by those responsible for the training of apprentices and in sufficient detail to serve as an outline of the basic elements of the trade to be learned.

[6-7-77, 8-26-84; 11.2.3.24 NMAC - Rn, 11 NMAC 2.3.24, 12-30-02; 11.2.3.24 NMAC - Rn & A, 11.2.3.23 NMAC, 1-31-13]

11.2.3.25 [~~CERTIFICATE OF COMPLETION OF APPRENTICESHIP.~~

~~A. General policy: It is the policy to emphasize the significance of the apprentice completion certificate issued by the council.~~

~~B. Authentication of requests for completion certificates: A certificate of completion of apprenticeship will be issued to apprentices upon receipt of a written request from the appropriate program sponsor. The council shall have in its file some specific evidence that the program sponsor has requested a certificate for the apprentice. Such evidence shall be in the form of a written request. If the request is irregular in some respect, the circumstances should be fully explained by the sponsor when asking for the certificate.~~

~~C. Issuance of certificates by program sponsor: The council will cooperate with a program sponsor who wishes to issue its own certificate of completion, providing the program is duly registered with the council. Such certificate may state that the apprentice was trained under a program registered with the council, and the director shall be authorized to sign the certificate upon request of the sponsor.~~]

APPRENTICE WAGES:

A. General policy: Wages for apprentices should be calculated so that training, rather than production, is the principal criterion.

B. Apprentice wages under bargaining agreement: Wage rates established for the apprentice under a bargaining agreement shall be recognized.

C. Beginning apprentice rates: The beginning apprentice rates shall equal or exceed those customarily paid the other beginning apprentices in the trade in the locality.

D. Expressing wage rates: Apprentice wage rates may be expressed in terms of cents per hour but preferably in percentages of the journeyworker's rate. The journeyworker's hourly rate as of the effective date of the program shall be reported when submitting programs for review and registration. Where the journeyworker's rate is shown as a weekly or monthly wage, the standard work week hours also shall be shown.

E. Coverage under state and federal wage and hour acts: If sponsors of apprenticeship programs are uncertain as to their coverage under state and federal wage and hour acts and they propose to set up rate schedules under which the apprentice would be paid less than the minimum wages established by these acts, they should be advised to check with their attorney, or with the state or federal agency responsible for the administration of these acts.

[6-7-77; 11.2.3.25 NMAC - Rn, 11 NMAC 2.3.25, 12-30-02; 11.2.3.25 NMAC - Rn & A, 11.2.3.24 NMAC, 1-31-13]

11.2.3.26 [~~APPRENTICE AGREEMENT.~~

~~A. General policy: The terms and conditions of employment and training of each apprentice shall be stated in a written apprenticeship agreement. The agreement shall contain explicitly or by reference:~~

~~(1) names and signatures of the contracting parties (apprentice, and the program sponsor or employer), and the signature of a parent or guardian if the apprentices is a minor;~~

~~(2) the date of birth of apprentice;~~

~~(3) name and address of the program sponsor and the council;~~

~~(4) a statement of the trade or craft in which the apprentice is to be trained, and the beginning date and term (duration) of apprenticeship;~~

~~(5) a statement showing (1) the number of hours to be spent by the apprentice in work on the job, and (2) the number of hours to be spent in related and supplemental instruction which is required to be not less than 144 hours per year;~~

~~(6) a statement setting forth a schedule of the work processes in the trade or industry division in which the apprentice is to be trained and the approximate time to be spent at each process;~~

~~(7) a statement of the graduated scale of wages to be paid the apprentice and whether or not the required school time shall be compensated;~~

~~(8) statements providing:~~

~~(a) for a specific period of probation during which the apprenticeship~~

~~agreement may be terminated by either party to the agreement upon written notice to the registration agency.~~

~~(b) that, after the probationary period, the agreement may be canceled at the request of the apprentice, or may be suspended, canceled, or terminated by the sponsor, for good cause, with due notice to the apprentice and a reasonable opportunity for corrective action, and with written notice to the apprentice and to the council of the final action taken;~~

~~(9) a reference incorporating as a part of the agreement the standards of the apprenticeship program as it exists on the date of the agreement and as it may be amended during the period of the agreement;~~

~~(10) a statement that the apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training, without discrimination because of race, color, religion, national origin, or sex;~~

~~(11) name and address of the appropriate authority, if any, designated under the program to receive, process and make disposition of controversies or differences arising out of the apprenticeship agreement when the controversies or differences cannot be adjusted locally or resolved in accordance with the established trade procedure or applicable collective bargaining provisions.~~

~~B. Types of apprentice agreements: The apprentice agreement may take the form of:~~

~~(1) an individual agreement between the apprentice and the employer; or~~

~~(2) an individual agreement between the apprentice and the joint apprenticeship committee, acting for the employer; or~~

~~(3) an individual agreement between the apprentice and an organization of employees, acting for the employer; or~~

~~(4) an individual agreement between the apprentice and an organization of employers, acting for the employer.]~~

CERTIFICATE OF COMPLETION OF APPRENTICESHIP:

A. General policy: It is the policy to emphasize the significance of the apprentice completion certificate issued by the SAA.

B. Authentication of requests for completion certificates: A certificate of completion of apprenticeship will be issued to apprentices upon receipt of a written request from the appropriate program sponsor. The SAA shall have in its files some specific evidence that the program sponsor has requested a certificate for the apprentice. Such evidence shall be in the form of a written request. If the request is irregular in some respect, the circumstances should be fully explained by the sponsor when asking for the certificate.

[6-7-77, 2-21-78; 11.2.3.26 NMAC - Rn, 11 NMAC 2.3.26, 12-30-02; 11.2.3.26 NMAC - Rn & A, 11.2.3.25 NMAC, 1-31-13]

11.2.3.27 [~~MISCELLANEOUS POLICY STATEMENT~~.

~~A. Reducing apprentice dropouts: Sponsors shall continuously review the operation of their program with the objective of reducing apprentice dropouts and attaining an optimum of apprentice completions.~~

~~B. Operation according to approved standards: After a program sponsor has registered their standards with the council, it is required that the operation of the program be in accordance with these standards. Should an operating procedure be desired that is not in accordance with the existing approved standards, the program sponsor is required to submit the desired changes in operating procedure to the council for approval and revision of the standards.~~

~~C. Programs not in compliance with council policies: Should a program sponsor not comply with these policies and procedures, the council shall take appropriate action. Deregistration of the program shall be used after reasonable efforts to gain compliance have failed.~~

~~D. Deregistration of an apprenticeship program: Deregistration of a program may be effected upon the voluntary action of the sponsor by a request for cancellation of the registration. Cancellation may also be accomplished by the council by instituting formal deregistration proceedings in accordance with council policy, upon establishment of reasonable cause. Deregistration of an apprenticeship program may be accomplished only by majority vote of the members of the council in attendance at a council meeting, except that the director may cancel a program when such cancellation is requested by the sponsor or when a program becomes inactive in accordance with Subsection B of 11.2.3.28 NMAC of this manual.~~

~~(1) Request by sponsor: The director may cancel the registration of an apprenticeship program by written acknowledgment of such request stating, but not limited to, the following matters:~~

~~(a) the registration is canceled at the sponsor's request and effective date thereof;~~

~~(b) that, within 15 days of the date of the acknowledgment, the sponsor shall notify all apprentices of such cancellation and the effective date; that such cancellation automatically deprives the apprentice of the program, removes the apprentice from coverage for federal and/or state purposes which require the approval of the secretary of labor and/or the council.~~

~~(2) Formal deregistration:~~

~~(a) Reasonable cause: Deregistration proceedings may be undertaken when the apprenticeship program is not conducted, operated, or administered in accordance with its registered standards, requirements of this manual, or requirements of the council equal employment opportunity in apprenticeship state plan. If the director of apprenticeship determines that the program deficiency is limited to noncompliance with the council EEO in apprenticeship state plan, sanctions against the program will be processed under Section 13 of that plan. However, if the director determines that the program deficiencies include noncompliance with their registered standards and/or requirements of this manual and also include noncompliance with the council's EEO in apprenticeship state plan, deregistration proceedings due to all deficiencies may be undertaken utilizing the procedure outlined in this manual.~~

~~(b) Except as specified under Subparagraph (h) of Paragraph (2) of Subsection D of 11.2.3.27 NMAC of this Subsection, where it appears that the program is not being operated in accordance with the registered standards, or with requirements of this manual, or with requirements of the council's EEO in apprenticeship state plan when the apparent deficiencies include noncompliance with that plan, the director shall so notify the program sponsor in writing.~~

~~(c) The notice shall be sent by registered or certified mail, with return receipt requested, and shall state the shortcomings and remedy required, and shall state that a determination of reasonable cause for deregistration will be made unless corrective action is effected within 30 days.~~

~~(d) Upon request by the sponsor for good cause, the 30 day term may be extended for another 30 days. During the period for correction, the sponsor shall be assisted in every reasonable way to achieve conformity.~~

~~(e) If the required correction is not effected within the allotted time, the director shall send a notice to the sponsor, by registered or certified mail, return receipt requested, stating the following:~~

~~(i) the notice is sent pursuant to this subsection;~~

~~(ii) certain deficiencies (stating them) were called to sponsor's attention and remedial measures requested, with dates of such occasions and letters; and that the sponsor has failed or refused to effect correction;~~

~~(iii) based upon the stated deficiencies and failure of a remedy, a determination of reasonable cause has been made and the program may be deregistered unless, within 15 days of the receipt of this notice, the sponsor requests a hearing;~~

~~(iv) if a request for a hearing is not made, the entire matter will be submitted to the council for a decision on the~~

record with respect to deregistration.

(f) If the sponsor does not request a hearing, the director shall transmit to the council a report containing all pertinent facts and circumstances concerning the nonconformity, including the findings and recommendations for deregistration, and copies of all relevant documents and records. Statements concerning interviews, meetings and conferences shall include the time, date, place and persons present. The council shall make a decision based upon the evidence submitted.

(g) Contested decertification procedures: If a sponsor requests a hearing to contest deregistration:

(i) within (30) days the director must comply with all requirements of Subparagraphs (b) through (e) of Paragraph (2) of Subsection D of 11.2.3.27 NMAC, and must provide the council and the sponsor with the report pursuant to Subparagraph (f) of Paragraph (2) of Subsection D of 11.2.3.27 NMAC and

(ii) the council at its next quarterly council meeting, and the sponsor within 30 days thereafter, shall designate a representative to hear the contested deregistration. These two individuals shall designate a third representative. The three representatives shall be familiar with apprenticeable occupations, and shall constitute a panel for purposes of hearing a contested decertification. The panel shall give reasonable notice of such hearing by registered mail, return receipt requested, to the appropriate sponsor. Such notice shall include: (1) A reasonable time and place of hearing, (2) a statement of the provisions of this part pursuant to which the hearing is to be held, and (3) a concise statement of the matters pursuant to which the action forming the basis of the hearing is proposed to be taken. The panel shall regulate the course of the hearing, including ruling upon discovery requests. Hearings shall be informally conducted. Every party shall have the right to counsel, and a fair opportunity to present his/her case, including cross-examination as may be appropriate in the circumstances. The panel shall make their proposed findings and recommended decisions in writing to the council upon the basis of the record before them. The council may order deregistration of the program. Council members shall state their reasons on any deregistration vote. If the council orders deregistration, the director shall notify each apprentice who is registered under the program of such deregistration; that such deregistration automatically deprives the apprentice of his/her individual registration; and that such deregistration removes the apprentice from coverage for federal and/or state purposes which require the approval of the secretary of labor and/or the council. Nothing in this section shall be interpreted to prohibit settlement of issues by and between the director and the sponsor, at any time before issuance of their findings and recommended decisions.

(h) The director may notify the program sponsor in writing, by registered or certified mail with return receipt requested, that a determination of reasonable cause for deregistration has been made without adhering to the requirements of Subparagraphs (b) through (e) of Paragraph (2) of Subsection D of 11.2.3.27 NMAC of this Subsection under the following conditions:

(i) If the director has documentation, or other evidence which demonstrates that deficiencies exist in an apprenticeship program which are of such a nature as to preclude correction, or correction within a reasonable period of time.

(ii) If the documentation shows that the sponsor has established a practice of correcting deficiencies after being notified pursuant to the requirements of Subparagraphs (b) through (d) of Paragraph (2) of Subsection D of 11.2.3.27 NMAC of this Subsection, but subsequently allowed the same deficiencies to be repeated. Should a determination of reasonable cause for deregistration be made under the conditions outlined in (i) and/or (ii) of this Subparagraph, the director shall include in the letter which informs the sponsor of such determination that the program may be deregistered unless, within 15 days of receipt of the letter, the sponsor requests a hearing. If the sponsor does not request a hearing, Subparagraph (f) of Paragraph (2) of Subsection D of 11.2.3.27 NMAC shall be adhered to unless the sponsor requests voluntary deregistration as is provided for under Paragraph (1) of Subsection D of 11.2.3.27 NMAC of this Section. If the sponsor requests a hearing, Subparagraph (g) of Paragraph (2) of Subsection D of 11.2.3.27 NMAC of this Subsection shall be adhered to.

E. Registration of programs: Should any program be deregistered in accordance with Paragraph (2) of Subsection D of 11.2.3.27 NMAC, such program may not be reregistered for a period of one year after deregistration. After the one year period, it may be reregistered if the sponsor can assure the council that the program will be conducted in accordance with the council policy manual.

F. Complaints:

(1) This Section is not applicable to any complaint concerning discrimination or other equal opportunity matters; all such complaints shall be submitted, processed and resolved in accordance with applicable provisions in the council plan for equal employment opportunity in apprenticeship.

(2) Except for matters described in Paragraph (1) of Subsection F of 11.2.3.27 NMAC of this section, any controversy or difference arising under an apprenticeship agreement which cannot be adjusted locally and which is not covered by a collective bargaining agreement may be submitted by an apprentice, or his/her authorized representative, to the council for review provided the complaint was presented to the sponsor, in writing, within 60 days of the occurrence of the event which caused the complaint. Matters covered by a collective bargaining agreement are not subject to council review.

(3) The complaint, in writing and signed by the complainant or authorized representative, shall be submitted within 60 days of the final local decision. It shall set forth the specific matter(s) complained of, together with all relevant facts and circumstances. Copies of all pertinent documents and correspondence shall accompany the complaint.

(4) The council shall render an opinion within 90 days after receipt of the complaint, based upon such investigation of the matters submitted as may be found necessary, and the record before it. During the 90-day period, the council shall make reasonable efforts to effect a satisfactory resolution between the parties involved. If so resolved, the parties shall be notified that the case is closed. Where an opinion is rendered, copies of same shall be sent to all interested parties.

(5) Nothing in this section shall be construed to require an apprentice to use the review procedure set forth in this section.

G. Limitations: Nothing in this part or in any apprenticeship agreement shall operate to invalidate --

(1) any apprenticeship provision in any collective bargaining agreement between employers and employees establishing higher apprenticeship standards; or

(2) any special provision for veterans, minority persons or females in the standards, apprentice qualifications or operation of the program, or in the apprenticeship agreement, which is not otherwise prohibited by law, executive order, or authorized regulation.**]** **APPRENTICE AGREEMENT:** General policy: The terms and conditions of employment and training of each apprentice shall be stated in a written apprenticeship agreement. The agreement shall contain explicitly or by reference:

A. names and signatures of the contracting parties (apprentice, and the program sponsor or employer), and the signature of a parent or guardian if the apprentice is a minor;

B. the date of birth of apprentice and, on a voluntary basis, social security number of the apprentice;

C. contact information of the program sponsor and SAA;

D. a statement of the occupation in which the apprentice is to be

trained, and the beginning date and term (duration) of apprenticeship;

E. a statement showing:

(1) the number of hours to be spent by the apprentice in work on the job in a time-based program; or a description of the skill sets to be attained by completion of a competency-based program, including the on-the-job training component; or the minimum number of hours to be spent by the apprentice and a description of the skill sets to be attained by completion of hybrid program; and

(2) the number of hours to be spent in related instruction in technical subjects related to the occupation, which shall not be less than 144 hours per year;

F. a statement setting forth a schedule of the work processes in the trade or industry division in which the apprentice is to be trained and the approximate time to be spent at each process;

G. a statement setting forth a schedule of the graduated scale of wages to be paid to the apprentice and whether or not the required related instruction is compensated;

H. statements providing:

(1) for a specific period of probation during which the apprenticeship agreement may be cancelled by either party to the agreement upon written notice to the SAA, without adverse impact on the sponsor;

(2) that, after the probationary period, the agreement may be:

(a) canceled at the request of the apprentice, or

(b) suspended or cancelled by the sponsor, for good cause, with due notice to the apprentice and a reasonable opportunity for corrective action, and with written notice to the apprentice and to the SAA of the final action taken;

I. a statement that the apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training, without discrimination because of race, color, religion, national origin, or sex;

J. contact information (name, address, phone, and email if appropriate) of the appropriate authority designated under the program to receive, process and make disposition of controversies or differences arising out of the apprenticeship agreement when the controversies or differences cannot be adjusted locally or resolved in accordance with the established procedure or applicable collective bargaining provisions.

[6-7-77, 2-21-78, 8-26-84, 12-15-97; 11.2.3.27 NMAC - Rn, 11 NMAC 2.3.27, 12-30-02; 11.2.3.27 NMAC - Rn & A, 11.2.3.26 NMAC, 1-31-13]

11.2.3.28 [~~INACTIVE PROGRAMS.~~

~~A. Responsibility for identifying inactive programs: The director shall be responsible for the identification of inactive programs. He shall cancel those programs which do not become active.~~

~~B. Definition of inactive programs: A program is considered to be inactive when there have been no apprentices training in the program for a period of six months. The sponsor must show cause for the inactivity, or the program will be deregistered.~~ **]**

PROGRAM COMPLIANCE AND DEREGISTRATION PROCEEDINGS:

A. Operation according to approved standards: After a program sponsor has registered the program's standards with the SAA, the program shall operate in accordance with these standards. Should an operating procedure be desired that is not in accordance with the existing approved standards, the program sponsor is required to submit a proposal pursuant to the procedures set forth in Subsection B of 11.2.3.18 NMAC.

B. Programs not in compliance with SAA policies: Should a program sponsor not comply with these policies and procedures, the SAA shall take appropriate action. Deregistration of the program shall be used after reasonable efforts to gain compliance have failed.

C. Deregistration of an apprenticeship program: Deregistration of a program may be effected upon the voluntary action of the sponsor by submitting a request for cancellation of the registration in accordance with Paragraph (1) of this subsection or upon reasonable cause, by the SAA instituting formal deregistration proceedings in accordance with Paragraph (2) of this subsection.

(1) Deregistration at the request of the sponsor: The SAA may cancel the registration of an apprenticeship program by written acknowledgment of such request stating the following:

(a) the registration is canceled at the sponsor's request and effective date thereof;

(b) that, within 15 days of the date of the acknowledgment, the sponsor shall notify all apprentices of such cancellation and the effective date; that such cancellation automatically deprives the apprentice of individual registration; that the deregistration of the program removes the apprentice from coverage for federal purposes which require the secretary of labor's approval of an apprenticeship program, and that all apprentices are referred to the SAA for information about potential transfer to other registered apprenticeship programs.

(2) Deregistration by the SAA upon reasonable cause:

(a) Deregistration proceedings may be undertaken when the apprenticeship program is not conducted, operated, or administered in accordance with the program's registered provisions or with the requirements of this part, including but not limited to: failure to provide on-the-job learning; failure to provide related instruction; failure to pay the apprentice a progressively increasing schedule of wages consistent with the apprentices skills acquired; or persistent and significant failure to perform successfully. Deregistration proceedings for violation of equal opportunity requirements must be processed in accordance with the provisions under 29 CFR part 30, as amended in 11 NMAC 2.2 equal employment opportunity in apprenticeship state plan.

(b) For purposes of this section, persistent and significant failure to perform successfully occurs when a program sponsor consistently fails to register at least one apprentice, shows a pattern of poor quality assessment results over a period of several years, demonstrates an ongoing pattern of very low completion rates over a period of several years, or shows no indication of improvement in the areas identified by the SAA during a review process as requiring corrective action. The SAA will measure completion rates for registered apprenticeship programs in accordance with Bulletin 2011-07 as developed by the U.S. department of labor employment and training administration office of apprenticeship services.

(c) Where it appears the program is not being operated in accordance with the registered standards or with requirements of this part, the SAA must notify the program sponsor in writing.

(d) The notice sent to the program sponsor's contact person must:

(i) be sent by registered or certified mail, with return receipt requested;

(ii) state the shortcoming(s) and the remedy required; and

(iii) state that a determination of reasonable cause for deregistration will be made unless corrective action is effected within 30 days.

(e) Upon request by the sponsor for good cause, the 30-day term may be extended for another 30 days; during the period for corrective action, the SAA must assist the sponsor in every reasonable way to achieve conformity.

(f) If the required correction is not effected within the allotted time, the SAA must send a notice to the sponsor, by registered or certified mail, return requested, stating the following:

(i) the notice is sent under this paragraph;

(ii) certain deficiencies were called to the sponsor's attention

(enumerating them and the remedial measures requested, with the dates of such occasions and letters), and the sponsor has failed or refused to take corrective action;

(iii) based upon the stated deficiencies and failure to remedy them, a determination has been made that there is reasonable cause to deregister the program and the program may be deregistered unless, within 15 days of the receipt of this notice, the sponsor requests a hearing with the applicable SAA; and

(iv) if the sponsor does not request a hearing, the entire matter will be submitted to the administrator of the OA, for a decision on the record with respect to deregistration.

(g) If the sponsor does not request a hearing, the SAA will transmit to the administrator a report containing all pertinent facts and circumstances concerning the nonconformity, including the findings and recommendation for deregistration, and copies of all relevant documents and records. Statements concerning interviews, meetings, and conferences will include the time, date, place, and persons present. The administrator will make a final order on the basis of the record presented.

(h) If the sponsor requests a hearing, the SAA will transmit to the administrator a report containing all the data listed in Subparagraph (f) of Paragraph (2) of Subsection C of this subsection, and the administrator will refer the matter to the office of administrative law judges. An administrative law judge will convene a hearing in accordance with Subsection D of this section.

(i) Every order of deregistration must contain a provision that the sponsor must, within 15 days of the effective date of the order, notify all registered apprentices of the deregistration of the program; the effective date thereof; that such cancellation automatically deprives the apprentice of individual registration; that the deregistration removes the apprentice from coverage for federal purposes which require the secretary of labor's approval of an apprenticeship program; and that all apprentices are referred to the SAA for information about potential transfer to other registered apprenticeship programs.

D. Hearings for deregistration:

(1) Within 10 days of receipt of a request for a hearing, the administrator of the OA shall contact the department's office of administrative law judges to request the designation of the administrative law judge to preside over the hearing. The administrative law judge shall give reasonable notice of such hearing by registered mail, return receipt requested, to the appropriate sponsor. Such notice will include:

(a) a reasonable time and place of hearing;

(b) a statement of the provisions to 11.2.3.26 NMAC pursuant to which the hearing is to be held; and

(c) a concise statement of the matters pursuant to which the action forming the basis of the hearing is proposed to be taken.

(2) The procedures contained in 29 CFR 18 will apply to the disposition of the request for hearing except that:

(a) the administrative law judge will receive, and make part of the record, documentary evidence offered by any party and accepted at the hearing; copies thereof will be made available by the party submitting the documentary evidence to any party to the hearing upon request;

(b) technical rules of evidence will not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination will be applied, where reasonably necessary, by the administrative law judge conducting the hearing; the administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence.

(3) The administrative law judge should issue a written decision within 90 days of the close of the hearing record. The administrative law judge's decision constitutes final agency action unless, within 15 days from receipt of the decision, a party dissatisfied with the decision files a petition for review with the administrative review board, specifically identifying the procedure, fact, law or policy to which exception is taken. Any exception not specifically urged is deemed to have been waived. A copy of the petition for review shall be sent to the opposing party at the same time. Thereafter, the decision of the administrative law judge remains final agency action unless the administrative review board, within 30 days of the filing of the petition for review, notifies the parties that it has accepted the case for review. The administrative review board may set a briefing schedule or decide the matter on the record. The administrative review board shall decide any case it accepts for review within 180 days of the close of the record. If not so decided, the administrative law judge's decision constitutes final agency action.

E. Reinstatement of program registration: Any apprenticeship program deregistered under Subsection C of 11.2.3.26 NMAC may be reinstated upon presentation of adequate evidence that the apprenticeship program is operating in accordance with 11.2.3 NMAC. Such evidence shall be presented to the SAA.

F. Complaints:

(1) This section is not applicable to any complaint concerning discrimination or other equal opportunity matters; all such complaints shall be submitted, processed and resolved in accordance with applicable provisions in 29 CFR Part 30, as amended, and with the 11.2.2 NMAC equal employment opportunity in apprenticeship state plan.

(2) Except for matters described in Paragraph (1) of Subsection F of this section, any controversy or difference arising under an apprenticeship agreement which cannot be adjusted locally and which is not covered by a collective bargaining agreement, may be submitted by an apprentice, or the apprentice's authorized representative, to the appropriate registration authority, either federal or state, which has registered or approved the program in which the apprentice is enrolled, for review. Matters covered by a collective bargaining agreement are not subject to such review.

(3) The complaint shall be in writing and signed by the complainant, or authorized representative, and shall be submitted within 60 days of the final local decision. It shall set forth the specific matter(s) complained of, together with relevant facts and circumstances. Copies of pertinent documents and correspondence shall accompany the complaint.

(4) The OA or recognized SAA, as appropriate, will render an opinion within 90 days after receipt of the complaint, based upon such investigation of the matters submitted as may be found necessary, and the record before it. During the 90-day period, the OA or recognized SAA will make reasonable efforts to effect a satisfactory resolution between the parties involved. If so resolved, the parties will be notified that the case is closed. Where an opinion is rendered, copies will be sent to all interested parties.

(5) Nothing in this section precludes an apprentice from pursuing any other remedy authorized under another federal, state, or local law.

(6) A SAA may adopt a complaint review procedure differing in detail from that given in this section provided it is submitted for review and approval by the OA.

G. Limitations: Nothing in 11.2.3.26 NMAC or in any apprenticeship agreement shall operate to invalidate:

(1) any apprenticeship provision in any collective bargaining agreement between employers and employees establishing higher apprenticeship standards; or

(2) any special provision for veterans, minority persons, or s in the women standards, apprentice qualifications or operation of the program, or in the apprenticeship agreement, which is not otherwise prohibited by law, executive order, or authorized regulation.

H. Inactive programs:

(1) Responsibility for identifying

inactive programs: The director shall be responsible for the identification of inactive programs. The director shall cancel those programs which do not become active.

(2) Definition of inactive programs: A program is considered to be inactive when there have been no apprentices training in the program for a period of six months. The sponsor must show cause for the inactivity, or the program will be deregistered in accordance with 11.2.3.26 NMAC.

[6-7-77, 8-26-84; 11.2.3.28 NMAC - Rn, 11 NMAC 2.3.28, 12-30-02; 11.2.3.28 NMAC - Rn & A, 11.2.3.27 & 28 NMAC, 1-31-13]

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

This is an amendment to 11.2.3 NMAC, Sections 20, 23 and 27, effective January 31, 2013.

11.2.3.20 METHOD OF RECOGNITION:

A. General policy: Recognition is a means of publicly acknowledging apprenticeship programs that are considered to have met the fundamentals of apprenticeship. Recognition may be accorded to New Mexico apprenticeship programs by the SAA, by registration, when they have met the fundamentals of apprenticeship, and as detailed below. The director of apprenticeship shall notify programs of registration or denial, with the stated reason of denial within five working days of said action.

B. Eligibility and procedure for registration of an apprenticeship program:

(1) Eligibility for registration of an apprenticeship program is conditioned upon a program's conformity with the apprenticeship program standards published in 11.2.3.21 NMAC. For a program to be determined by the SAA as being in conformity with these published standards, the program must apply for registration and be registered with the SAA. The determination that the program meets the apprenticeship program standards is effectuated only through such registration.

(2) Only an apprenticeship program or agreement that meets the following criteria is eligible for SAA registration:

(a) it is in conformity with the requirements of this part and the training is in an apprenticeable occupation having the characteristics set forth in 11.2.3.20 NMAC and

(b) it is in conformity with the requirements of the United States department of labor regulation on equal employment opportunity in apprenticeship and training in 29 CFR part 30, as amended, and with the 11.2.2 NMAC equal employment opportunity in apprenticeship state plan.

(3) Except as provided under Paragraph (4) of this subsection, apprentices must be individually registered under a registered program. Such individual registration may be accomplished by filing copies of each individual apprenticeship agreement with the SAA:

(a) by filing copies of each individual apprenticeship agreement with the SAA or;

(b) subject to prior SAA approval, by filing a master copy of such agreement followed by a listing of the name, and other required data, of each individual when apprenticed.

(4) The names of persons in probationary employment as an apprentice under an apprenticeship program registered by the SAA, if not individually registered under such program, must be submitted within 45 days of employment to the SAA for certification to establish the apprentice as eligible for such probationary employment.

(5) The SAA must be notified within 45 days of all individuals who have successfully completed apprenticeship programs. The SAA must also be notified and provided a statement of the reasons within 45 days of any individuals who are transferred, suspended or whose apprenticeship agreement is cancelled.

(6) Operating apprenticeship programs approved by the SAA must be accorded registration and approval evidenced by a certificate or other written indicia.

(7) Applications for new programs that the SAA determines meet the required standards for program registration shall be given provisional approval for a period of one year. The SAA must review all new programs for quality and for conformity with the requirements of 11.2.3 NMAC at the end of the first year after registration and make a determination that:

(a) a program that conforms with the requirements of 11.2.3 NMAC shall be made permanent or shall continue to be provisionally approved through the first full training cycle;

(b) a program that is not in operation or does not conform to the regulations during the provisional approval period shall be recommended for deregistration procedures.

(8) The SAA shall review all programs for quality and for conformity with the requirements of 11.2.3 NMAC at the end of the first full training cycle. A satisfactory review of a provisionally approved program shall result in conversion of provisional approval to permanent registration. Subsequent reviews shall be conducted no less frequently than every five years. Programs that are not in operation or that do not conform to the regulations shall be recommended for deregistration procedures.

(9) Any sponsor proposals or applications for modification(s) or change(s) to registered programs must be submitted to the SAA. [~~Within 90 days of the submission of the proposal or application, the SAA shall forward the proposal or application to the SAC for a formal recommendation. Once the SAC issues its formal recommendation, the SAA shall make a final determination on whether to approve the proposal or application. If approved, the modification(s) or change(s) will be recorded and acknowledged.~~] The registration agency must make a determination on whether to approve such submissions within 90 days from the date of receipt. If approved, the modification(s) or change(s) will be recorded and acknowledged within 90 days of approval as an amendment to such program. If not approved, the sponsor shall be notified of the reasons for the disapproval and provided the appropriate technical assistance.

(10) Under a program proposed for registration by an employer or employers' association, where the standards, collective bargaining agreement or other instrument provides for participation by a union in any manner in the operation of the substantive matters of the apprenticeship program, and such participation is exercised, written acknowledgement of the union agreement or no objection to the registration is required. Where no such participation is evidenced and practiced, the employer or employers' association shall simultaneously furnish to an existing union, which is the collective bargaining agent of the employees to be trained, a copy of its application for registration and of the apprenticeship program. The SAA shall provide for receipt of union comments, if any, within 45 days before final action on the application for registration and approval. Refer also to 11.2.3.18 NMAC.

(11) Where the employees to be trained have no collective bargaining agreement, an apprenticeship program may be proposed for registration by an employer or group of employers, or an employers' association.

C. Reciprocity of multi-state and out-of-state programs: The SAA will cooperate with the United States department of labor, OA, in the recognition of multi-state or out-of-state programs registered by OA. The SAA shall grant reciprocal approval for federal purposes to apprentices, apprenticeship programs, and standards that are registered in other states by the OA or the SAA if such reciprocity is requested by the apprenticeship program sponsor. Program sponsors seeking reciprocal approval must meet the wage and hour provisions and apprentice ratio

standards of the reciprocal state.
[6-7-77; 11.2.3.20 NMAC - Rn, 11 NMAC 2.3.20, 12-30-02; 11.2.3.20 NMAC - Rn & A, 11.2.3.19 NMAC, 1-31-13; A, 1-31-13]

11.2.3.23 STANDARDS OF APPRENTICESHIP:

A. General policy: It is the objective of the SAA and the SAC to encourage the development and continuance of apprenticeship programs adequate to produce qualified skilled workers. Labor and employers will be encouraged to jointly develop adequate standards of apprenticeship, and it is the policy of the SAA and SAC to render any assistance needed by these groups in the development of such standards. Apprenticeship program sponsors shall submit their standards to the SAA for registration. After registration, the sponsor shall provide the director of apprenticeship with such documentation as may be requested concerning the operation of the program.

B. Development of standards: In order to promote good apprenticeship policies and procedures each apprenticeship program sponsor, who desires registration by the SAA, shall formulate, adopt, and submit to the SAA for review a set of apprenticeship standards. The purpose of these standards is to provide rules for the operation of the apprenticeship program. An apprenticeship program, to be eligible for registration by the SAA shall conform to the following standards:

(1) The program shall have an organized, written plan embodying the terms and conditions of employment, training, and supervision of one or more apprentices in the apprenticeable occupation, as defined in 11.2.3 NMAC and subscribed to by a sponsor who has undertaken to carry out the apprentice training program.

(2) The program standards shall contain provisions that address:

(a) the employment and training of the apprentice in a skilled occupation;

(b) the term of apprenticeship, which for an individual apprentice may be measured either through the completion of the industry standard for on-the-job training (at least 2,000 hours) (time-based approach), the attainment of competency (competency-based approach), or a blend of the time-based and competency-based approaches (hybrid approach);

(i) the time-based approach measures skill acquisition through the individual apprentice's completion of at least 2,000 hours of on-the-job training as described in a work process schedule;

(ii) the competency-based approach measures skill acquisition through the individual apprentice's successful demonstration of acquired skills and knowledge, as verified by the program sponsor; programs utilizing this approach shall still require apprentices to complete an on-the-job training component of registered apprenticeship; the program standards shall address how on-the-job training will be integrated into the program, describe competencies, and identify an appropriate means of testing and evaluation for such competencies;

(iii) the hybrid approach measures the individual apprentice's skill acquisition through a combination of specified minimum number of hours of on-the-job training and the successful demonstration of competency as described in a work process schedule;

(iv) the determination of the appropriate approach for the program standards is made by the program sponsor, subject to approval by the SAA of the determination as appropriate to the apprenticeable occupation for which the program standards are registered;

(c) an outline of the work processes in which the apprentice will receive supervised work experience and training on the job, and the allocation of the approximate amount of time to be spent in each major process;

(d) provisions which will ensure the apprentice of organized related and supplemental instruction in technical subjects related to the trade; a minimum of 144 hours of related instruction for each year is required; such instruction may be given in a classroom through occupation and industrial courses or by correspondence courses of equivalent value, electronic media, or other instruction reviewed by the SAC and approved by the SAA; such instruction will not be the financial responsibility of the apprentice with the possible exception of the purchase of books;

(e) every apprenticeship instructor shall:

(i) meet the state department of education's requirements for a vocational-technical instructor in the state of registration, or be a subject matter expert, which is an individual, such as a journeyworker, who is recognized within an industry as having expertise in a specific occupation; and

(ii) have training in teaching techniques and adult learning styles, which may occur before or after the apprenticeship instructor has started to provide the related technical instruction;

(f) a progressively increasing schedule of wages to be paid to the apprentice consistent with the skill acquired; the entry wage shall not be less than the minimum wage prescribed by the Fair Labor Standards Act, where applicable, unless a higher wage is required by other applicable federal law, state law, respective regulations, or by collective bargaining agreement;

(g) periodic review and evaluation of the apprentice's progress in job performance and related instruction; and the maintenance of appropriate progress records;

(h) [~~the~~] a numeric ratio of apprentices to journeyworkers consistent with established industry practices, proper supervision, training, safety, and continuity of employment, and applicable provisions in collective bargaining agreements except where such ratios are expressly prohibited by the collective bargaining agreements; the ratio language shall be specific and clearly described as to its application to the job site, workforce, department or plant; for all apprenticeship programs in the building and construction industry, the maximum allowable ratio of apprentices to journeyworker shall not exceed 1:1;

(i) a probationary period reasonable in relation to the full apprenticeship term, with full credit given for such period toward completion of apprenticeship; the probationary period cannot exceed 25 percent of the length of the program, or one year, whichever is shorter;

(j) adequate and safe equipment and facilities for training and supervision, and safety training for apprentices on the job and in related instruction;

(k) the minimum qualifications required by a sponsor for persons entering the apprenticeship program, with an eligible starting age not less than 16 years;

(l) the placement of an apprentice under a written apprenticeship agreement; such agreement shall directly, or by reference, incorporate the standards of the program as part of the agreement;

(m) the granting of advanced standing or credit for previously acquired experience, training or skills for all applicants equally with commensurate wages for any progression step so granted; all credit, which is to be granted, shall be reported to the office of the SAA in accordance with adopted procedures and guidelines;

(n) the transfer of an apprentice between apprenticeship programs and within an apprenticeship program shall be based on agreement between the apprentice and the affected apprenticeship committees or program sponsors, and shall comply with the following requirements:

(i) the transferring apprentice shall be provided a transcript of related instruction and on-the-job training by the committee or program sponsor;

(ii) transfer shall be to the same occupation; and

(iii) a new apprenticeship agreement shall be executed when the transfer occurs between program sponsors;

(o) assurance of qualified training personnel and adequate supervision on the

job;

(p) recognition for successful completion of apprenticeship evidenced by an appropriate certificate issued by the SAA;

(q) program standards that utilize the competency-based or hybrid approach for progression through an apprenticeship and that choose to issue interim credentials shall clearly identify the interim credentials, demonstrate how these credentials link to the components of the apprenticeable occupation, and establish the process for assessing an individual apprentice's demonstration of competency associated with the particular interim credential; further, interim credentials shall only be issued for recognized components of an apprenticeable occupation, thereby linking interim credentials specifically to the knowledge, skills, and abilities associated with those components of the apprenticeable occupation;

(r) identification of the SAA;

(s) provision for the registration, cancellation and deregistration of the program; and for the prompt submission of any program standard modification or amendment to the SAA;

(t) provision for the registration of apprenticeship agreements, modifications, and amendments; notice to the SAA of persons who have successfully completed apprenticeship programs; and notice of transfers, suspensions, and cancellations of apprenticeship agreements and a statement of the reasons therefore;

(u) authority for the cancellation of an apprenticeship agreement during the probationary period by either party without stated cause; cancellation during the probationary period will not have an adverse impact on the sponsor's completion rate;

(v) a statement that the program will be conducted, operated, and administered in conformity with applicable provisions of 29 CFR 30 and the SAA's plan for equal employment opportunity in apprenticeship;

(w) contact information (name, address, telephone number, and e-mail address if appropriate) for the appropriate individual with authority under the program to receive, process and make disposition of complaints;

(x) recording and maintenance of all records concerning apprenticeship as may be required by the OA or recognized SAA and other applicable law;

(y) all standards registered with the SAA shall contain a provision which states that the director of the SAA or his or her designee selected from OA or SAA staff shall be an ex-officio member, without vote, of any committee which functions to administer the apprenticeship program; and

(z) provision which clearly states that the director of the SAA or his or her designee selected from OA or SAA shall have the right to visit all job sites where apprentices may be employed, and apprentice related instruction classes, in order to determine compliance with apprenticeship standards.

[6-7-77; 11.2.3.23 NMAC - Rn, 11 NMAC 2.3.23, 12-30-02; 11.2.3.23 NMAC - Rn & A, 11.2.3.22 NMAC, 1-31-13; A, 1-31-13]

11.2.3.27 APPRENTICE AGREEMENT: General policy: The terms and conditions of employment and training of each apprentice shall be stated in a written apprenticeship agreement. The agreement shall contain explicitly or by reference:

A. names and signatures of the contracting parties (apprentice, and the program sponsor or employer), and the signature of a parent or guardian if the apprentice is a minor;

B. the date of birth of apprentice and, on a voluntary basis, social security number of the apprentice;

C. contact information of the program sponsor and SAA;

D. a statement of the occupation in which the apprentice is to be trained, and the beginning date and term (duration) of apprenticeship;

E. a statement showing:

(1) the number of hours to be spent by the apprentice in work on the job in a time-based program; or a description of the skill sets to be attained by completion of a competency-based program, including the on-the-job training component; or the minimum number of hours to be spent by the apprentice and a description of the skill sets to be attained by completion of hybrid program; and

(2) the number of hours to be spent in related instruction in technical subjects related to the occupation, which shall not be less than 144 hours per year;

F. a statement setting forth a schedule of the work processes in the trade or industry division in which the apprentice is to be trained and the approximate time to be spent at each process;

G. a statement setting forth a schedule of the graduated scale of wages to be paid to the apprentice and whether or not the required related instruction is compensated;

H. statements providing:

(1) for a specific period of probation during which the apprenticeship agreement may be cancelled by either party to the agreement upon written notice to the SAA, without adverse impact on the sponsor;

(2) that, after the probationary period, the agreement may be:

(a) canceled at the request of the apprentice, or

(b) suspended or cancelled by the sponsor, for good cause, with due notice to the apprentice and a reasonable opportunity for corrective action, and with written notice to the apprentice and to the SAA of the final action taken;

I. a reference incorporating as part of the agreement the standards of the apprenticeship program as they exist on the date of the agreement and as they exist on the date of the agreement and as they may be amended during the period of the agreement;

[~~I.~~] J. a statement that the apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training, without discrimination because of race, color, religion, national origin, or sex;

[~~J.~~] K. contact information (name, address, phone, and email if appropriate) of the appropriate authority designated under the program to receive, process and make disposition of controversies or differences arising out of the apprenticeship agreement when the controversies or differences cannot be adjusted locally or resolved in accordance with the established procedure or applicable collective bargaining provisions.

[6-7-77, 2-21-78, 8-26-84, 12-15-97; 11.2.3.27 NMAC - Rn, 11 NMAC 2.3.27, 12-30-02; 11.2.3.27 NMAC - Rn & A, 11.2.3.26 NMAC, 1-31-13; A, 1-31-13]

End of Adopted Rules Section

Submittal Deadlines and Publication Dates
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Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 18	March 29
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 3	June 14
Issue Number 12	June 17	June 28
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Issue Number 21	November 1	November 14
Issue Number 22	November 15	November 27
Issue Number 23	December 2	December 13
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