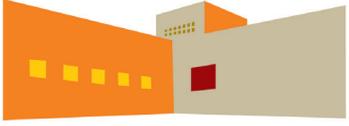


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New Mexico Register

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

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New Mexico Register

Volume XXIX, Issue 15

August 14, 2018

Table of Contents

Notices of Rulemaking and Proposed Rules

HEALTH, DEPARTMENT OF	
Notice of Public Hearing.....	1111
HUMAN SERVICES DEPARTMENT	
MEDICAL ASSISTANCE DIVISION	
Notice of Rulemaking.....	1112
Notice of Rulemaking.....	1113
PUBLIC EDUCATION DEPARTMENT	
Notice of Proposed Rulemaking.....	1115
Notice of Proposed Rulemaking.....	1115
REGULATION AND LICENSING DEPARTMENT	
REAL ESTATE COMMISSION	
Notice of Regular Meeting and Rule Hearing.....	1116

Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT	
OIL CONSERVATION COMMISSION	
19.15.29 NMAC R Release Notification.....	1119
19.15.29 NMAC N Releases.....	1119
WORKFORCE SOLUTIONS, DEPARTMENT OF	
11.2.17 NMAC R Workforce Investment Act Priority of Service.....	1126
11.2.18 NMAC R Workforce Investment Act Eligible Training Provider List.....	1126

Notices of Rulemaking and Proposed Rules

HEALTH, DEPARTMENT OF

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the proposed repeal and replacement of rule, 16.11.2 NMAC, “Certified Nurse Midwives”. The public hearing will be held on September 25, 2018 at 9:30 a.m. in the auditorium of the Harold Runnels Building, located at 1190 St. Francis Drive in Santa Fe, New Mexico.

This hearing will be conducted to receive public comment regarding the proposed repeal and replacement of the current rule concerning the licensing, scope of practice, and disciplining of certified nurse midwives. The hearing will be conducted to receive public comments regarding the proposed repeal and replacement of the rule, 16.11.2. NMAC, including the following rule parts:

1. Amended Subsection B of 16.11.2.10 NMAC-Certified Nurse-Midwife: added to Subsection B the ability to prescribe through electronic health record (EHR) and added a requirement that a CNM is to prescribe, provide samples of and dispense any dangerous drug to a patient only if the CNM is in a valid CNM-client relationship with a patient; and, inserted new Subsection D of 16.11.2.10 NMAC-Certified Nurse-Midwife, the Prescription Monitoring Program (PMP) requirements. The PMP Requirements change is part of a state-wide initiative for all practitioners to obtain and review a report from the state’s prescription monitoring program prior to prescribing or dispensing an opioid for the first time to a patient, pursuant to Section 26-1-16.1 NMSA 1978 (2017).

2. Removed Paragraph (2) and (5) of Subsection B of 16.11.2.10 NMAC-Certified Nurse-Midwife:

the provision had allowed CNMs to prescribe controlled substances in emergency situations to family/household/self.

3. Removed Subsection E of 16.11.2.10 NMAC-Certified Nurse-Midwife “Limitation of physician liability”: this provision stated that any consultative relationship between a CNM and a physician shall not by itself provide the basis for finding a physician liable for any acts or omissions of the CNM.

4. Amended 16.11.2.11 NMAC-Certified Nurse-Midwife, License Denial, Suspension, or Revocation; Disciplinary Action: Added more specific language to give clearer guidance for the appeal process in cases of non-disciplinary proceedings; to make it clear that final administrative decisions are reported to the National Practitioner Data Base (NPDB), as required; adds as grounds for discipline the falsifying or altering of personnel records; lengthens to 20 business days the time in which a CNM may report in writing to the division any complaint or claim against the CNM’s practice as a registered, certified or licensed health care provider in any jurisdiction; provides for a settlement process in lieu of hearing, if appropriate; and, to clarify the requirements for reinstatement of a revoked license.

5. Amended 16.11.2.7 NMAC-Certified Nurse-Midwife Definitions: Added definition “AMCB”, American midwifery certification board – this is the certifying body, to distinguish from “ACNM”, American college of nurse-midwives, which is the professional organization; updated the definition of a “Valid CNM-client relationship” to clarify it is a professional relationship for the purpose of maintaining the client’s well-being.

6. Amended Paragraph (5) of Subsection C of 16.11.2.9 NMAC-Certified Nurse-Midwife, Licensure: specifying the right to an appeal

hearing if licensure is denied; Amended Subsection E of 16.11.2.9 NMAC - Certified Nurse-Midwife to change the fees section to reflect a slightly higher penalty for late renewals, and added clarification of when applications are due; Amended Paragraph (2) and (3) of Subsection C of 16.11.2.9 NMAC - Certified Nurse-Midwife to add clarification for license requirements, especially continuing education (CE) requirements and which options may be accepted in lieu of CE contact hours.

7. Amended 16.11.2.12 NMAC-Certified Nurse-Midwife, “Advisory Board”: Added more details to description of the “public” and “division employee” Advisory Board membership qualifications.

The legal authority authorizing the proposed repeal and the adoption of the replacement rule by the Department is at Subsection E of Section 9-7-6, Subsections B and D of Section 24-1-2, Subsection J of Section 24-1-3 and Section 24-1-5 NMSA 1978.

The foregoing are summaries of the proposed rule. The proposed rule includes various additional substantive revisions not identified here. Free copies of the full text of the proposed rule may be obtained online from the Department’s website at <https://nmhealth.org/publication/regulation/>

Any interested member of the public may attend the hearing and offer public comments on the proposed rule during the hearing. Written public comments may also be submitted prior to the date of the hearing. Please submit any written comments regarding the proposed rule to the attention of:

Catherine Avery
Maternal Health Program Manager
Family Health Bureau/Public Health
Division
2040 S. Pacheco (Colgate Building)

Santa Fe, New Mexico 87505
Catherine.Avery@state.nm.us
(505) 476-8866

All written comments must be received by 5 pm MST on September 23, 2018. All written comments will be published on the agency website at <https://nmhealth.org/publication/regulation/> within 3 days of receipt, and will be available at the New Mexico Department of Health Office of General Counsel for public inspection.

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

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

NOTICE OF RULEMAKING

The New Mexico Human Services Department Methods and Standards for Establishing Payment-Inpatient Hospital Services

The New Mexico Human Services Department (HSD) is providing this notice for the purpose of receiving public comment regarding proposed amendments to the Methods and Standards for Establishing Payment-Inpatient Hospital Services rule (8.311.3) of the New Mexico Administrative Code (NMAC). There is no anticipated financial impact due to these proposed changes.

The Department proposes to add language extending the definition of "Outlier Cases". For the state teaching hospital, HSD proposes to define outlier cases as those cases for eligible recipients of any age with medically necessary services

exceeding \$200,000 in billed charges or with medically necessary lengths of stay of 75 calendar days or more.

In this section, the Department also proposes language to include nationally-accredited primary care residency programs as a qualifying factor for teaching hospitals eligible for an Indirect Medical Education (IME) adjustment. It also clarifies that the IME adjustment payment will be calculated separately for traditional Medicaid and the Other Adult Group expansion categories.

The Department also proposes to add language regarding the computation of hospital prospective payments rates, to specify that when a market basket index (MBI) inflation factor is applied, a notification will be sent informing the provider of the percentage increase that will be applied.

A new proposed section was added to Disproportionate Share Hospitals (DSH) to specify that the Department has one year from the date of discovery of an overpayment to a provider to recover or seek to recover overpayment before the federal share must be refunded to CMS. The provider will be notified of the overpayment, including the dollar amount that is subject to recovery. The provider has 90 calendar days from the date of notification to submit the payment in full unless otherwise directed by the department.

As a result of a federal review, the Department added language to allow more time for hospitals to submit cost reports. Cost reports must be submitted within five months after the close of the hospital's fiscal year. Previously, the time requirement was 90 days. Because of this federal requirement, HSD implemented this provision of the rule through an Interim Policy and Procedure that was effective on July 1, 2018. Penalties for failure to file a report within the required time frames are specified in this section.

OPPORTUNITY TO VIEW DOCUMENTS AND MAKE COMMENTS: Medicaid providers, Medicaid recipients, and other interested parties are invited to make comments on this proposal. The complete draft rule amendments may be found on the Department's website at: <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> and <http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>.

A written copy of these proposed documents may be requested by contacting the HSD Medical Assistance Division (HSD/MAD) in Santa Fe at (505) 827-6252.

A public hearing to receive testimony on this proposed rule will be held in the Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico on Thursday, September 13, 2018 from 9:30 a.m. to 10:30 a.m., Mountain Daylight Time (MDT).

Recorded comments may be left by calling (505) 827-1337. Electronic comments may be submitted to madrules@state.nm.us. Written, electronic and recorded comments will be given the same consideration as oral testimony. All comments must be received no later than 5:00 p.m. MDT, September 14, 2018. Written or e-mailed comments are preferred because they become part of the record associated with these changes.

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

Copies of all comments will be made available by HSD/MAD upon request by providing copies directly to a requestor or by making them available on the HSD/MAD website or at a location within the county of the requestor.

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend NMAC policy: *8.314.5 NMAC, Developmental Disabilities Home and Community-Based Services Waiver*.

On June 21, 2017, the Department received approval from the Centers for Medicare and Medicaid Services (CMS) for a renewal of the 1915 (c) Home and Community-Based Services (HCBS), Developmental Disabilities Waiver with an effective date of July 1, 2016. The program rule, 8.314.5 NMAC, is being amended to align services and definitions with the approved Waiver renewal and the CMS HCBS Settings Final Rule.

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

Notice Date: August 14, 2018
Hearing Date: September 13, 2018
Adoption Date: Proposed as December 1, 2018
Technical Citations: 42 CFR 438 subparts A through J

The Department proposes the following amendments to the rule:

Section 7

Definition language was updated throughout this section: clarification

that activities of daily living include bathing, dressing, transferring, toileting, mobility and eating; description and clarification of person centered planning process; and removal of the definition for the Supports Intensity Scale.

Section 8

The language in this section has been removed.

Section 9

This section was updated to align with the CMS HCBS Settings Final Rule. Language has been added clarifying the recipient's right to privacy, dignity and respect and that the Developmental Disabilities Waiver (DDW) services must be provided in a setting that: is integrated in and facilitates full access to the greater community; ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid Home and Community-Based services; maximizes independence in making life choices; is chosen by the individual (in consultation with the guardian if applicable) from among residential and day options, including non-disability specific settings; ensures the right to privacy, dignity, respect and freedom from coercion and restraint; optimizes individual initiative, autonomy and independence in making life choices; provides an opportunity to seek competitive employment; provides individuals an option to choose a private unit in a residential setting; and facilitates choice of services and who provides them.

Section 10

Subsection C- Clarifying language was added to provider agency oversight and supervision of subcontractors and employees.

Subsection D- Clarifying language was added to the qualifications for case management provider agencies.

Subsection F- Clarifying language was added to qualifications of adult nursing provider agencies.

Subsection H- Clarifying

language was added detailing when direct support staff personnel employed by or subcontracting with the provider agency must be approved through a home study; requirement for supported living agencies to supervise specific nurse functions.

Subsection T- Inclusion of LCSW, LMFT and LISW under qualifications for licensed behavioral health practitioners that can be employed by preliminary risk screening and consultation (PRSC) related to inappropriate sexual behavior agencies.

Subsection U- Clarifying language added to qualifications of socialization and sexual education providers.

Section 11

This section was updated with language on conflict of interest, including the requirements for provider agencies and case management agencies to mitigate real or perceived conflicts of interest. This language is consistent with the DDW service standards.

Subsection C - Language was added detailing conflict of interest requirements and prohibitions for DDW providers with regard to guardians, family members and spouses of eligible recipients.

Subsection D - Language was added detailing conflict of interest requirements and prohibitions for case management agency owners and individually employed or contracted case managers with regard to: relation by blood or affinity to the eligible recipient or to any paid caregiver of the eligible recipient; material financial interest in any entity that is paid to provide DDW or Mi Via services; making financial or health related decisions for eligible recipients on their caseload; relation by blood or affinity to any DDW service provider for eligible recipients on their caseload; and holding caseloads with DDW and Mi Via eligible recipients.

Language was added detailing conflict of interest requirements and prohibitions for case management provider agencies with regard to being

a provider agency for any other DDW service and providing guardianship services to an eligible recipient receiving case management services from that same agency.

Language was added detailing conflict of interest requirements and prohibitions for a case manager or director of a case management provider agency with regard to serving on the board of directors of any DDW provider agency and training staff of DDW provider agencies.

Language was added outlining requirements for case management provider agencies to disclose familial relationships between employees/ subcontract case managers and providers of other DDW services.

Section 12

This section was updated with language that notes the eligibility criteria for DDW services are found in 8.290.400 NMAC.

Section 13

This section was updated to remove all language related to the Recipient Standardized Assessment and Supports Intensity Scale (SIS).

Section 14

Subsection A - Supplemental Dental was removed as a covered service for eligible recipients ages birth to 18 years as this service is covered under the Early Periodic Screening Diagnosis and Treatment (EPSDT) program under the state plan.

Subsection C - Preliminary risk screening and consultation was added to the list of service options that are allowed outside of the Annual Resource Allotment (ARA) for eligible recipients ages birth to 18 years.

Section 15

Subsection A - This section was updated with the removal of SIS language. Language was added on the use of Proposed Budget Levels (PBL) and corresponding suggested budget dollar amount based on the type of living care arrangement, assumptions

about types and amounts of services, intensity of staffing needs, and support needs in each level.

Subsection B - The H Authorization language was removed and replaced with the Exception Authorization Process. Clarifying language was added to outline the requirements and process for the Exception Authorization Process. This process allows DDW individuals who have extenuating circumstances, including extreme complex clinical needs, to receive services beyond what is authorized in their current ISP/budget level or to allow individual exceptions to the DDW service standards.

Subsection C (1) - Clarifying language was added to the functions required under case management services including the addition of health care coordination and activities that support the person-centered planning process such as: supporting informed choice and participant self-advocacy; allowing participants to lead their own meetings, program and plan development; increasing an individual's experiences with other paid, unpaid, publicly-funded and community support options; increasing self-determination; demonstrating that the approved budget is not replacing other natural or non-disability specific resources available; and documenting efforts demonstrating choice of non-waiver and non-disability specific options in the Individual Support Plan (ISP), Intermediate Disciplinary Team (IDT) meeting minutes or companion documents when an individual has only DDW funded supports.

Subsection C (4) - Language was added to clarify that for all medically necessary therapy services accessed under the state plan by eligible recipients under 21 years of age, the services under the waiver are services not otherwise covered under the state plan, and consistent with waiver objectives to support the recipient to remain in the community and prevent institutionalization.

Subsection C (5) - Clarifying language was added noting

that Living Support services are available up to 24 hours per day; the section on Family Living service was reformatted.

Subsection C (6) - Clarifying language was added for Customized Community Supports settings.

Subsection C (7) - This section was updated with additional language describing the services available through the various Community Integrated Employment models.

Section 17

This section was updated with the addition of language on the person-centered planning process and requirements as it pertains to the development of the ISP. Language on the SIS process was deleted.

Section 20

This section was updated with clarifying language on agency review conferences and the fair hearing process; language on the denial of services through H authorization was replaced with exception authorization process.

This proposed rule will be contained in 8.314.5 NMAC, Developmental Disabilities Home and Community-Based Services Waiver. The register and proposed rule language are available on the HSD website at: <http://www.hsd.state.nm.us/LookingForInformation/register.aspx> and <http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD at 505-827-6252.

The Department proposes to implement this rule effective December 1, 2018. A public hearing to receive testimony on this proposed rule will be held in the Rio Grande Conference room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico on September 13, 2018 from 11 a.m. to 12 p.m.,

Mountain Daylight Time (MDT).

Interested persons may address written or recorded comments to: Human Services Department, Office of the Secretary, ATTN: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MDT on September 14, 2018. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at (505) 827-6252. The Department requests at least 10 working days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on Monday, September 17, 2018 from 9:00 a.m. to 11:00 a.m. (MDT). The purpose of the public hearing is to receive public input on the proposed

repeal and replace of 6.10.7 NMAC, Statewide Standardized Testing Security Issues and Irregularities to be replaced with 6.10.7 NMAC, Standardized Testing Procedures and Requirements. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the rule changes. Written comment will also be accepted at the hearing.

Explanation of Purpose and Summary of Text.

The purpose of the proposed repeal and replace of 6.10.7 NMAC is to update the roles, responsibilities, and procedures required for the preparation, storing, handling, distribution, security, and administration of standardized tests. The rule change also clarifies and sets requirements for the reporting of test irregularities to the PED Assessment Bureau to ensure test validity. Additionally, the structure of the rule has been re-organized.

Statutory Authorizations:

Section 22-2-1 NMSA 1978
Section 22-2-2 NMSA 1978
Section 22-2C-4 NMSA 1978
Section 22-13-1.1 NMSA 1978

No technical information served as a basis for this proposed rule change.

Public Comment. Interested parties may provide comment at the public hearing or may submit written comments by mail to Jamie Gonzales, Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, New Mexico 87501, by electronic mail to rule.feedback@state.nm.us, or by fax to (505) 827-6520. All written comments must be received no later than 5:00 p.m. (MDT) on Monday, September 17, 2018. The public comment period is from August 14, 2018 to September 17, 2018 at 5:00 p.m. (MDT).

The PED will review all feedback received during the public comment period and issue communication

regarding a final decision at a later date.

Copies of the proposed repeal and replace may be accessed through the page titled, "Rule Notification," on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from Jamie Gonzales at (505) 827-7889 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Jamie Gonzales at (505) 827-7889 as soon as possible before the date set for the public hearing. The PED requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on Wednesday, September 19, 2018 from 9:00 a.m. to 11:00 a.m. (MDT). The purpose of the public hearing is to receive public input on the proposed repeal and replace of 6.60.3 NMAC, Alternative Licensure; 6.60.8 NMAC, Background Checks for Educator Licensure; and 6.61.9 NMAC, Certificates of Endorsement Waiver. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the rule changes. Written comment will also be accepted at the hearing.

Explanation of Purpose and Summary of Text.

The purpose of the proposed repeal and replace of **6.60.3 NMAC, Alternative Licensure** is to update the pathways and requirements for seeking alternative teaching and administrative licensure. A new section was added to outline the requirements for receiving an alternative license to serve as a student success advisor. Language was also updated to address the transition from No Child Left Behind to the Every Student Succeeds Act. Additionally, the structure of the rule was re-organized.

The purpose of the proposed repeal and replace of **6.60.8 NMAC, Background Checks for Educator Licensure** is to clarify the requirements for in-state versus out-of-state initial licensure applicants. Language clarifying disclosure procedures was added as well as language stating that applicants may not work with students until they have participated in a background check. Additionally, the structure of the rule was re-organized.

The purpose of the proposed repeal and replace of **6.61.9 NMAC, Certificates of Endorsement Waiver** is to update the requirements for seeking a waiver, renewing a waiver, and requesting department review of a denied waiver. The rule change also defines which endorsements may be waived. Additionally, the structure of the rule was re-organized.

Statutory Authorization(s):

Section 22-2-1 NMSA 1978; Section 22-2-2 NMSA 1978; Section 22-10A-5 NMSA 1978; Section 22-10A-6 NMSA 1978; Section 22-10A-8 NMSA 1978; Section 22-10A-14 NMSA 1978

No technical information served as a basis for this proposed rule change.

Public Comment. Interested parties may provide comment at the public hearing or may submit written comments by mail to Jamie Gonzales,

Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, New Mexico 87501, by electronic mail to rule.feedback@state.nm.us, or by fax to (505) 827-6520. All written comments must be received no later than 5:00 p.m. (MDT) on Wednesday, September 19, 2018. The PED encourages the early submission of written comments. The public comment period is from August 14, 2018 to September 19, 2018 at 5:00 p.m. (MDT).

The PED will review all feedback received during the public comment period and issue communication regarding a final decision at a later date.

Copies of the proposed rules may be accessed through the page titled, "Rule Notification," on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from Jamie Gonzales at (505) 827-7889 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Jamie Gonzales at (505) 827-7889 as soon as possible before the date set for the public hearing. The PED requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

REGULATION AND LICENSING DEPARTMENT REAL ESTATE COMMISSION

NOTICE OF REGULAR MEETING AND RULE HEARING

The New Mexico Real Estate Commission will hold a regular meeting and public hearing on proposed amendments to the Real Estate Commission Rules on Monday, September 17, 2018 at 9

a.m. at the offices of the Greater Albuquerque Association of Realtors, 1635 University Boulevard NE, Albuquerque, New Mexico.

The Real Estate Commission will be considering and receiving public comments on proposed amendments to the following rules recommended by the Commission's Rules Task Force.

The full text of the proposed rule changes is available on the Real Estate Commission web site at: <http://www.rld.state.nm.us/> or by contacting Gie Vivar at (505) 222-9820 at the Real Estate Commission office at 5500 San Antonio Drive NE, Albuquerque, New Mexico 87109.

Written comments on the proposed rules will be accepted up to and throughout the rule hearing. Oral comments will be accepted throughout the rule hearing.

16.61.1 NMAC GENERAL PROVISIONS:

Broker, Brokerage, Brokerage Relationship: The amendments would break the three terms into separate definitions.

Purpose: The purpose of the amendment is to create a distinct definition for each of these terms. The terms are currently under the Broker heading.

Property Management: An amendment to the definition of property management that would exclude advertising and taking reservations for vacation property rentals from the definition of property management.

Purpose: The purpose of the proposed amendment is to allow companies to advertise and take reservations for vacation properties in New Mexico without obtaining a New Mexico real estate broker's license.

Transaction Coordinator: The amendment would create new

definition of a Transaction Coordinator as a licensed New Mexico associate broker who performs brokerage related services for one brokerage, or a licensed New Mexico qualifying broker who performs brokerage related services for multiple brokerages with different ownership.

Purpose: The purpose of the new language is to codify licensure requirements for transaction coordinators that the Real Estate Commission adopted by a motion at a public meeting.

Statutory Authority: Section 61.29.4 NMSA 1978

16.61.2 NMAC LICENSE AND OTHER FEES:

Section 8, Fees: The amendment would set fees charged for applications to teach pre-licensing and continuing education courses to a fee not to exceed \$70 to teach an existing approved course, and a fee not to exceed \$100 to renew certification as an approved instructor. An additional amendment would set a fee not to exceed \$50 plus \$2 for each credit hour up to a maximum of 10 credit hours for approval to teach a new pre-licensing course, and a fee not exceed \$25 plus \$1 for each credit hour up to a maximum of 10 credit hours for "bulk course approval", defined as five or more courses submitted for approval at any single meeting of the Education Advisory Committee.

Purpose: The purpose of the proposed amendments is to clarify and standardize fees charged for approval of pre-licensing and continuing education courses.

Statutory Authority: Section 61.29.4 NMSA 1978

16.61.3 NMAC REAL ESTATE BROKER'S LICENSE: EXAMINATION AND LICENSING APPLICATION REQUIREMENTS:

Section 11, Qualifying Broker Candidate Education Requirements for Application: The amendment would specify that a qualifying broker candidate shall attend a commission meeting, public hearing, or disciplinary hearing for at least three hours or until the meeting or hearing adjourns or goes into executive session whichever happens first. The amendment would permit attendance through a live or recorded distance broadcast.

Section 13, Qualifying Broker License Renewal: The amendment would specify that a qualifying broker candidate shall attend a commission meeting, public hearing, or disciplinary hearing for at least three hours or until the meeting or hearing adjourns or goes into executive session whichever happens first. The amendment would permit attendance through a live or recorded distance broadcast.

Purpose: The purpose of the amendments is to clarify how long a qualifying broker must attend a commission meeting, public hearing, or disciplinary hearing to satisfy their licensing application and renewal requirements.

Statutory Authority: Section 61.29.4 NMSA 1978

16.61.11 NMAC LICENSE EXPIRATION AND RENEWAL:

The amendment would not allow a qualifying broker to avoid paying a late fee on an expired license by allowing the license to expire and applying for an additional license. An application for an additional license within the broker's next licensing cycle would only be accepted if the qualifying broker brings all other licenses current with respect to fees, continuing education, and other renewal requirements.

Purpose: The purpose of the amendment is to close a loophole in the rules that currently allows a qualifying broker to avoid paying \$810 to renew an expired license by

applying for a new license for \$270.

Statutory Authority: Section 61.29.4 NMSA 1978

16.61.13 NMAC CONTINUING EDUCATION REQUIREMENTS:

Section 8, Requirements: The amendments would clarify course completion requirements for the four-hour Core Course. The amendment would require brokers to complete the core course designated for each year of the three licensing cycle, but would allow brokers who missed a core course required in the first year of the licensing cycle to take make up the course by taking the course required in the third year of the licensing cycle twice with different instructors. Although the repeated course would be given credit for purposes of license renewal, the broker would not receive continuing education credit for the repeated course.

Purpose: The purpose of the amendment is to clarify the annual requirement of the core course, but to provide a makeup option to brokers who missed the course in the first year of their cycle.

Statutory Authority: Section 61.29.4 NMSA 1978

16.61.15 NMAC APPROVAL OF REAL ESTATE COURSES, SPONSORS, AND INSTRUCTORS:

Section 9, Approval of Education Programs: The amendments would clarify that courses offered for Real Estate Commission-approved credit must be taught by Commission-approved instructors, that instructors will be evaluated by the Education Advisory Committee for their honesty, truthfulness, good repute, competence, and professionalism; and that student evaluations of instructors shall be made available to the commission or any duly authorized commission representative upon request.

Section 11, Approval of Courses:
The amendments would clarify the definition of distance education, require sponsors of distance education to provide technical support to rectify minor technical problems, require proctors and set a 40 student maximum for administration of the Core Course, and require final exams for courses that are not proctored.

Section 12, Approval of Instructors:
The amendments would require Core Course instructors to complete a Core Course training approved by the Education Advisory Committee; teach the Core Course twice for no compensation; be teamed with two different approved Core Course instructors; and receive above average evaluations in both courses; appear before and be approved by the Education Advisory Committee; and appear before and be sworn in by the Real Estate Commission.

Purpose: The purpose of the foregoing amendments to Part 15 is to ensure the highest possible quality of real estate instruction, and set standards for distance education.

Statutory Authority: Section 61.29.4 NMSA 1978

16.61.17 NMAC ASSOCIATE BROKER: AFFILIATION AND RESPONSIBILITIES: The amendment would specify that an associate broker could perform brokerage services for different qualifying brokers within the same brokerage, but would be required to have a qualifying broker’s license to perform brokerage services for multiple brokerages with different ownership in the capacity of a transaction coordinator.

Purpose: The purpose of the amendments is to clarify what brokerage duties an associate broker can perform in light of the emergence of the transaction coordinator in brokerage business.

Statutory Authority: Section 61.29.4 NMSA 1978

16.61.19 NMAC BROKER DUTIES AND BROKERAGE

RELATIONSHIPS: The amendments would create new language requiring brokers to disclose in writing to customers and clients when the broker has a written agreement with a transaction coordinator who will be providing brokerage services related to their customer’s or client’s transaction.

Other amendments would require brokers to make timely presentation of and response to all written offers and counter-offers to customers and clients and to other brokers.

Purpose: The purpose of the amendment is to ensure that the broker makes full disclosure to their customer or client of the involvement of a transaction coordinator in the transaction, and to clarify that the requirement for timely presentation of offers and counter-offers applies to written offers.

Statutory Authority: Section 61.29.4 NMSA 1978

16.61.23 NMAC TRUST

ACCOUNTS: The amendments would require brokers who maintain trust accounts but do not engage in property management to file an annual audit declaration naming the bank where the trust account is maintained, the last four digits of the trust accounts maintained, and the balance of all such accounts as of December 31 of the previous year. Brokers who maintain trust accounts and engage in property management would be required to disclose such involvement to the Real Estate Commission; submit an annual audit declaration form to the Commission, and attest that they have reconciled and balanced all trust accounts related to their brokerage business on a monthly basis during the previous year.

Purpose: The purpose of the amendments is to enhance public protection by making property managers more accountable to their customers and to the Real Estate Commission.

Statutory Authority: Section 61.29.4 NMSA 1978

16.61.24 NMAC PROPERTY MANAGEMENT: The amendments would require brokers providing property management services to attach to any residential tenancy agreement a copy of the Uniform Owner Resident Act and take additional continuing education courses in property management. The amendments would also require the broker to disclose if they are using an online travel agent or third party advertising entity.

Other amendments would require property managers hiring vendors or employees to perform maintenance, repair or renovation to use certified, licensed and/or insured vendors to perform such work; require brokers to execute assignments of contracts when transferring management between broker and obtain owners’ consent of such assignments.

Other amendments would change the name of Part 16.51.24.16 from Short term and vacation rentals to Vacation rentals and would allow New Mexico brokerages to pay fees to unlicensed companies engaged in advertising and taking reservations for vacation rentals without violating Section 61-29-12 A (3) of the Real Estate License Law which prohibits paying or receiving compensation to or from an unlicensed entity.

Purpose: The purpose of the amendments is to enhance public protection by ensuring a higher level of education, accountability, disclosure, and professionalism among property managers.

Statutory Authority: Section 61.29.4 NMSA 1978

End of Notices of Rulemaking and Proposed Rules

Adopted Rules

Effective Date and Validity of Rule Filings

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

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
OIL CONSERVATION
COMMISSION**

The Oil Conservation Commission repeals its rule 19.15.29 NMAC, entitled Release Notification, filed December 1, 2008, and replaces it with its rule 19.15.29 NMAC, entitled Releases, effective August 14, 2018.

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
OIL CONSERVATION
COMMISSION**

**TITLE 19 NATURAL
RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 29 RELEASES**

19.15.29.1 ISSUING
AGENCY: Oil Conservation Commission.

[19.15.29.1 NMAC - Rp, 19.15.29.1 NMAC, 8/14/2018]

19.15.29.2 SCOPE: 19.15.29 NMAC applies to persons engaged in oil and gas development and production within New Mexico.
[19.15.29.2 NMAC - Rp, 19.15.29.2 NMAC, 8/14/2018]

19.15.29.3 STATUTORY AUTHORITY: 19.15.29 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-11 NMSA 1978 (1977) and Section 70-2-12 NMSA 1978 (2004).
[19.15.29.3 NMAC - Rp, 19.15.29.3 NMAC, 8/14/2018]

19.15.29.4 DURATION:
Permanent.

[19.15.29.4 NMAC - Rp, 19.15.29.4 NMAC, 8/14/2018]

19.15.29.5 EFFECTIVE DATE: August 14, 2018, unless a later date is cited at the end of a section.

[19.15.29.5 NMAC - Rp, 19.15.29.5 NMAC, 8/14/2018]

19.15.29.6 OBJECTIVE:
To require persons who operate or control the release or the location of the release to report the unauthorized release of oil, gases, produced water, condensate or oil field waste including regulated NORM or other oil field related chemicals, contaminants or mixtures of those chemicals or contaminants that occur during drilling, producing, storing, disposing, injecting, transporting, servicing or processing and to establish reporting, site assessment, remediation, closure, variance and enforcement procedures.
[19.15.29.6 NMAC - Rp, 19.15.29.6 NMAC, 8/14/2018]

19.15.29.7 DEFINITIONS:
A. "Major release"
means:

(1) an unauthorized release of a volume, excluding gases, of 25 barrels or more;

(2) an unauthorized release of a volume that (a) results in a fire or is the result of a fire;

(b) may with reasonable probability reach a watercourse;

(c) may with reasonable probability endanger public health; or

(d) substantially damages property or the environment;

(3) an

unauthorized release of gases exceeding 500 MCF; or

(4) a release of a volume that may with reasonable probability be detrimental to fresh water.

B. "Minor release"
means an unauthorized release, which is not a major release and is a volume greater than five barrels but less than 25 barrels; or for gases, greater than 50 MCF but less than 500 MCF.

C. "Responsible party" means the operator, as defined in 19.15.2 NMAC. Notwithstanding the foregoing, the division, in its sole discretion, may also consider a person causing the release, or controlling the location of the release as the responsible party.

D. "Wellstream"
means the gas, oil, water, suspended constituents, or any combination thereof, which comes from the wellbore.

[19.15.29.7 NMAC - Rp, 19.15.29.7 NMAC, 8/14/2018]

19.15.29.8 RELEASES:
A. Requirements.

For all releases regardless of volume, the responsible party shall comply with 19.15.29.8 NMAC and shall remediate the release. For major and minor releases, the responsible party shall also comply with 19.15.29.9, 19.15.29.10, 19.15.29.11, 19.15.29.12 and 19.15.29.13 NMAC.

B. Initial response.
The responsible party must take the following immediate actions unless the actions could create a safety hazard that would result in injury.

(1) **Source elimination and site security.**
The responsible party must take appropriate measures to stop the source of the release and limit access to the site as necessary to protect human health and the environment.

(2)

Containment. Once the site is secure, the responsible party must contain the materials released by construction of berms or dikes, the use of absorbent pads or other containment actions to limit the area affected by the release and prevent potential fresh water contaminants from migrating to watercourses or areas that could pose a threat to public health and environment. The responsible party must monitor the containment to ensure that it is effectively containing the material and not being degraded by weather or onsite activity.

(3) **Site**

stabilization. After containment, the responsible party must recover any free liquids and recoverable materials that can be physically removed from the surface within the containment area. The responsible party must deliver material removed from the site to a division-approved facility.

(4)

Remediation. The responsible party may commence remediation immediately.
[19.15.29.8 NMAC - Rp, 19.15.29.8 NMAC, 8/14/2018]

19.15.29.9 RELEASE NOTIFICATION:

A. The responsible party must notify the division on form C-141 of a major or minor release occurring during the drilling, producing, storing, disposing, injecting, transporting, servicing or processing of oil, gases, produced water, condensate or oil field waste including regulated NORM, or other oil field related chemicals, contaminants or mixture of the chemicals or contaminants, in accordance with the requirements of 19.15.29 NMAC.

B. If state, federal or tribal lands are involved, the responsible party must send a copy of the form C-141 to the appropriate land managing agency including the state land office, the BLM or tribal authority, as applicable.
[19.15.29.9 NMAC - Rp, 19.15.29.9 NMAC, 8/14/2018]

19.15.29.10 RELEASE NOTIFICATION REPORTING REQUIREMENTS:

The responsible party must notify the division of releases in 19.15.29.9 NMAC as follows.

A. Reporting a major release.

(1) The responsible party must notify the division's environmental bureau chief and the appropriate division district office verbally or by e-mail within 24 hours of discovery of the release. The notification must provide the information required on form C-141.

(2) The responsible party must also notify the appropriate division district office in writing within 15 days of discovering the release by completing and filing form C-141. The written notification must verify the prior verbal or e-mail notification and include additions or corrections to the information contained in the prior verbal or e-mail notification.

B. Reporting a minor release. The responsible party must notify the appropriate division district office in writing within 15 days of discovery of the release by completing and filing form C-141.
[19.15.29.10 NMAC - Rp, 19.15.29.10 NMAC, 8/14/2018]

19.15.29.11 SITE ASSESSMENT/CHARACTERIZATION: After the responsible party has removed all free liquids and recoverable materials, the responsible party must assess soils both vertically and horizontally for potential environmental impacts from any major or minor release containing liquids.

A. Characterization requirements. The responsible party must submit information characterizing the release to the appropriate division district office within 90 days of discovery of the release or characterize the release by submitting a final closure report within 90 days of discovery of the release in accordance with Subsection E of 19.15.29.12 NMAC. The responsible party may seek an extension of time to submit

characterization information for good cause as determined by the division. The responsible party must submit the following information to the division.

(1) Site map.

The responsible party must provide a scaled diagram that shows the potentially impacted area, significant surface features including roads and site infrastructure, location of borings, sample points, monitoring wells and subsurface features such as known pipelines to the extent known at the time of submittal including the source of information regarding subsurface features.

(2) Depth to ground water. The responsible party must determine the depth to ground water where the release occurred. If the exact depth to ground water is unknown, the responsible party must provide a reasonable determination of probable ground water depth using data generated by numeric models, cathodic well lithology, water well data, published information or other tools as approved by the appropriate division district office. If the responsible party uses water well data, the responsible party must provide all pertinent well information.

(3) Wellhead protection area. The responsible party must determine the horizontal distance from all known water sources within a half mile of the release including private and domestic water sources. Water sources are wells, springs or other sources of fresh water extraction. Private and domestic water sources are those water sources used by less than five households for domestic or stock purposes.

(4) Distance to nearest significant watercourse. The responsible party must determine the horizontal distance to the nearest significant watercourse as defined in Subsection P of 19.15.17.7 NMAC within a half mile of any horizontal boundary of the release.

(5) Soil/waste characteristics. The responsible party must determine the lateral and vertical extents of soil contamination, as follows.

(a)

If the release occurred within a lined containment area, the responsible party must demonstrate liner integrity after affected material is removed and the affected area of the liner is exposed and provide:

(i) certification on form C-141 that the responsible party has visually inspected the liner where the release occurred and the liner remains intact and had the ability to contain the leak in question; and

(ii) at least two business days' notice to the appropriate division district office before conducting the liner inspection.

(b) If the responsible party is unable to demonstrate liner integrity or the release occurred outside of a lined containment area, the responsible party must delineate the release horizontally and vertically using Table I of 19.15.29.12 NMAC constituents or as required by Subparagraph (e) of Paragraph (5) of Subsection A of 19.15.29.11 NMAC based on the type of release. The responsible party shall use one or more of the following soil sampling methods for characterization:

(i) NRCS Field Guide;

(ii) EPA SW-846;

(iii) ASTM Method 4547;

(iv) EPA 600; or

(v) or other division-approved methods.

(c) In addition to Subparagraph (b) of Paragraph (5) of Subsection A of 19.15.29.11 NMAC, if the release occurred outside of a lined containment area and is in an area where depth to ground water is greater than 50 feet and less than or equal to 100 feet, the responsible party must delineate the vertical extent of the release to the greater of 600 mg/kg chloride or background chloride level, if:

(i) the release contains produced water that exceeds 10,000 mg/l of chloride

(if the responsible party contends the fluid is less than 10,000 mg/l, the responsible party must provide current sample results to the division); and

(ii) the release is of an unknown quantity or results in greater than 200 barrels of unrecovered produced water.

(d) If the conditions are met in Subparagraph (c) of Paragraph (5) of Subsection A of 19.15.29.11 NMAC, the responsible party must submit at least two soil samples for laboratory analysis from each borehole or sample point (highest observed contamination and deepest depth investigated). Field screening and assessment techniques are acceptable (headspace, titration, electrical conductivity [include algorithm for validation purposes], electromagnetics, etc.), but the sampling procedures must be clearly defined. The responsible party must submit copies of field notes attributable to field sampling and provide copies of the actual laboratory results including chain of custody documentation.

(e) If a known release of other oil field related chemicals occurs that is not included in Table I of 19.15.29.12 NMAC, and does not include oil, gas, produced water or other fluids from the wellstream, the standards for remediation shall be as follows:

(i) if the constituent appears on Table 1 of 40 C.F.R. 261.24(b), then that constituent shall be remediated according to 40 C.F.R. 261.24;

(ii) if the constituent is not identified in Table 1 of 40 C.F.R. 261.24(b), but is identified in the New Mexico environment department's Risk Assessment Guidance for Site Investigations and Remediation Volumes I and II (assessment), the division will determine the appropriate Assessment Volume and remediation shall occur pursuant to the assessment;

(iii) if the constituent is not identified in Items (i) or (ii) of Subparagraph (e)

of Paragraph (5) of Subsection A of 19.15.29.11 NMAC, the division shall consult with the responsible party to determine appropriate remediation of the release.

B. Unless the site characterization report includes completed efforts at remediation, the report must include a proposed remediation plan in accordance with 19.15.29.12 NMAC, which includes the anticipated timelines for beginning and completing the remediation.

C. If the division determines that more information is needed to understand the character of the release and its potential impact on fresh water, public health and the environment, the division may request the responsible party submit additional information. Should the division request additional information, it must do so in writing to the responsible party within 30 days from receipt of the characterization report or remediation plan with what specific information the division is requesting and reasons why the additional information is needed. The responsible party has 14 days to respond to a written request for additional information. If the responsible party disagrees with the request for additional information, it may consult with the division, or file an application for hearing pursuant to 19.15.4 NMAC within 30 days of the issuance of the request for additional information.

[19.15.29.11 NMAC - Rp, 19.15.29.11 NMAC, 8/14/2018]

19.15.29.12 REMEDIATION AND CLOSURE:

A. The responsible party must remediate all releases regardless of volume.

B. Remediation requirements.

(1) Unless remediation is completed, and a final closure report submitted, within 90 days of discovery of the release, the responsible party must complete division-approved remediation for releases either pursuant to a remediation plan approved pursuant to 19.15.29.12 NMAC or pursuant

to an abatement plan in accordance with 19.15.30 NMAC. If the director determines that the release has caused water pollution in excess of the standards and requirements of 19.15.30 NMAC, the director may notify the responsible party that an abatement plan may be required pursuant to 19.15.30 NMAC.

(2) Any remediation under 19.15.29 NMAC should be completed as soon as practicable. Any remediation that exceeds 90 days must follow the division-approved timeline in the remediation plan. The responsible party may request an extension of time to remediate upon a showing of good cause as determined by the division.

C. Remediation plan requirements. The responsible party must take the following action for any major or minor release containing liquids.

(1) The responsible party must submit a detailed description of proposed remediation measures in accordance with the findings of the site assessment/characterization plan that includes:

- (a) delineation results, including laboratory analysis;
- (b) a scaled sitemap showing release area with horizontal and vertical delineation points;
- (c) estimated volume of impacted material to be remediated;
- (d) proposed remediation technique; and
- (e) proposed timeline for remediation activities.

(2) The responsible party shall restore the impacted surface area of a release occurring on a developed well pad, central tank battery, drilling site, compressor site or other exploration, development, production or storage sites to meet the standards of Table I of 19.15.29.12 NMAC or other applicable remediation standards and restore and reclaim the area

pursuant to 19.15.29.13 NMAC. If contamination is located in areas immediately under or around production equipment such as production tanks, wellheads and pipelines where remediation could cause a major facility deconstruction, the remediation, restoration and reclamation may be deferred with division written approval until the equipment is removed during other operations, or when the well or facility is plugged or abandoned, whichever comes first. The deferral may be granted so long as the contamination is fully delineated and does not cause an imminent risk to human health, the environment, or ground water. Final remediation and reclamation shall take place in accordance with 19.15.29.12 and 19.15.29.13 NMAC once the site is no longer being used for oil and gas operations.

(3) The responsible party shall remediate the impacted surface area of a release not occurring on a lined, bermed or otherwise contained exploration, development, production or storage site to meet the standards of Table I of 19.15.29.12 NMAC or other applicable remediation standards and restore and reclaim the area pursuant to 19.15.29.13 NMAC.

(4) If a release occurs within the following areas, the responsible party must treat the release as if it occurred less than 50 feet to ground water in Table I of 19.15.29.12 NMAC:

- (a) within:
 - (i) 300 feet of any continuously flowing watercourse or any other significant watercourse, or
 - (ii) 200 feet of any lakebed, sinkhole or playa lake (measured from the ordinary high-water mark);
- (b) within 300 feet from an occupied permanent residence, school, hospital, institution or church;
- (c) within:
 - (i)

500 feet of a spring or a private, domestic fresh water well used by less than five households for domestic or stock watering purposes, or

(ii) 1000 feet of any fresh water well or spring;

(d) within incorporated municipal boundaries or within a defined municipal fresh water well field covered under a municipal ordinance adopted pursuant to Section 3-27-3 NMSA 1978 as amended, unless the municipality specifically approves;

(e) within 300 feet of a wetland;

(f) within the area overlying a subsurface mine;

(g) within an unstable area; or

(h) within a 100-year floodplain.

(5) The division has 60 days from receipt of the proposed remediation plan to review and approve, approve with conditions or deny the remediation plan. If 60 days have lapsed without response from the division, then the plan is deemed denied. If the plan is approved with conditions or affirmatively denied, the division shall provide a written summary of deficiencies on which the decision is based. If the responsible party disagrees with any conditions of approval or denial of the plan, it shall consult with the division or file an application for hearing pursuant to 19.15.4 NMAC within 30 days of the denial or issuance of the conditions.

D. Closure requirements. The responsible party must take the following action for any major or minor release containing liquids.

(1) The responsible party must test the remediated areas for contamination with representative five-point composite samples from the walls and base, and individual grab samples from any wet or discolored areas. The samples must be analyzed for the constituents listed in Table I of 19.15.29.12 NMAC or constituents

from other applicable remediation standards.

(a)

The responsible party must verbally notify the appropriate division district office two business days prior to conducting final sampling. If the division district office does not respond to the notice within the two business days, the responsible party may proceed with final sampling. The responsible party may request a variance from this requirement upon a showing of good cause as determined by the division.

(b)

The responsible party may submit a composite and grab sample plan for the division's review and approval separately or with the remediation plan.

(c)

Alternately, without division approval, the responsible party may elect to perform a composite and grab sample plan of the remediated area where each composite sample is not representative of more than 200 square feet.

(2) If

all composite and grab sample concentrations are less than or equal to the parameters listed in Table I of 19.15.29.12 NMAC or any conditions of approval, then the responsible party may proceed to backfill any excavated areas.

E. Closure reporting.

The responsible party must take the following action for any major or minor release containing liquids.

(1) The

responsible party must submit to the division a closure report on form C-141, including required attachments, to document all closure activities including sampling results and the details on any backfilling, capping or covering, where applicable. The responsible party must certify that all information in the closure report and attachments is correct and that the responsible party has complied with all applicable closure requirements and conditions specified in division rules or directives. The responsible party must submit closure report along with

form C-141 to the division within 90 days of the remediation plan approval.

The responsible party may apply for additional time to submit the final closure report upon a showing of good cause as determined by the division.

The final report must include:

(a) a

scaled site and sampling diagram;

(b)

photographs of the remediated site prior to backfill;

(c)

laboratory analyses of final sampling; and

(d) a

description of all remedial activities.

(2) The

division district office has 60 days to review and approve or deny the closure report. If 60 days have lapsed without response from the division, then the report is deemed denied. If the report is affirmatively denied, the division shall provide a written summary of deficiencies on which the decision is based. If the responsible party disagrees with denial of the closure report, it may consult with the division or file an application for hearing pursuant to 19.15.4 NMAC within 30 days of the denial.

Continued on the following page

Table I
Closure Criteria for Soils Impacted by a Release

Minimum depth below any point within the horizontal boundary of the release to ground water less than 10,000 mg/l TDS	Constituent	Method*	Limit**
≤ 50 feet	Chloride***	EPA 300.0 or SM4500 Cl B	600 mg/kg
	TPH (GRO+DRO+MRO)	EPA SW-846 Method 8015M	100 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8260B	10 mg/kg
51 feet-100 feet	Chloride***	EPA 300.0 or SM4500 Cl B	10,000 mg/kg
	TPH (GRO+DRO+MRO)	EPA SW-846 Method 8015M	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8260B	10 mg/kg
>100 feet	Chloride***	EPA 300.0 or SM4500 Cl B	20,000 mg/kg
	TPH (GRO+DRO+MRO)	EPA SW-846 Method 8015M	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8260B	10 mg/kg

*Or other test methods approved by the division.

**Numerical limits or natural background level, whichever is greater.

***This applies to releases of produced water or other fluids, which may contain chloride.

[19.15.29.12 NMAC - N, 8/14/2018]

19.15.29.13 RESTORATION, RECLAMATION AND RE-VEGETATION:

A. The responsible party must substantially restore the impacted surface areas to the condition that existed prior to the release or their final land use. Restoration of the site must include the replacement of removed material and must be replaced to the near original relative positions and contoured to achieve erosion control, long-term stability and preservation of surface water flow patterns.

B. Areas reasonably needed for production operations or for subsequent drilling operations must be compacted, covered, paved or otherwise stabilized and maintained in such a way as to minimize dust and erosion to the extent practical.

C. The responsible party must construct the soil cover to the site's existing grade and prevent ponding of water and erosion of the cover material.

D. Reclamation of areas no longer in use. The responsible party shall reclaim all areas disturbed by the remediation and closure, except areas reasonably needed for production operations or for subsequent drilling operations, as early and as nearly as practical to their original condition or their final land use and maintain those areas to control

dust and minimize erosion to the extent practical.

(1) The reclamation must contain a minimum of four feet of non-waste containing, uncontaminated, earthen material with chloride concentrations less than 600 mg/kg as analyzed by EPA Method 300.0, or other test methods approved by the division. The soil cover must include a top layer, which is either the background thickness of topsoil or one foot of suitable material to establish vegetation at the site, whichever is greater.

(2) The responsible party must reseed disturbed area in the first favorable growing season following closure of the site.

(3) The division will consider reclamation of all disturbed areas complete when uniform vegetative cover has been established that reflects a life-form ratio of plus or minus fifty percent of pre-disturbance levels and a total percent plant cover of at least seventy percent of pre-disturbance levels, excluding noxious weeds.

(4) For any major or minor release containing liquids, the responsible party must notify the division when reclamation and re-vegetation are complete.

E. The surface restoration, reclamation and re-vegetation obligations imposed by federal or state agencies or tribes on lands managed or owned by those agencies supersede these provisions and govern the obligations of any responsible party subject to those provisions, provided that the other requirements provide equal or better protection of fresh water, human health and the environment.
[19.15.29.13 NMAC - N, 8/14/2018]

19.15.29.14 VARIANCES:

A. A responsible party may file a written request for a variance from any requirement of 19.15.29 NMAC with the appropriate division district office. The variance request must include:

(1) a detailed statement explaining the need for a

variance; and

(2) a detailed written demonstration that the variance will provide equal or better protection of fresh water, public health and the environment.

B. The division district office must approve or deny the variance in writing within 60 days of receipt. If the division district office denies the variance, it must provide the responsible party with the reasons for denial.

C. If the division district office does not approve or deny a request for variance from the requirements of 19.15.29 NMAC within 60 days of the date the request for variance is received by the division district office, then the request for variance is deemed denied and the responsible party may file an application for a hearing pursuant to 19.15.4 NMAC within 30 days of the denial.

D. If the responsible party requests a hearing pursuant to 19.15.4 NMAC within 30 days after receipt of notice, the division must set the matter for hearing with notice to the responsible party and appropriate division district office.

E. In addition to the notice provisions in 19.15.4 NMAC, the responsible party must provide notice of the hearing on the request for variance to the surface owner of the site by certified mail, return receipt requested, at least 20 days prior to the date of the hearing.

F. Variances must receive division approval prior to implementation.
[19.15.29.14 NMAC - N, 8/14/2018]

19.15.29.15 ENFORCEMENT:

A. The responsible party must comply with all the requirements of 19.15.29 NMAC. The division may take enforcement action against any responsible party who does not comply with 19.15.29 NMAC pursuant to 19.15.5.10 NMAC.

B. A responsible party may enter an agreed compliance order with the division for any violation of 19.15.29 NMAC, except

for 19.15.29.9 NMAC. An agreed compliance order may be entered prior to or after the filing of an application by the division or any other party for an administrative compliance proceeding. Any administrative compliance order will have the same force and effect as a compliance order issued after an adjudicatory hearing.

C. The director or the director's designee may deny any application or permit, including but not limited to, a permit to drill, deepen or plug back a well if the responsible party is not in compliance with a court order, agreed compliance order or administrative compliance order arising from 19.15.29 NMAC.

D. If the division or other party files an administrative enforcement application, the provisions of 19.15.4 NMAC apply to the enforcement proceeding, unless altered or amended by 19.15.5.10 NMAC or 19.15.29 NMAC.
[19.15.29.15 NMAC - N, 8/14/2018]

19.15.29.16 TRANSITIONAL PROVISIONS:

A. Responsible parties with current ongoing corrective actions/remediation with approved plans and timelines as of August 14, 2018 do not have to submit revised plans.

B. Responsible parties with ongoing corrective actions/remediation without approved timelines or plans as of August 14, 2018 must submit a characterization plan or corrective action/remediation plan with proposed timeframes within 90 days of August 14, 2018.
[19.15.29.16 NMAC - N, 8/14/2018]

HISTORY of 19.15.29 NMAC:

History of Repealed Material:

19.15.3 NMAC, Drilling (filed 10/29/2001) repealed 12/1/2008. 19.15.29 NMAC, Release Notification (filed 12/1/2008) was repealed effective 8/14/2018.

NMAC History:

That applicable portion of 19.15.3 NMAC, Drilling (Section 116) (filed

10/29/2001) was replaced by 19.15.29 NMAC, Release Notification, effective 12/1/2008.

19.15.29 NMAC, Release Notification (filed 12/1/2008) was repealed and replaced by 19.15.29, Releases, effective 8/14/2018.

**WORKFORCE
SOLUTIONS,
DEPARTMENT OF**

At its public hearing on May 1, 2018, the Department of Workforce Solutions repealed its rule 11.2.17 NMAC entitled Labor and Workers Compensation; Job Training; Workforce Investment Act Priority of Service, adopted July 26, 2018 and effective August 14, 2018.

At its public hearing on May 1, 2018, the Department of Workforce Solutions repealed its rule 11.2.18 NMAC entitled Labor and Workers Compensation; Job Training; Workforce Investment Act Eligible Training Provider List, adopted July 26, 2018 and effective August 14, 2018.

**END OF ADOPTED
RULES**

2018 New Mexico Register

Submittal Deadlines and Publication Dates

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Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 16
Issue 2	January 18	January 30
Issue 3	February 1	February 13
Issue 4	February 15	February 27
Issue 5	March 1	March 13
Issue 6	March 15	March 27
Issue 7	March 29	April 10
Issue 8	April 12	April 24
Issue 9	April 26	May 15
Issue 10	May 17	May 29
Issue 11	May 31	June 12
Issue 12	June 14	June 26
Issue 13	June 28	July 10
Issue 14	July 12	July 24
Issue 15	July 26	August 14
Issue 16	August 16	August 28
Issue 17	August 30	September 11
Issue 18	September 13	September 25
Issue 19	September 27	October 16
Issue 20	October 18	October 30
Issue 21	November 1	November 13
Issue 22	November 15	November 27
Issue 23	November 29	December 11
Issue 24	December 13	December 27

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