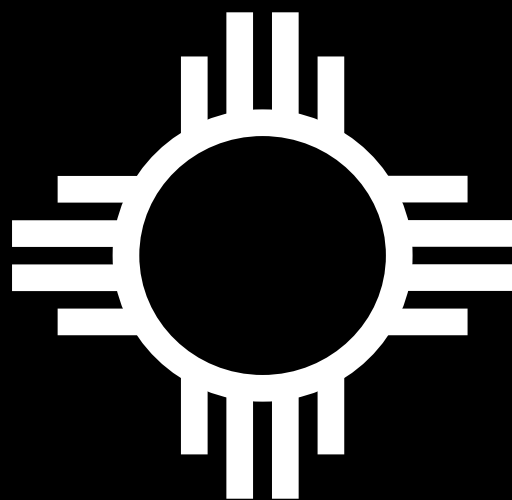


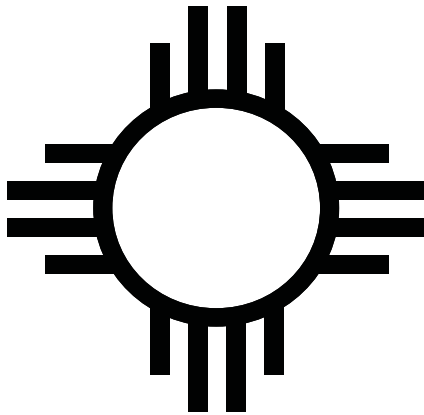
NEW MEXICO REGISTER



Volume XXV
Issue Number 2
January 31, 2014

New Mexico Register

**Volume XXV, Issue Number 2
January 31, 2014**



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

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Administrative Law Division
Santa Fe, New Mexico
2014

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New Mexico Register

Volume XXV, Number 2

January 31, 2014

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

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Notices of Rulemaking and Proposed Rules

NEW MEXICO BOARD OF OPTOMETRY

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Optometry will hold a Rule Hearing on Monday, March 10, 2014. Following the Rule Hearing the New Mexico Board of Optometry will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Optometry Rule Hearing will begin at 10:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held in the Rio Grande Room at the Regulation and Licensing Department, Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules in 16.16 NMAC: 16.15.13 NMAC: Continuing Education; and New Parts: 16.16.15 NMAC: Management of Pain with Controlled Substances; 16.16.25 NMAC: Licensure for Military Service Members, Spouses and Veterans.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico, or call (505)476-4622 after February 7, 2014 or from the Board's website. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board Office in writing no later than February 24, 2014. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4622 at least two weeks prior to the meeting or as soon as possible.

Martha L. Gallegos, Administrator
PO Box 25101, Santa Fe, NM 87505

NEW MEXICO RACING COMMISSION

NEW MEXICO RACING COMMISSION NOTICE OF RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN

that the New Mexico Racing Commission will hold a Regular Meeting and Rule Hearing on February 20, 2014. The hearing will be held during the Commission's regular business meeting, beginning at 8:30 a.m. with executive session. Public session will begin at 10:30 a.m. The meeting will be held in the Boardroom at 4900 Alameda Blvd. NE, Albuquerque, NM.

The purpose of the Rule Hearing is to consider adoption of the proposed amendments and additions to the following Rules Governing Horse Racing in New Mexico No. 15.2.5 NMAC, 16.47.1 NMAC, 15.2.6 NMAC. The comments submitted and discussion heard during the Rule Hearing will be considered and discussed by the Commission during the open meeting following the Rule Hearing. The Commission will vote on the proposed rules during the meeting.

Copies of the proposed rules may be obtained from Vince Mares, Executive Director, New Mexico Racing Commission, 4900 Alameda Blvd NE, Albuquerque, New Mexico 87113, (505) 222-0700. Interested persons may submit their views on the proposed rules to the commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

Anyone who requires special accommodations is requested to notify the commission of such needs at least five days prior to the meeting.

Vince Mares
Executive Director

Dated: January 15, 2014

End of Notices and Proposed Rules Section

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Adopted Rules

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.63 NMAC, amending Sections 2, 10, & 11, effective February 10, 2014.

20.11.63.2 SCOPE: 20.11.63 NMAC is applicable to all stationary sources of air pollutants located within Bernalillo county, which are subject to the requirements of 40 CFR Part 60, as amended in the *Federal Register* through [August 29, 2011] September 13, 2013.

A. Exempt: 20.11.63 NMAC does not apply to sources within Bernalillo county that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

B. Exclusions:
(1) 40 CFR 60, Subpart AAA, *Standards of Performance for New Residential Wood Heaters*.

(2) Reserved.
C. Variances: The variance provisions of 20.11.7 NMAC, *Variance Procedure*, Revised Ordinances of Albuquerque 1994 Section 9-5-1-8, Bernalillo County Ordinance 94-5, Section 8, and NMSA 1978 Section 74-2-8 shall not apply to 20.11.63 NMAC or the incorporated federal standards. [1/1/2000; 20.11.63.2 NMAC - Rn, 20 NMAC 11.63.2, 10/1/02; A, 1/1/05; A, 1/1/06; A, 1/15/07; A, 2/16/09; A, 12/12/11; A, 2/10/14]

20.11.63.10 DOCUMENTS: Documents incorporated and cited in 20.11.63 NMAC may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM, 87102. [1/1/2000; 20.11.63.10 NMAC - Rn, 20 NMAC 11.63.10, & A, 10/1/02; A, 1/1/05; A, 2/10/14]

20.11.63.11 INCORPORATION OF FEDERAL STANDARDS: Except as otherwise provided in 20.11.63 NMAC, the New Source Performance Standards promulgated by the United States environmental protection agency, and codified at 40 CFR Part 60, including Subpart A, *General Provisions* thereto, as amended in the *Federal Register* through [August 29, 2011] September 13, 2013, are hereby incorporated into 20.11.63 NMAC. [1/1/2000; 20.11.63.11 NMAC - Rn, 20 NMAC 11.63.11, 10/1/02; A, 1/1/05;

A, 1/15/07; A, 2/16/09; A, 12/12/11; A, 2/10/14]

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.64 NMAC, amending Sections 2, 10, 11, 12, 13 & 14, effective February 10, 2014.

20.11.64.2 SCOPE: 20.11.64 NMAC is applicable to all stationary sources of air pollutants located within Bernalillo county, which are subject to any requirements of 40 CFR Part 61 or Part 63, as amended in the *Federal Register* through [August 29, 2011] September 13, 2013.

A. Exempt: 20.11.64 NMAC does not apply to sources within Bernalillo county, that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

B. Exclusions:
(1) 40 CFR 61, Subpart B, *National Emission Standards for Radon Emissions From Underground Uranium Mines*;

(2) 40 CFR 61, Subpart H, *National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities*;

(3) 40 CFR 61, Subpart I, *National Emission Standards for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H*;

(4) 40 CFR 61, Subpart K, *National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants*;

(5) 40 CFR 61, Subpart Q, *National Emission Standards for Radon Emissions From Department of Energy Facilities*;

(6) 40 CFR 61, Subpart R, *National Emission Standards for Radon Emissions From Phosphogypsum Stacks*;

(7) 40 CFR 61, Subpart T, *National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings*; and

(8) 40 CFR 61, Subpart W, *National Emission Standards for Radon Emissions From Operating Mill Tailings*.

C. Variances: The variance provisions of 20.11.7 NMAC, *Variance Procedure*, Revised Ordinances of Albuquerque 1994 Section 9-5-1-8,

Bernalillo County Ordinance 94-5, Section 8 and NMSA 1978 Section 74-2-8 shall not apply to 20.11.64 NMAC or the incorporated federal standards. [1/1/2000; 20.11.64.2 NMAC - Rn, 20 NMAC 11.64.2, 10/1/02; A, 1/1/05; A, 1/15/07; A, 2/16/09; A, 12/12/11; A, 2/10/14]

20.11.64.10 DOCUMENTS: Documents incorporated and cited in 20.11.64 NMAC may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM, 87102. [1/1/2000; 20.11.64.10 NMAC - Rn, 20 NMAC 11.64.10, & A, 10/1/02; A, 1/1/05; A, 2/10/14]

20.11.64.11 INCORPORATION OF FEDERAL STANDARDS CODIFIED AT 40 CFR PART 61: Except as otherwise provided, the National Emission Standards for Hazardous Air Pollutants, promulgated by the United States environmental protection agency, and codified at 40 CFR Part 61, including Subpart A, *General Provisions* thereto, as amended in the *Federal Register* through [August 29, 2011] September 13, 2013, are hereby incorporated into 20.11.64 NMAC. [1/1/2000; 20.11.64.11 NMAC - Rn, 20 NMAC 11.64.11, 10/1/02; A, 1/1/05; A, 1/15/07; A, 2/16/09; A, 12/12/11; A, 2/10/14]

20.11.64.12 INCORPORATION OF FEDERAL STANDARDS CODIFIED AT 40 CFR PART 63: Except as otherwise provided, the National Emissions Standards for Hazardous Air Pollutants for Source Categories, promulgated by the United States environmental protection agency, and codified at 40 CFR Part 63, including Subpart A, *General Provisions* thereto, as amended in the *Federal Register* through [August 29, 2011] September 13, 2013, are hereby incorporated into 20.11.64 NMAC. [1/1/2000; 20.11.64.12 NMAC - Rn, 20 NMAC 11.64.12, 10/1/02; A, 1/1/05; A, 1/15/07; A, 2/16/09; A, 12/12/11; A, 2/10/14]

20.11.64.13 MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY (MACT) DETERMINATIONS FOR RECONSTRUCTED MAJOR SOURCES OF HAZARDOUS AIR POLLUTANTS: Any owner or operator that constructs or reconstructs a major source of hazardous air pollutants shall be required to perform a MACT

determination, approved by the department, consistent with the provisions of 40 CFR 63, Sections 40 through 44. Any MACT emission limitations or requirements shall be incorporated into any permit issued pursuant to 20.11.41 NMAC, [~~Authority-to-Construct~~] *Construction Permits* or 20.11.42 NMAC, *Operating Permits*. [1/1/2000; 20.11.64.13 NMAC - Rn, 20 NMAC 11.64.13, 10/1/02; A, 1/1/05; A, 2/10/14]

20.11.64.14 MODIFICATIONS AND EXCEPTIONS: The following modifications or exceptions are made to the incorporated federal standards:

A. For purposes of administering and enforcing 40 CFR 61, the following modification or exception is made to the federal standards that are incorporated in 40 CFR 61. When the director of the Albuquerque environmental health department is exercising the authority delegated to the director by the United States environmental protection agency, the definition of "administrator" of the United States environmental protection agency that is included in 40 CFR 61.02, *Definitions*, shall be changed to "director" of the Albuquerque environmental health department.

B. For purposes of administering and enforcing 40 CFR 63, the following modification or exception is made to the federal standards that are incorporated in 40 CFR 63. When the director of the Albuquerque environmental health department is exercising the authority delegated to the director by the United States environmental protection agency, the definition of "administrator" of the United States environmental protection agency that is included in 40 CFR 63.2, *Definitions*, shall be changed to "director" of the Albuquerque environmental health department.

C. Pursuant to 40 CFR 63.42(b), the effective date for the incorporation of 40 CFR 63, Sections 40 through 44, shall be June 29, [1999] 1998. If the department does not have a program to adequately implement the provisions of Section 112(g) of the Clean Air Act, all case-by-case MACT determinations made by the department shall be submitted in writing to the EPA regional administrator for concurrence. All applicable MACT emission limitations and requirements shall be incorporated into all permits issued by the department. [1/1/2000; 20.11.64.14 NMAC - Rn, 20 NMAC 11.64.14, 10/1/02; A, 1/1/05; A, 2/10/14]

NEW MEXICO ANIMAL SHELTERING BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 24 ANIMAL SHELTERING PROVIDERS PART 1 GENERAL PROVISIONS

16.24.1.1 ISSUING AGENCY: Regulation and Licensing Department, Animal Sheltering Board. [16.24.1.1 NMAC - Rp, 16.24.1.1 NMAC, 2/5/14]

16.24.1.2 SCOPE: This part applies to applicants, licensees, certificate holders and persons or agencies within the jurisdiction of the board. [16.24.1.2 NMAC - Rp, 16.24.1.2 NMAC, 2/5/14]

16.24.1.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Animal Sheltering Act, Sections 77-1B-2, 77-1B-3, 77-1B-4, 77-1B-5, 77-1B-6, 77-1B-7, 77-1B-8, 77-1B-9, 77-1B-10 and 77-1B-11 NMSA 1978. [16.24.1.3 NMAC - Rp, 16.24.1.3 NMAC, 2/5/14]

16.24.1.4 DURATION: Permanent. [16.24.1.4 NMAC - Rp, 16.24.1.4 NMAC, 2/5/14]

16.24.1.5 EFFECTIVE DATE: 2/5/2014 unless a later date is cited in the history note at the end of a section. [16.24.1.5 NMAC - Rp, 16.24.1.5 NMAC, 2/5/14]

16.24.1.6 OBJECTIVE: To define terms relevant to animal sheltering, euthanasia, circumstances under which a license is required, persons exempted from licensing, custody and alteration of a license, transferability, display of license, notification of changes, local regulations, and professional ethical standards, and to set forth standards for the operation, meeting and record keeping requirements of the board. [16.24.1.6 NMAC - Rp, 16.24.1.6 NMAC, 2/5/14]

16.24.1.7 DEFINITIONS:

A. "Act" means the Animal Sheltering Act, Sections 77-1B-1 through 77-1B-12 NMSA 1978.

B. "Animal" means any animal, except humans, not defined as "livestock" in Subsection T of this section.

C. "Animal shelter"

means:

(1) a county or municipal facility that provides shelter to animals on a regular basis, including a dog pound; and

(2) a private humane society or a private animal shelter that temporarily houses stray, unwanted or injured animals through administrative or contractual arrangements with a local government agency; and

(3) does not include a municipal zoological park.

D. "Board" means the animal sheltering board.

E. "Companion animal" means any vertebrate commonly kept as domestic pets, excluding man, and those under the jurisdiction of the New Mexico department of game and fish and those under the jurisdiction of the New Mexico livestock board.

F. "Consulting pharmacist" means a pharmacist whose services are engaged on a routine basis by a euthanasia agency and who is responsible for the distribution, receipt and storage of drugs according to the state and federal regulations.

G. "Dangerous drug" means a drug, other than a controlled substance enumerated in Schedule I of the Controlled Substances Act, that because of a potentiality for harmful effect or the method of its use or the collateral measures necessary to its use is not safe, except under the supervision of a practitioner licensed by law to direct the use of such drug and hence for which adequate directions for use cannot be prepared. 'Adequate directions for use' means directions under which the layperson can use a drug or device safely and for the purposes for which it is intended.

H. "DEA" means United States drug enforcement administration.

I. "Department" means the regulation and licensing department.

J. "Disposition" means the adoption of an animal; return of an animal to the owner; release of an animal to a rescue organization; release of an animal to another animal shelter or to a rehabilitator licensed by the department of game and fish or the United States fish and wildlife service; or euthanasia of an animal.

K. "Emergency field euthanasia" means the process defined by rule of the board to cause the death of an animal in an emergency situation when the safe and humane transport of the animal is not possible.

L. "Euthanasia" means to produce the humane death of an animal by standards deemed acceptable to the board as set forth in its rules.

M. "Euthanasia agency" means a facility licensed by the board that

provides shelter to animals on a regular basis, including a dog pound, a humane society or a public or private shelter facility that temporarily houses stray, unwanted or injured animals, and that performs euthanasia.

N. “Euthanasia drugs” means non-narcotic schedule II or schedule III substances and chemicals as set forth in the Controlled Substances Act, Section 30-31-1 et. seq. NMSA 1978, that are used for the purposes of euthanasia and pre-euthanasia of animals.

O. “Euthanasia instructor” means a euthanasia technician or a veterinarian certified by the board to instruct other individuals in euthanasia techniques.

P. “Euthanasia technician” means a person licensed by the board to euthanize animals for a euthanasia agency.

Q. “Exotic” means any vertebrate animal, excluding man, wild animals, livestock and companion animals.

R. “FDA” means United States food and drug administration.

S. “Humanely” means actions marked by compassion, sympathy or consideration, especially for the prevention of the suffering of the animal.

T. “Livestock” means all domestic or domesticated animals that are used or raised on a farm or ranch and exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae but does not include canine or feline animals.

U. “Non-livestock” means any animal not covered under the definition of livestock in Subsection L of Section 77-1B-2 NMSA 1978.

V. “Rescue organization” means an organization that rescues animals and is not involved in the breeding of animals.

W. “Sharps” means any discarded article that may cause punctures or cuts. Such wastes may include, but are not limited to needles, scalpel blades, glass slides, glassware, suture needles and trocars.

X. “Supervising veterinarian” means a person who is a veterinarian, who holds both a valid New Mexico controlled substance license and a valid federal drug enforcement agency license and who approves the drug protocols and the procurement and administration of all pharmaceuticals at a euthanasia agency.

Y. “Veterinarian” means a person who is licensed as a doctor of veterinary medicine by the board of veterinary medicine pursuant to the Veterinary Practice Act, Section 61-14-1 et. seq. NMSA 1978.

Z. “Veterinary facility” means any building, mobile unit, vehicle or other location where services included within the practice of veterinary medicine are provided.

AA. “Wild animal” means any vertebrate animals under the jurisdiction of the New Mexico game and fish department.
[16.24.1.7 NMAC - Rp, 16.24.1.7 NMAC, 2/5/14]

16.24.1.8 BOARD OPERATIONS:

A. Quorum. The board shall transact official business only at a legally constituted meeting with a quorum present. A simple majority of the appointed board members constitutes a quorum. The board is in no way bound by any opinion, statement, or action of any board member, the board administrator, or other staff except when such action is pursuant to a lawful instruction or direction of the board.

B. Addressing the board. Except for proceedings to adopt, amend, or repeal rules in accordance with the Uniform Licensing Act, Section 61-1-29 NMSA 1978, the board, at its sole discretion, may provide a reasonable opportunity for persons attending an open meeting to address the board on an agenda item. The request to speak shall be timely made and shall not delay or disrupt the board’s meeting. No person shall be permitted to address the board on any pending or concluded application, complaint, investigation, adjudicatory proceeding, or matter in litigation, except to confer for the purpose of settlement or simplification of the issues. Any public comment to the board shall be brief, concise, and relevant to the agenda item. The board may limit the total time allotted for comments and the time allotted to any person.

C. Conflict of interest, recusal. Any board member who cannot be impartial in the determination of a matter before the board and who cannot judge a particular matter or controversy fairly on the basis of its own merits, including because the board member had prior knowledge of the controversy, shall not participate in the any board deliberation or vote on the matter. A board member with a personal, social, family, financial, business, or pecuniary interest in a matter shall recuse himself or herself and shall not participate in a hearing, consideration, deliberation, or vote on the matter, except as provided by law.

D. Confidentiality. Board members shall not disclose to any non-member the content of any executive session discussion or deliberation, or any other confidential matters that may be the subject of an executive session or attorney-

client privileged communications except as ordered by a court of competent jurisdiction or where the board knowingly and intentionally permits disclosure. Nothing herein shall preclude the board from including in executive session discussions or confidential committee meetings the board administrator or other persons the board deems necessary to assist the board in carrying out its operations. Such other persons shall be bound by the same rules of executive session as board members.
[16.24.1.8 NMAC - Rp, 16.24.1.8 NMAC, 2/5/14]

16.24.1.9 BOARD MEETING TELEPHONIC ATTENDANCE:

A. Pursuant to the provisions of the Open Meetings Act, Subsection C of Section 10-15-1, NMSA 1978, board members may participate in a meeting of the board by means of a conference telephone or similar communications equipment.

(1) Board members’ participation in meetings telephonically shall constitute presence in person at the meeting.

(2) Telephonic participation may occur only when it is difficult or impossible for the board member to be physically present, that is, when there are circumstances which make attendance in person extremely burdensome.

B. Each board member participating telephonically shall be identified when speaking and all participants shall be able to hear all other participants.

C. Members of the public attending the meeting shall be able to hear all members of the board and members of the public who speak during the meeting.
[16.24.1.9 NMAC - Rp, 16.24.1.9 NMAC, 2/5/14]

16.24.1.10 INSPECTION OF PUBLIC RECORDS:

A. Public Records. The board operates in compliance with the Inspection of Public Records Act, Section 14-2-1 et. seq. NMSA 1978. The board administrator is the custodian of the board’s records.

B. Copying charges. The custodian shall charge the standard copying charge established by the department.

C. Creating records. The board shall not be required to create any document or compile data for an individual or private entity.

D. Reasonable access. Consistent with the Inspection of Public Records Act and taking into account the available staff, space, and the needs of other legitimate public business, the custodian may determine the reasonable time, place, and conditions for access to public records.

E. Removal. Public records shall not be removed from the board office.

[16.24.1.10 NMAC - Rp, 16.24.1.10 NMAC, 2/5/14]

16.24.1.11 NON-PUBLIC

RECORDS: The following records are considered confidential and are not subject to public inspection:

A. letters of reference;

B. medical reports or records of chemical dependency, physical or mental examinations or treatment;

C. the contents of any examination used to test for an individual's knowledge or competence;

D. investigative files if disclosure would impede the investigation;

E. written communication relating to actual or potential disciplinary action, including complaints, until the board acts or declines to act; and

F. matters of opinion in personnel files.

[16.24.1.11 NMAC - Rp, 16.24.1.11 NMAC, 2/5/14]

16.24.1.12 SAVINGS CLAUSE:

If any provision of these rules or the application thereof to any person or circumstances shall be held to be invalid or unconstitutional, the remainder of these rules and the application of such provisions to other persons or circumstances shall not be affected thereby.

[16.24.1.12 NMAC - Rp, 16.24.1.12 NMAC, 2/5/14]

HISTORY OF 16.24.1 NMAC:

History of Repealed Material:

16.24.1 NMAC, General Provisions, filed 05/14/2009 - Duration expired 7/21/2012.

NEW MEXICO ANIMAL SHELTERING BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 24 ANIMAL SHELTERING PROVIDERS PART 2 LICENSURE AND CERTIFICATION

16.24.2.1 ISSUING AGENCY:

Regulation & Licensing Department, Animal Sheltering Board.

[16.24.2.1 NMAC - Rp, 16.24.2.1 NMAC, 2/5/14]

16.24.2.2

SCOPE:

This part applies to applicants, licensees, certificate holders and persons or agencies within the jurisdiction of the board.

[16.24.2.2 NMAC - Rp, 16.24.2.2 NMAC, 2/5/14]

16.24.2.3 STATUTORY

AUTHORITY: These rules are promulgated pursuant to the Animal Sheltering Act, Sections 77-1B-5, 77-1B-6, 77-1B-7, NMSA 1978.

[16.24.2.3 NMAC - Rp, 16.24.2.3 NMAC, 2/5/14]

16.24.2.4 DURATION:

Permanent.

[16.24.2.4 NMAC - Rp, 16.24.2.4 NMAC, 2/5/14]

16.24.2.5 EFFECTIVE DATE:

2/5/2014 unless a later date is cited in the history note at the end of a section.

[16.24.2.5 NMAC - Rp, 16.24.2.5 NMAC, 2/5/14]

16.24.2.6 OBJECTIVE:

To provide for the most humane restraint, in-facility capture, and death possible for animals when euthanasia is required.

[16.24.2.6 NMAC - Rp, 16.24.2.6 NMAC, 2/5/14]

16.24.2.7 DEFINITIONS:

[Reserved]

16.24.2.8 PRACTICING WITHOUT A LICENSE OR CERTIFICATE:

A. It is a violation of the act for a person, other than a veterinarian licensed to practice in New Mexico, to perform euthanasia for a euthanasia agency in this state unless the individual is licensed by the board pursuant to the Act, Section 77-1B-6 NMSA 1978.

B. It is a violation of the act for an entity other than a veterinary facility to perform euthanasia unless the agency is licensed by the board pursuant to the Act, Section 77-1B-8 NMSA 1978.

[16.24.2.8 NMAC - Rp, 16.24.2.8 NMAC, 2/5/14]

16.24.2.9 LICENSURE OR CERTIFICATION EXEMPTIONS:

A. The act does not apply to veterinarians licensed in New Mexico.

B. The act does not apply to wildlife rehabilitators working under the auspices of the department of game and fish.

C. A for profit veterinary facility serving as a euthanasia agency pursuant to a contract with a local government is exempt from the provisions of the act; provided that the veterinary facility is subject to licensure and rules adopted pursuant to the Veterinary Practice Act, Section 61-14-1 et. seq. NMSA 1978.

D. A municipal facility

that is a zoological park is exempt from the provisions of the act.

E. A commissioned law enforcement officer is exempt from the act when conducting emergency field euthanasia or in situations where the public's health or safety is at risk or the animal is irremediably suffering.

F. The board may exempt a euthanasia instructor from the required euthanasia technician testing based upon review of the applicant's credentials and practical experience in shelter euthanasia. The applicant shall be required to obtain a euthanasia instructor certificate and is subject to the required certified euthanasia instructor duties.

[16.24.2.9 NMAC - Rp, 16.24.2.9 NMAC, 2/5/14]

16.24.2.10 CUSTODY AND ALTERATION OF LICENSE OR CERTIFICATE:

A. Licenses and certificates issued by the board are at all times the property of the board, and may remain in the custody of the licensee or certificate holder only as long as the licensee or certificate holder complies with the act and board rules.

B. Licenses and certificates shall not be altered in any way.

C. Inspectors or board designees shall retrieve any license or certificate that is suspended, revoked, expired, or left by a licensee or certificate holder who is no longer employed at an establishment.

[16.24.2.10 NMAC - Rp, 16.24.2.10 NMAC, 2/5/14]

16.24.2.11 LICENSE OR CERTIFICATE NOT TRANSFERABLE:

A license or certificate issued by the board pursuant to the act shall not be transferred or assigned.

[16.24.2.11 NMAC - Rp, 16.24.2.11 NMAC, 2/5/14]

16.24.2.12 DISPLAY OF LICENSE OR CERTIFICATE AND NOTIFICATION OF CHANGES:

A. A euthanasia technician license or a euthanasia agency license shall at all times be posted in the euthanasia room of the euthanasia agency, unless the euthanasia technician is working at a location other than the euthanasia agency. If the euthanasia technician is performing euthanasia offsite, the licensee shall have the license in his or her possession. Euthanasia instructor certificate holders shall have the certificate in his or her possession when teaching any board approved euthanasia technician training course.

B. Licensees and

certificate holders shall notify the board of any change of address, phone or other contact information within 30 days. If a euthanasia agency has a change of address, its current license will be invalidated on the date the change in address is effective and the agency shall reapply to the board for a valid license in order to perform euthanasia. [16.24.2.12 NMAC - Rp, 16.24.2.12 NMAC, 2/5/14]

16.24.2.13 APPLICATION FOR LICENSURE AS A EUTHANASIA TECHNICIAN:

A. All persons who will provide euthanasia services on or after January 1, 2010, with the exception of licensed New Mexico veterinarians or state or federally licensed wildlife rehabilitators, shall be licensed by the board by January 1, 2010, or before they begin performing euthanasia services after January 1, 2010. Any person not licensed in that time frame may be in violation of the act for practicing euthanasia without a license.

B. In order to obtain a license as a licensed euthanasia technician, the applicant shall submit the following documentation and a completed application on a form provided by the board which may be available online, accompanied by the required fees:

- (1) proof of age indicating the applicant is at least 18 years of age, such as a copy of a driver's license or a copy of a state issued identification card (do not submit a copy of a birth certificate);
- (2) two 2" x 2" original photographs taken within the past six months;
- (3) a notarized authorization for release of information form;
- (4) state criminal history background check as specified in 16.24.2.17 NMAC;
- (5) verification that the applicant holds a high school diploma or its equivalent;
- (6) verification that the applicant holds a certificate of completion, or similar document, of a board approved euthanasia technician training course within three years preceding the date the application for licensure is submitted, which course shall be approved as described in 16.24.2.18 NMAC;
- (7) verification of passing a board approved examination administered by a certified euthanasia instructor at a board approved euthanasia training course with a grade of at least 80%;
- (8) passing a board approved jurisprudence examination, administered by the board, with a grade of at least 80%;
- (9) any other information or verifications the board may request.

C. 60-day temporary

euthanasia technician license.

(1) A temporary license may be issued at the discretion of the board. The temporary license is intended to assist a licensed euthanasia agency to hire trained personnel in the event the agency's only licensed euthanasia technician leaves the agency or is no longer able to perform euthanasia for any reason. The temporary license is valid for a period of no more than 60 calendar days. The temporary license cannot be renewed by the euthanasia technician. No more than one temporary license may be granted to an individual unless approved by the board in consideration of extenuating circumstances.

(2) To qualify for a temporary license, an applicant shall submit all items required in Paragraphs (1) through (4) of Subsection B of 16.24.2.13 NMAC, submit proof of completion of a euthanasia technician training course within three years preceding the date of the application, successfully complete the jurisprudence exam, and submit three references regarding euthanasia by injection proficiency from licensed veterinarians or New Mexico licensed euthanasia technicians who have witnessed the applicant perform these procedures. [16.24.2.13 NMAC - Rp, 16.24.2.13 NMAC, 2/5/14]

16.24.2.14 APPLICATION FOR CERTIFICATION AS A EUTHANASIA INSTRUCTOR:

A. In order to obtain a certificate as a certified euthanasia instructor the applicant shall submit the following documentation and a completed application on a form provided by the board, which may be available online, accompanied by the required fees:

- (1) proof of age indicating the applicant is at least 21 years of age such as a copy of a driver's license or a copy of a state issued identification card (do not submit a copy of a birth certificate);
- (2) two 2" x 2" original photographs taken within the past six months;
- (3) a notarized authorization for release of information form;
- (4) state criminal history background check as specified in 16.24.2.17 NMAC;
- (5) verification that the applicant holds a high school diploma or its equivalent;
- (6) verification that the applicant holds a certificate of completion of a board approved euthanasia technician training course, completed within one year preceding the date the application for certification is submitted;
- (7) verification of passing a board approved examination for a board approved

euthanasia technician training course with a grade of at least 90%;

(8) verification of at least one year of practical experience in the euthanasia of shelter animals preceding the date of application;

(9) any other information or verifications the board may request.

B. The board may exempt a euthanasia instructor from taking a required board approved euthanasia technician training course and test based upon review of the applicant's credentials and practical experience in shelter euthanasia. The applicant shall be required to obtain a euthanasia instructor certificate and is subject to the required certified instructor duties.

[16.24.2.14 NMAC - Rp, 16.24.2.14 NMAC, 2/5/14]

16.24.2.15 APPLICATION FOR LICENSURE AS A EUTHANASIA AGENCY:

All agencies that will provide euthanasia services on or after January 1, 2010, shall be licensed by the board by January 1, 2010, or before performing euthanasia services if the agency does not begin performing euthanasia services until a later date. In order to obtain a license as a euthanasia agency, the applicant shall submit the following documentation and a completed application on a form provided by the board, which may be online, accompanied by the required fee:

A. the agency shall have at least one licensed euthanasia technician on staff who shall at all times be assisted by a trained assistant as specified in Subsection I of 16.24.3.11 NMAC for each method of humane euthanasia;

B. the agency shall provide the names of their current licensed euthanasia technicians at the time of application or renewal for licensure and shall notify the board when there is a change in licensed euthanasia technicians at the agency within 30 days;

C. the agency shall have a written contingency plan for providing euthanasia in the event the agency is without a licensed euthanasia technician;

D. the agency shall notify the board in the event it no longer has a licensed euthanasia technician on staff within 72 hours;

E. the agency shall keep accurate controlled substance and dangerous drug logs, in compliance with applicable state controlled substances laws, which shall be inspected quarterly according to the guidelines of the New Mexico pharmacy board and shall be made available to the board approved euthanasia agency inspector;

F. the agency shall identify and describe any contracts with

a supervising veterinarian, a consulting pharmacist and any holder of DEA licenses;

G. the agency shall comply with board requests for inspections;

H. the agency shall pay the license fee established by the board; and

I. the agency shall provide any other information or verifications the board may request.

[16.24.2.15 NMAC - Rp, 16.24.2.15 NMAC, 2/5/14]

16.24.2.16 APPLICATION FOR LICENSE OR CERTIFICATE RENEWALS:

A. Licenses and certificates shall be valid for three years from the date the license or certificate is issued. Each licensee or certificate holder shall, on or before the expiration date of the license or certificate submit a renewal form provided by the board, which may be online, and pay a renewal fee as established by the board. Holders of a license or certificate who fail to renew on or before the expiration date may not practice past the expiration date and may be considered to be practicing without a license. Any person may reinstate an expired license or certificate within three years of its expiration by making application to the board for renewal and paying the current renewal fee along with all delinquent renewal fees and late fees. After three years have elapsed since the date of expiration, a license or certificate may not be renewed and the holder shall apply for a new license or certificate and take the required examination. The board may assess a late fee on the applicant as established by the board. License or certificate holders shall also comply with Subsections B through D to renew a license or certificate, as applicable.

B. For each renewal, a euthanasia technician shall also:

(1) provide proof of having taken 12 hours of board approved continuing education courses or in-service training during the prior three years, which may include, but are not limited to, animal handling, euthanasia, recording and handling of controlled substances and dangerous drugs, shelter operations and teacher training courses;

(2) complete any continuing education course specifically required by the board within the preceding three years;

(3) be responsible for proving the validity of the reported continuing education hours by submitting photocopies of seminar registrations or completion certificates, or similar documentation;

(4) submit a request for course approval including a course description with course outline, the number of course hours, and agency teaching the course, in writing to the board if there is a question

about whether a particular course, class, or seminar will be approved for credit;

(5) pass a board approved jurisprudence examination, administered by the board, with a grade of at least 80%.

C. For each renewal, a euthanasia instructor shall also:

(1) provide proof of having taken 24 hours of board approved continuing education courses during the prior three years, which may include, but are not limited to, animal handling, euthanasia, recording and handling of controlled substances and dangerous drugs, shelter operations and teacher training courses;

(2) complete any continuing education course specifically required by the board within the preceding three years;

(3) be responsible for proving the validity of the reported continuing education hours by submitting photocopies of seminar registrations or completion certificates, or similar documentation;

(4) submit a request for course approval including a course description with course outline, the number of course hours, and agency teaching the course, in writing to the board if there is a question about whether a particular course, class, or seminar will be approved for credit;

(5) pass a board approved jurisprudence examination, administered by the board, with a grade of at least 80%.

D. For each renewal, a euthanasia agency shall also:

(1) submit to an annual inspection and correct any deficiencies found during its inspection;

(2) submit a current list of its licensed euthanasia technicians.
[16.24.2.16 NMAC - Rp, 16.24.2.16 NMAC, 2/5/14]

16.24.2.17 APPLICANT BACKGROUND CHECK PROCEDURE:

A. Pursuant to Section 77-1B-5(N) NMSA 1978 all applicants for initial issuance, reinstatement or renewal of a license or certificate in New Mexico shall be required to establish positive identification for a state criminal history background check, except commissioned law enforcement officers.

B. Completed RLD release of information form and DPS authorization for release of information form shall be submitted to the department of public safety with a money order or cashier's check made out to the department of public safety, for the prescribed fee for the amount established by the department of public safety for the processing of state criminal history background checks.

[16.24.2.17 NMAC - Rp, 16.24.2.17 NMAC, 2/5/14]

16.24.2.18 CURRICULUM FOR BOARD APPROVED EUTHANASIA TECHNICIAN TRAINING COURSES:

A. In order to receive board approval for a euthanasia technician training course that will be taught on or after July 1, 2009, the euthanasia instructor shall submit a written request for approval to the board along with 12 copies of the instructor's manual, the course curriculum and a description of the test administered by the instructor. Courses will be approved until such time as the board revokes the approval. Approved courses will subject to annual review. The curriculum shall include the following.

(1) Animal anatomy and physiology as related to euthanasia.

(2) Euthanasia: the history, current standards, stages of euthanasia, best practices.

(3) Euthanasia by injection: acceptable sites (advantages, disadvantages, criteria for selecting which site), restraint for each type of injection, injection techniques and mechanics of each technique, acceptable euthanasia drugs, best practices.

(4) Pre-euthanasia anesthesia: uses, stages of anesthesia, criteria for judging depth of anesthesia, drugs for this use, administration sites and methods, best practices.

(5) Verification of death: proper and accurate methods of verification of death.

(6) Pharmaceuticals: controlled and non-controlled substances (types, method of actions, uses), dosage calculations, security and storage of both types of drugs, record keeping, drug logs, controlled substance logs, labeling of drug mixtures, material safety data sheets (MSDS sheets), inventory management.

(7) Proper disposal techniques: euthanized animals, drug waste, expired drugs, sharps, biohazardous or infectious waste.

(8) Euthanasia by non-injection method: criteria for choosing case for non-injection method.

(9) Emergency field euthanasia: methods and best practices for emergency field euthanasia.

(10) Animal handling: humane handling techniques, techniques to reduce animal stress, restraint of wild or unsocialized animals, humane capture techniques for in-facility escapes.

(11) Species other than dogs and cats: restraint techniques, acceptable and best euthanasia techniques for each species, public health concerns, rabies (description of disease, signs, submission procedures).

(12) Euthanasia room: equipment and supplies (use and location), backup equipment, setup, lighting, safety measures.

(13) Staff health and safety concerns: zoonotic disease, emergency equipment (use, location), sharps handling and disposal, work place safety, safety equipment and apparel, eye wash station; compassion fatigue and euthanasia-related stress (recognition, reduction techniques, professional services).

B. The board may approve euthanasia technician training courses that were taught between July 1, 2006 and June 30, 2009, in its discretion.
[16.24.2.18 NMAC - Rp, 16.24.2.18 NMAC, 2/5/14]

HISTORY OF 16.24.2 NMAC:

History of Repealed Material:

16.24.2 NMAC, Licensure and Certification, filed 5/14/2009 - Duration expired 7/21/2012.

NEW MEXICO ANIMAL SHELTERING BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 24 ANIMAL SHELTERING PROVIDERS PART 3 DUTIES OF LICENSEES AND CERTIFICATE HOLDERS

16.24.3.1 ISSUING AGENCY:
Regulation & Licensing Department,
Animal Sheltering Board.
[16.24.3.1 NMAC - Rp, 16.24.3.1 NMAC, 2/5/14]

16.24.3.2 SCOPE: This part applies to applicants, licensees, certificate holders and persons or agencies within the jurisdiction of the board.
[16.24.3.2 NMAC - Rp, 16.24.3.2 NMAC, 2/5/14]

16.24.3.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Animal Sheltering Act, Sections 77-1B-5, 77-1B-6, 77-1B-7, NMSA 1978.
[16.24.3.3 NMAC - Rp, 16.24.3.3 NMAC, 2/5/14]

16.24.3.4 DURATION:
Permanent.
[16.24.3.4 NMAC - Rp, 16.24.3.4 NMAC, 2/5/14]

16.24.3.5 EFFECTIVE DATE:
2/5/2014 unless a later date is cited in the history note at the end of a section.
[16.24.3.5 NMAC - Rp, 16.24.3.5 NMAC, 2/5/14]

16.24.3.6 OBJECTIVE: To

establish board approved procedures for humane euthanasia of common shelter animals in New Mexico that include duties of euthanasia agencies, euthanasia technicians, and euthanasia instructors in order to ensure approved humane restraint and euthanasia techniques are consistently practiced.
[16.24.3.6 NMAC - Rp, 16.24.3.6 NMAC, 2/5/14]

16.24.3.7 DEFINITIONS: [Reserved]

16.24.3.8 GENERAL REQUIREMENTS FOR LICENSED EUTHANASIA TECHNICIANS AND AGENCIES:

A. Euthanasia shall be performed by a licensed euthanasia technician employed or under contract with a licensed euthanasia agency, by a licensed veterinarian, or in the case of emergency field euthanasia, may be performed by a commissioned law enforcement officer by means of gunshot.

B. Euthanasia technicians shall scan all companion animals for a microchip and look for a license or other identification tag directly prior to performing euthanasia. Every microchip, license or identification tag located shall be recorded. If a microchip, license or identification tag is found at the time of euthanasia, the licensed euthanasia technician shall verify that all reasonable attempts to contact the owner have been made and only after verification may the euthanasia proceed. If the verification is not possible, then the euthanasia shall be postponed until verification is completed, except in situations in which the animal is in severe, acute distress or is irremediably suffering.

C. Euthanasia technicians shall euthanize dogs and cats only by the use of an FDA approved sodium pentobarbital euthanasia solution, or any other board approved euthanasia solutions, with the exception of emergency field euthanasia as provided for in 16.24.3.15 NMAC.

D. Euthanasia agencies using controlled substances shall have under contract a consulting pharmacist as defined in the New Mexico Pharmacy Act.

E. Euthanasia agencies shall be inspected at least once annually.

F. Euthanasia technicians shall euthanize all other non-livestock animals in accordance with Section 61-11-1 et. seq. NMSA 1978 and the applicable methods, recommendations and procedures set forth in 16.24.3.9 NMAC and 16.24.3.12 through 16.24.3.15 NMAC.

G. Euthanasia technicians and euthanasia agencies shall maintain

storage, security, recordkeeping and disposal methods of controlled substances used for euthanasia as set forth in the board approved euthanasia technician training courses in accordance with the New Mexico pharmacy board and DEA regulations. Euthanasia technicians and euthanasia agencies shall adhere to all existing state and federal laws and protocols.

H. Euthanasia agencies shall display material safety data sheets for all drugs used in the euthanasia process in the euthanasia area or shall make such material available and accessible to all employees on the premises.

I. Euthanasia technicians may use pre-euthanasia drugs as set forth in the board approved euthanasia technician training courses.

J. Euthanasia technicians and their assistants shall handle animals humanely as detailed in board approved euthanasia instruction from the commencement of and throughout the euthanasia process. Remains shall be disposed of in a respectful manner.

K. A euthanasia agency shall handle, treat and dispose of infectious waste, including but not limited to remains, anatomical body parts, excretions, blood soiled articles and bedding, that are generated from an animal that the agency knows or has reason to suspect has a disease that is capable of being transmitted to humans as follows.

(1) All infectious waste will be sterilized or disinfected by heat, steam, chemical disinfection, radiation, or desiccation.

(2) Infectious waste held for disposal shall be collected in sanitary leak resistant bags clearly labeled for biohazard disposal. The bag shall contain the gloves worn while collecting the waste and those used in treatment and post mortem examinations of suspect animals.

(3) All sharps shall be disposed of in labeled sharps containers. Such containers shall be rigid-sided, solidly sealed containers that are highly resistant to puncture. These containers shall be incinerated or disposed of in an environmentally safe manner by a duly licensed disposer or an approved medical sharps incineration facility or shall be disposed of in such a way as to render the sharps harmless. This disposal shall not apply to infectious waste sharps, which, contained in a puncture resistant container, should be disposed of as described in infectious waste disposal. Due to the small volume of sharps generated in a euthanasia agency, transportation of the filled, sealed containers shall not be mandated by nor limited to commercial haulers.

L. A euthanasia agency shall dispose of drugs as follows.

(1) The removal and disposal of outdated or unwanted dangerous drugs shall be pursuant to the rules of the board of pharmacy and be the responsibility of the consultant pharmacist.

(2) Outdated or unwanted controlled substances shall be disposed of through a DEA-registered reverse distributor or pursuant to the requirements of Title 21, Code of Federal Regulations, Part 1307.

(3) The transfer of any dangerous drug inventory to another registrant shall be pursuant to the rules of the board of pharmacy and be the responsibility of the consultant pharmacist in compliance with state and federal laws and regulations for the transfer of such drugs.

M. A euthanasia agency shall handle waste materials that are generated from an animal that does not have a disease transmissible to humans and is not suspected of being contaminated with an agent capable of infecting humans as provided under this section.

(1) Animal remains.

(a) A euthanasia technician shall dispose of an animal's remains promptly by release to owner, burial, cremation, incineration, commercial rendering or, if permitted by local ordinance, placement in a public landfill.

(b) If prompt disposal of an animal's remains is not possible, the euthanasia technician shall contain the animal's remains in a freezer or store them in a sanitary, non-offensive manner until such time as they can be disposed of as provided above.

(2) A euthanasia technician shall dispose of tissues, specimens, bedding, animal waste and extraneous materials, not suspected of harboring pathogens infectious to humans, by approved municipality or county disposal methods.

N. In the event of the occurrence of a suspect foreign animal disease or disease of potential concern to state or national security, the euthanasia agency will immediately contact the state department of agriculture, the U. S. department of agriculture, and other applicable departments. The euthanasia technician and euthanasia agency shall handle all tissues, laboratory samples, and biomedical waste associated with such cases in accordance with the recommendations made by the department of agriculture, and other departments and agencies, which are deemed necessary and appropriate in such cases.

O. It shall be a violation of the act for euthanasia technicians and euthanasia agencies to end an animal's life using the following methods:

- (1) decompression;
- (2) nitrous oxide;

- (3) drowning;
- (4) decapitation;
- (5) cervical dislocation;
- (6) pithing;
- (7) exsanguination;
- (8) electrocution;
- (9) gunshot, excluding properly

performed field euthanasia in an emergency situation as defined in 16.24.3.13 NMAC below;

- (10) air embolism;
- (11) nitrogen flushing;
- (12) strychnine;
- (13) acetone or any other industrial solvent;
- (14) any other chemical agent;
- (15) intrahepatic injection (IH);

and

(16) any method not specifically approved by the board.
[16.24.3.8 NMAC - Rp, 16.24.3.8 NMAC, 2/5/14]

16.24.3.9 DUTIES OF A LICENSED EUTHANASIA

TECHNICIAN: The duties of a euthanasia technician shall include but are not limited to:

A. performing euthanasia on a sufficient number and variety of animals under the direct supervision of a veterinarian or an experienced, licensed euthanasia technician to demonstrate proficiency in the performance of humane euthanasia before performing euthanasia without supervision, and, verifying in writing to the board (for example, by a letter written by the supervising veterinarian or euthanasia technician) within 60 days that the technician has demonstrated proficiency and maintains that documentation at the euthanasia agency, provided that this requirement does not apply to euthanasia technicians who have performed euthanasia for a period of at least six months;

B. preparing animals for euthanasia, including scanning for the presence of a microchip in companion animals;

C. carefully and accurately recording the dosage and drug waste for every euthanasia performed pursuant to the rules of the New Mexico board of pharmacy;

D. maintaining the security of all controlled substances and dangerous drugs, including records relating to controlled substances and dangerous drugs, at the euthanasia agency in accordance with applicable state and federal laws;

E. reporting to the board, the regulation and licensing department or the department of health any infraction of the act or rules adopted pursuant to the act, or any misuse of drugs;

F. humanely capturing, restraining, and euthanizing animals

as taught in board approved euthanasia technician training courses;

G. disposing of remains in accordance with law;

H. maintaining one's license in an active status;

I. reporting any change of address, telephone or other contact information to the board within 30 days;

J. providing to the board or authorized board representative a reply to a request for information allowed under the act or these rules within ten working days;

K. a euthanasia technician shall prepare a report of any euthanasia performed that deviates from board approved rules, and the euthanasia agency shall keep these records on file for three years.

[16.24.3.9 NMAC - Rp, 16.24.3.9 NMAC, 2/5/14]

16.24.3.10 DUTIES OF A CERTIFIED EUTHANASIA

INSTRUCTOR: The duties of a certified euthanasia instructor shall include but are not limited to:

A. reporting any change of address, phone or other contact information to the board within 30 days;

B. maintaining current knowledge of New Mexico board of pharmacy rules, the New Mexico board of veterinary medicine rules and these rules, as they apply to euthanasia and controlled substances used in the practice of euthanasia;

C. providing reports on a form provided to the board within 30 days of the completion of the courses;

D. complying with continuing education requirements as set by the board;

E. providing to the board or authorized board representative, a reply to a request for additional information allowed under the act or these rules within ten working days.

[16.24.3.10 NMAC - Rp, 16.24.3.10 NMAC, 2/5/14]

16.24.3.11 DUTIES OF A LICENSED EUTHANASIA AGENCY:

The duties of a licensed euthanasia agency shall include, but are not limited to:

A. keeping records for a period of 3 years showing:

(1) those individuals who are authorized in writing, in accordance with these rules, by the euthanasia agency to administer an FDA approved sodium pentobarbital euthanasia solution or other board approved euthanasia solution;

(2) logs with respect to controlled substances used to carry out humane euthanasia in accordance with the New Mexico pharmacy board rules;

B. having at least one licensed euthanasia technician on staff or having a contract with a veterinary facility for the purposes of performing euthanasia; in the event the agency falls below this minimum requirement, the agency shall immediately apply to the board to license additional individual(s) or forfeit its license;

C. accurately reporting annually no later than January 31 of each year on board provided forms, which may be online, regarding the impound, disposition and reason for euthanasia of all animals for the prior year; the board may suspend or revoke the agency's license in the event the agency fails to report their annual numbers to the board by February 28th of each year;

D. expediting the euthanasia procedure for any animal accepted by a euthanasia agency that is critically ill or severely injured and that in the determination of the euthanasia agency requires euthanasia; in these cases, the euthanasia agency shall place the animal in a quiet environment and give the animal treatment to reduce pain and suffering until a euthanasia technician or veterinarian is able to euthanize the animal;

E. having a current euthanasia policy and procedures manual; the manual shall include but is not limited to the following:

(1) a copy of the act, Section 77-1B-1 et. seq. NMSA 1978, and the animal sheltering rules, Title 16 Chapter 24 Parts 1 - 5 NMAC;

(2) a copy of the euthanasia training manuals provided by the board approved euthanasia technician training courses attended by the euthanasia technicians working at the euthanasia agency;

(3) a list of methods of euthanasia allowed at the euthanasia agency and the policy and procedures for each method;

(4) a list of licensed euthanasia technicians, the methods they have been trained in, the date of training and the date of expiration of their license;

(5) the name, address and contact information for the veterinarian or euthanasia technician responsible for the euthanasia agency facility license;

(6) the name, address and contact information for the veterinarian responsible for veterinary medical care of the animals; the contact information shall include telephone numbers for working hours, weekends, nights and holidays;

(7) a protocol for euthanasia procedures to use in emergencies, after hours, holidays and weekends;

(8) procedures to follow if no licensed euthanasia technician is present and euthanasia of an animal is necessary;

(9) a list of methods of verifying

death of an animal after a euthanasia process is performed;

(10) the name and contact information of the manufacturer and supplier of all materials used in euthanasia procedures at the euthanasia agency, including such materials as:

(a) bottled gas (if applicable);

(b) the chamber used to euthanize animals by inhalant gas (if applicable);

(c) injectable FDA approved sodium pentobarbital euthanasia solution or other board approved euthanasia solution; and,

(d) tranquilizer or anesthetic solution;

(11) a copy of the original DEA certification permitting the use of controlled substances;

(12) a material safety data sheet for any chemical or gas used for euthanasia in that agency;

(13) a material safety data sheet for any anesthetic or tranquilizer used in that agency;

(14) notice of the signs and symptoms associated with human exposure to the agents used for euthanasia at that agency;

F. providing for the observation or inspection of the euthanasia process and euthanasia agency as requested by the board; observations or inspections may be done by any means including through a board approved instructor, inspector, or appointed designee;

G. a euthanasia technician shall prepare a report of any euthanasia performed that deviates from board approved rules, and the euthanasia agency shall keep these records on file for three years;

H. the agency shall ensure that any assistants to the euthanasia technician have received, at a minimum, documented in-service training as to the proper handling and restraint of animals for the purposes of euthanasia; this training can be provided by the agency's own licensed euthanasia technician.

[16.24.3.11 NMAC - Rp, 16.24.3.11 NMAC, 2/5/14]

16.24.3.12 EUTHANASIA BY INJECTION OF FDA APPROVED SODIUM PENTOBARBITAL EUTHANASIA SOLUTION OR BOARD APPROVED EUTHANASIA SOLUTIONS:

A. The approved routes of injections of an FDA approved sodium pentobarbital euthanasia solution or board approved euthanasia solutions, listed in order of preference, are:

(1) intravenous injection as taught in board approved euthanasia technician training courses;

(2) intraperitoneal injection, but only if used as taught in a board approved euthanasia technician training course and as set forth below; or

(3) intracardiac injection, but only if used in accordance with Section 30-18-15 NMSA 1978 and as set forth below; it is unlawful for a euthanasia technician to use intracardiac injections to administer euthanasia on a conscious animal if the animal could first be rendered unconscious in a humane manner.

B. Intracardiac injection shall be acceptable only when performed on anesthetized or comatose animals. If a euthanasia technician uses intracardiac injection, the euthanasia technician shall administer the appropriate pre-euthanasia drugs as set forth in the board approved euthanasia technician training courses and shall ascertain that the animal is not conscious before administering the intracardiac injection.

C. Euthanasia technicians shall place animals who received an intraperitoneal injection in small cages in a quiet area to minimize excitement and trauma except that newborns and infants may be held.

D. Only veterinarians or euthanasia technicians shall administer the injections set forth in the board approved euthanasia technician training.

E. The euthanasia agency shall equip the designated area used for injection to ensure accuracy in the procedure and safety for the euthanasia technician, which should include but is not limited to sufficient lighting, useable animal restraint devices, and an eye wash station.

F. Euthanasia technicians shall administer injectable euthanasia agents to animals with at least the minimum dosage, as set forth in the board approved euthanasia technician training courses.

G. Euthanasia technicians shall place animals given an FDA approved sodium pentobarbital euthanasia solution or board approved euthanasia solutions by intraperitoneal injection in a quiet area, separated from physical contact with other animals during the dying process except that newborns and infants may be held.

H. Euthanasia technicians shall monitor the animals from the time euthanasia is performed until verification of the death of each animal.

I. Euthanasia technicians shall verify death by a combination of ascertaining the absence of ocular reflexes as well as the cessation of heartbeat or by observing the onset of rigor mortis, or other methods established by the board approved euthanasia technician training courses prior to remains storage and disposal.

[16.24.3.12 NMAC - Rp, 16.24.3.12 NMAC, 2/5/14]

16.24.3.13 EUTHANASIA BY CARBON MONOXIDE GAS:

A. Carbon monoxide is illegal for the euthanasia of dogs and cats.

B. Carbon monoxide may be used for the euthanasia of animals (excluding dogs or cats) that may present a zoonotic hazard.

C. Operations shall be in compliance with all applicable state and federal regulations under the occupational safety and health administration (OSHA) and an annual inspection of such equipment and operations shall be required. The following guidelines shall be observed:

(1) a euthanasia agency shall not operate a carbon monoxide chamber unless a euthanasia technician or New Mexico licensed veterinarian and one other adult are present at the time of operation;

(2) acceptable gas is limited to commercially compressed carbon monoxide gas and never gas piped from a motor;

(3) the ambient temperature inside the chamber shall not exceed 85 degrees fahrenheit (29.4 degrees celsius) when it contains live animals;

(4) if the chamber is commercially manufactured to euthanize only one animal at a time, no more than one animal at a time may be euthanized;

(5) if the chamber is commercially designed to euthanize more than one animal at a time, there shall be independent sections or cages to separate individual animals; if separation partitions are not used under specific circumstances, the specific circumstances shall be noted on the animal's disposition card; only animals of the same species shall be placed in the chamber simultaneously, with no more than the maximum number recommended by the manufacturer placed in the chamber;

(6) no live animal shall be placed in the chamber with a dead animal;

(7) prior to storage and disposal of remains, the euthanasia technician shall verify death by a combination of ascertaining the absence of ocular reflexes as well as the cessation of heartbeat or by observing the onset of rigor mortis or other methods established by the board approved euthanasia technician training courses prior to remains storage and disposal;

(8) euthanasia of this type shall be performed in a commercially manufactured carbon monoxide chamber and the manufacturer's operating and servicing instructions shall be strictly followed;

(9) the chamber shall be located outdoors or in a properly ventilated room, though if it is located indoors it shall not be located in the same room as kennels housing other animals;

(10) to avoid risk of death or injury to personnel operating the chamber, as well as personnel working in the vicinity

of the chamber, the chamber shall be airtight and equipped with the following in working order:

(a) an exhaust fan that is capable of evacuating all gas from the chamber prior to the chamber being opened, is connected by a gas-type duct to the outdoors, and the chamber shall be thoroughly vented prior to removing any remains to avoid risk of death to the euthanasia technician or other personnel in the vicinity of the chamber;

(b) a gas flow regulator and flow meter for the canister;

(c) a gas concentration gauge to indicate that gas concentrations are at proper levels and that the gas concentration process shall achieve at least a 6.0% carbon monoxide gas concentration, but not to exceed 10%, within 5 minutes after the introduction of carbon monoxide into the chamber is initiated;

(d) an accurate temperature gauge for monitoring the interior of the chamber;

(e) a carbon monoxide monitor, which if located on the exterior of the chamber shall be connected to an audible alarm system that will sound in the room containing the chamber;

(f) explosion-proof electrical equipment, if equipment is exposed to carbon monoxide; and

(g) a view-port with either internal lighting or external lighting sufficient to allow visual surveillance of all animals within the chamber;

(11) all chamber equipment shall be in proper working order and used according to manufacturer's specifications during the operation of the chamber;

(12) the chamber shall be thoroughly cleaned after the completion of each cycle; chamber surfaces shall be constructed and maintained so they are impervious to moisture and can be readily sanitized; and,

(13) the euthanasia agency shall prominently display the operation, maintenance, and safety instructions in the area containing the chamber.
[16.24.3.13 NMAC - Rp, 16.24.3.13 NMAC, 2/5/14]

16.24.3.14 EUTHANASIA BY CARBON DIOXIDE GAS:

A. Euthanasia by carbon dioxide gas is illegal for use on dogs and cats.

B. Carbon dioxide may be used for the euthanasia of animals, excluding dogs and cats, that may present a zoonotic hazard.

C. Operations and equipment shall be in compliance with any applicable state and federal regulations and may be inspected annually or as required by the board. Inspections must be performed by board trained inspectors.

D. Acceptable gas is limited to commercially compressed carbon dioxide gas.

E. If the chamber is manufactured to euthanize only one animal at a time, no more than one animal at a time may be euthanized in that chamber.

F. If the chamber is designed to euthanize more than one animal at a time there shall be independent sections or cages to separate individual animals. If separation partitions are not used under specific circumstances approved by the board, the specific circumstances shall be noted on the animal's disposition card. Only animals of the same species shall be placed in the chamber simultaneously with no more than the maximum recommended by the manufacturer.

G. Carbon dioxide should enter the chamber at a rate that displaces 20% of the oxygen each minute.

H. The optimal carbon dioxide flow for the chamber must be calculated.

I. No live animal shall be placed in the chamber with a dead animal.

J. Euthanasia of this type shall be performed in a commercially manufactured carbon dioxide chamber or one manufactured to commercial standards and the manufacturer's operating and services instructions shall be strictly followed.

K. The chamber shall be located outdoors or in a well-ventilated room to minimize exposure to the carbon dioxide.

L. The chamber must not be airtight. Air must be able to escape to leave room for the carbon dioxide. A vent hole near the top of the chamber or a loosely-fitted lid will let out the air but not the carbon dioxide. The vent hole will also prevent pressure buildup.

M. The carbon dioxide chamber shall have a view-port to allow visual surveillance of the animals within the chamber.

N. All chamber equipment shall be in proper working order and used according to the manufacturer's specifications during the operation of the chamber.

O. The chamber shall be thoroughly cleaned and aired out between uses. Chamber surfaces shall be constructed and maintained so they are impervious to moisture and can be readily sanitized.

P. The euthanasia agency shall prominently display the operation, maintenance, and safety instructions for the carbon dioxide chamber in the area containing the chamber.

Q. Euthanasia technicians shall verify death by a combination of ascertaining the absence of ocular reflexes

as well as the cessation of heartbeat or by observing the onset of rigor mortis or other methods established by the board approved euthanasia technician training courses, prior to remains storage and disposal.
[16.24.3.14 NMAC - Rp, 16.24.3.14 NMAC, 2/5/14]

16.24.3.15 EMERGENCY FIELD EUTHANASIA:

A. From time to time, there will be cases when emergency field euthanasia will be required. Cases shall be limited to:

(1) situations in which the animal is in severe, acute distress or is irremediably suffering in which delay or movement of the animal will cause severe pain and suffering;

(2) situations in which movement of the animal poses immediate and significant risk to the animal, human, or public health or safety.

B. If possible or practical, euthanasia by injection is the preferred method of field euthanasia. If practical, pre-euthanasia drugs shall be given to the animal prior to the euthanasia drugs.

C. If gunshot is used, it shall be performed by a euthanasia technician only if the euthanasia technician is properly certified in the use of firearms permitted by the employing agency of the euthanasia technician, or by a commissioned law enforcement officer. The gunshot shall be placed according to species as taught in board approved euthanasia technician training courses, whenever possible.

D. All instances of emergency field euthanasia shall be documented and shall include the following:

(1) a description of the incident that resulted in the need to conduct emergency field euthanasia;

(2) the date of the incident;

(3) the time of the incident;

(4) a description of the animal including species, gender, estimated age;

(5) the name and contact information of the euthanasia technician or law enforcement officer;

(6) the technique used; and,

(7) the reason why the animal could not be transported to a shelter or euthanasia agency.

E. Emergency field euthanasia incidents shall be reported to the board within 30 days. All documentation and records relating to the incident shall be kept on file by the euthanasia agency for three years and be available for review by the board.

F. The euthanasia technician or commissioned law enforcement officer shall verify death by pupil dilation and cessation of respiration

or other methods established by the board approved euthanasia technician training courses prior to remains storage and disposal.

[16.24.3.15 NMAC - Rp, 16.24.3.15 NMAC, 2/5/14]

HISTORY OF 16.24.3 NMAC:

History of Repealed Material:

16.24.3 NMAC, Duties of Licensees and Certificate Holders, filed 5/14/2009 - Duration expired 7/21/2012.

NEW MEXICO ANIMAL SHELTERING BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 24 ANIMAL SHELTERING PROVIDERS PART 4 COMPLAINTS, ENFORCEMENT AND DISCIPLINARY ACTION

16.24.4.1 ISSUING AGENCY:

Regulation and Licensing Department, Animal Sheltering Board.

[16.24.4.1 NMAC - Rp, 16.24.4.1 NMAC, 2/5/14]

16.24.4.2 SCOPE: This part applies to applicants, licensees, certificate holders and persons or agencies within the jurisdiction of the board.

[16.24.4.2 NMAC - Rp, 16.24.4.2 NMAC, 2/5/14]

16.24.4.3 STATUTORY AUTHORITY:

These rules are promulgated pursuant to the Animal Sheltering Act, Sections 77-1B-3, 77-1B-5, 77-1B-9, 77-1B-10, 77-1B-11, NMSA 1978.

[16.24.4.3 NMAC - Rp, 16.24.4.3 NMAC, 2/5/14]

16.24.4.4 DURATION:

Permanent.

[16.24.4.4 NMAC - Rp, 16.24.4.4 NMAC, 2/5/14]

16.24.4.5 EFFECTIVE DATE:

2/5/2014 unless a later date is cited in the history note at the end of a section.

[16.24.4.5 NMAC - Rp, 16.24.4.5 NMAC, 2/5/14]

16.24.4.6 OBJECTIVE:

To inform licensees, certificate holders, applicants, animal shelters, euthanasia agencies and the public of the board's complaint, enforcement and disciplinary procedures.

[16.24.4.6 NMAC - Rp, 16.24.4.6 NMAC, 2/5/14]

16.24.4.7

[Reserved]

DEFINITIONS:

16.24.4.8 COMPLAINT PROCEDURES:

A. Inquiries regarding filing of complaints.

(1) Inquiries made to the board or to a board member regarding a potential complaint will be referred to the board administrator.

(2) Upon receipt of an inquiry, the board administrator shall forward to the potential complainant a statement regarding the board's jurisdiction, the conduct or grounds for possible action by the board against a licensee, certificate holder, applicant, or person or agency within the jurisdiction of the board, and a complaint form with instructions on how to file the complaint. The complainant shall submit the complaint in writing on a form provided by the board that is signed, notarized and submitted to the board administrator.

(3) Anonymous complaints may be investigated in the sole discretion of the board.

B. Procedures for processing complaints.

The board administrator shall:

(1) log in the date the complaint is received;

(2) determine whether the subject of the complaint is a licensed euthanasia technician, certified euthanasia instructor, licensed euthanasia agency, or an applicant or person otherwise within the jurisdiction of the board;

(3) assign an individual file with a complaint number, which numbering sequence shall begin each new calendar year;

(4) send a letter to the complainant confirming receipt of the complaint within 5 days of receipt; and

(5) forward the complaint file to the chair of the complaint committee and the complaint manager or designee, if any.

C. Review by the complaint committee.

(1) The complaint committee is appointed by the board chair shall consist of at least one board member and may include liaisons from the compliance section of the regulation and licensing department.

(2) The complaint committee shall review the complaint and meet with the administrative prosecutor as needed.

(3) Unless the complaint committee determines that it will impede an investigation or interfere with the acquisition of documents or relevant papers or the development of the case, the complaint committee shall inform the licensee, certificate holder, applicant, or person or agency within the jurisdiction of the board of the complaint and request a

response to the allegations.

(4) The complaint committee or its designee may employ experts, consultants, or private investigators to assist in investigations of complaints.

(5) Upon completion of an investigation and review, the complaint committee shall submit a case summary containing alleged violations of the code, board regulations or the act and recommendations for legal disposition, to the full board. Throughout this process, the confidentiality of interested parties will be maintained.

D. Review by the full board.

(1) Any board member or any member of the complaint committee who is not capable of judging a particular controversy fairly, including because the board member had prior personal knowledge of the controversy, shall not participate in the decision of whether to issue a notice of contemplated action and shall not participate in the hearing, deliberation, or decision of the board.

(2) The board shall review the case summary presented by the complaint committee, relevant documents, witness statements, and other pertinent information regarding the complaint. If the board has sufficient evidence, when substantiated, that constitutes grounds for disciplinary action, the board may forward the evidence to the administrative prosecutor for issuance of a notice of contemplated action in accordance with the Uniform Licensing Act, Sections 61-1-1 et. seq. NMSA 1978.

(3) Following the issuance of a notice of contemplated action, the board may at its option authorize a board member, the hearing officer, or the administrative prosecutor to confer with the applicant or the licensee for the purpose of settlement of the complaint. Such settlement shall be approved by the board, shall be with the consent of the applicant or licensee, and shall include a knowing and intentional waiver by the applicant or the licensee of the right of the applicant or licensee to a hearing under the Uniform Licensing Act.

(4) Pursuant to Section 77-1B-10 NMSA 1978 the board may issue a cease and desist order or refer a complaint to the attorney general for a temporary restraining order or injunctive proceedings.
[16.24.4.8 NMAC - Rp, 16.24.4.8 NMAC, 2/5/14]

16.24.4.9 ADJUDICATORY PROCEEDINGS:

A. General provisions and pre-hearing and preliminary matters.

(1) All hearings shall be conducted either by the board or, at the election of the board, by a hearing officer.

(2) If the board appoints a hearing officer, the hearing officer shall have the authority to decide pre-hearing matters, preside over the hearing, and direct post-hearing matters in accordance with the requirements of the case in a manner that ensures an efficient and orderly hearing and expedites the final resolution of the case. Except as otherwise limited in this part, the hearing officer shall have the authority to rule on all non-dispositive motions. If the board does not appoint a hearing officer or if the hearing officer is unavailable or unable to proceed, the board chair or other board member designated by the board shall have the authority to decide pre-hearing or preliminary matters on behalf of the board. This authority shall be in accordance with the requirements of the case in a manner that ensures an efficient and orderly hearing and expedites the final resolution of the case, including:

(a) unopposed or stipulated motions to change venue;

(b) motions for continuance of a hearing date; a motion to vacate the hearing shall contain an affirmative statement that the licensee or applicant waives the right of the licensee or applicant to a hearing held not more than 60 days from the date of service of the notice hearing;

(c) the granting of one notice of peremptory excusal to each party if the notice is timely and if the peremptory excusal does not result in a loss of a quorum of the board; and,

(d) motions regarding discovery.

(3) The original of any papers and pleadings shall be filed with the board. Copies shall be sent to the hearing officer and attorneys or parties of record.

(4) The hearing officer or designated board member shall issue appropriate orders to control the course of the proceedings.

(5) Consistent with provisions of the Uniform Licensing Act and to the extent practicable, the rules of civil procedure for the district courts shall apply unless the hearing officer or designated board member orders otherwise.

(6) A request for an order shall be made by a motion filed with the board. Except for motions made during the course of the hearing, a motion shall be in writing. A motion shall state with particularity the grounds for the motion and shall set forth the relief and order sought.

(7) A motion shall be accompanied by a memorandum brief in support of the motion. The brief shall state with particularity the grounds for the motion and shall contain citations to authorities, statutes, and references to the pleadings on file. If matters outside of the pleadings are considered, a copy of the referenced material shall be attached to the

brief. Responsive briefs shall be permitted in accordance with the rules of civil procedure for the district courts to the extent practicable unless the hearing officer or designated board member orders otherwise.

(8) The hearing officer or the designated board member may order the filing of briefs or other documents and may set oral argument on any matter.

(9) No more than 2 continuances of the hearing date will be granted without the approval of the board for good cause shown.

(10) All dispositive motions shall be decided by the board.

(11) No proposed settlement, consent agreement, voluntary surrender of a license in lieu of prosecution, or other proposal for the resolution of a pending disciplinary case shall be effective unless approved by the board and executed by the board and the licensee or applicant. The board or hearing officer may seek information from the administrative prosecutor and the licensee or applicant concerning circumstances of the case relevant to a consideration of the proposed settlement or clarification of the proposed terms and conditions. No board member is presumed to be biased and shall not be excused based solely on the reason that the member considered a proposed settlement, consent agreement, or other proposal for the resolution of a pending disciplinary case. The board may submit a counterproposal for the settlement or resolution of the case.

(12) Any proposed settlement, consent agreement, voluntary surrender of a license in lieu of prosecution, or other proposal for the resolution of a pending disciplinary case shall contain at least the following:

(a) an admission of all jurisdictional facts; an acknowledgment of the rights contained in the Uniform Licensing Act and an express waiver of those rights and of all rights to hearing and judicial review or any other opportunity to contest the validity of the board order in any other proceeding or forum;

(b) a statement that the proposal resolves only the violations alleged in the notice of contemplated action and a statement that the board reserves the right to initiate other proceedings for any other violations of the act or board regulations;

(c) a description of the general nature of the evidence underlying each alleged violation;

(d) if appropriate, a list of provisions of the acts or practices from which the licensee or applicant will refrain in the future;

(e) a statement of the type, terms, and conditions of the proposed disciplinary action of the board;

(f) a statement that the licensee

will be responsible for all costs of disciplinary proceedings or a statement setting forth the reason why the licensee should be excused from paying costs; the affidavit of the board administrator concerning the costs incurred to date shall accompany the proposal;

(g) a statement that the decision and order of the board shall be a public record and reported, as required by law; and

(h) other provisions necessary to ensure the complete and final resolution of the proceedings.

(13) A proposal to settle a matter shall not stay the proceedings or vacate the hearing date unless otherwise ordered by the hearing officer or presiding officer upon the filing of a timely motion.

B. Duties of the board administrator. The board administrator shall:

(1) after consultation with the board or hearing officer, issue a notice of hearing stating the date, time, and place of the hearing;

(2) on behalf of the hearing officer or board, execute notices, scheduling orders, subpoenas, and subpoenas duces tecum, and other routine procedural documents that facilitate the efficient conduct of adjudicatory proceedings;

(3) maintain the official record of all papers and pleadings filed with the board in any matter;

(4) prepare an affidavit as to costs of any disciplinary proceeding at the conclusion of any hearing or upon request by a party submitting a proposed settlement, consent agreement, or voluntary surrender of a license in lieu of prosecution;

(5) prepare, certify, and file with the district court the record of the case on appeal or review;

(6) unless the board orders otherwise, have the authority to sign the decision of the board to grant or refuse a request to reopen the case.

C. Conduct of hearings.

(1) The hearing officer, or presiding officer if the case is heard by the board, shall ensure the fair, efficient, and orderly conduct of the hearing in accordance with the Uniform Licensing Act.

(2) Unless the board orders otherwise, a board member hearing officer, the board chair, or presiding officer shall have the authority to sign the written decision of the board.

(3) The board administrator shall serve the decision of the board on the licensee or applicant in accordance with law.

(4) A motion for an order staying the operation of a board decision shall be decided by the board.

[16.24.4.9 NMAC - Rp, 16.24.4.9 NMAC, 2/5/14]

16.24.4.10 SURRENDER OF LICENSE OR CERTIFICATE:

A. If a license or certificate is restricted, suspended, or revoked by the board for any reason specified in the rules and regulations of the board or in the act, the licensee or certificate holder shall immediately surrender the license or certificate of the licensee or the certificate holder in person or by registered mail to the board.

B. If the scope of practice of the licensee or certificate holder is restricted or limited or otherwise subject to conditions, the license or certificate may reflect the restriction, limitations, or condition.

[16.24.4.10 NMAC - Rp, 16.24.4.10 NMAC, 2/5/14]

16.24.4.11 PUBLIC RECORDS: Except as provided herein and except as otherwise provided by law, all applications, pleadings, petitions and motions are matters of public record at the time of filing with the board. The notice of contemplated action, or the pre-notice of contemplated action settlement agreed upon prior to the issuance of a notice of contemplated action and the information contained in the complaint file becomes a public record and subject to disclosure.

[16.24.4.11 NMAC - Rp, 16.24.4.11 NMAC, 2/5/14]

HISTORY OF 16.24.4 NMAC:

History of Repealed Material:

16.24.4 NMAC, Complaints, Enforcement and Disciplinary Action, filed 5/14/2009 - Duration expired 7/21/2012.

NEW MEXICO ANIMAL SHELTERING BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 24 ANIMAL SHELTERING PROVIDERS PART 5 FEES

16.24.5.1 ISSUING AGENCY: Regulation and Licensing Department, Animal Sheltering Board.

[16.24.5.1 NMAC - Rp, 16.24.5.1 NMAC, 2/5/14]

16.24.5.2 SCOPE: This part applies to applicants, licensees, certificate holders and persons or agencies within the jurisdiction of the board.

[16.24.5.2 NMAC - Rp, 16.24.5.2 NMAC, 2/5/14]

16.24.5.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Animal Sheltering Act, Sections 77-1B-5, 77-1B-6, 77-1B-7, NMSA 1978.

[16.24.5.3 NMAC - Rp, 16.24.5.3 NMAC, 2/5/14]

16.24.5.4 DURATION: Permanent.

[16.24.5.4 NMAC - Rp, 16.24.5.4 NMAC, 2/5/14]

16.24.5.5 EFFECTIVE DATE: 2/5/2014 unless a later date is cited in the history note at the end of a section.

[16.24.5.5 NMAC - Rp, 16.24.5.5 NMAC, 2/5/14]

16.24.5.6 OBJECTIVE: To establish fees for application, licensure, certification, renewal and board provided services.

[16.24.5.6 NMAC - Rp, 16.24.5.6 NMAC, 2/5/14]

16.24.5.7 DEFINITIONS: [Reserved]

16.24.5.8 FEES: All fees are payable to the board and are non-refundable. No individual fee shall exceed \$150.00 annually. Fees are as follows.

A.	Application for euthanasia technician license	\$ 50.00
B.	Renewal for euthanasia technician license	\$ 50.00
C.	Application for 60-day temporary license	\$ 25.00
D.	Application for euthanasia instructor certification	\$ 150.00
E.	Renewal for euthanasia instructor certification	\$ 150.00
F.	Application for euthanasia agency license	\$ 200.00
G.	Renewal for euthanasia agency license	\$ 200.00
H.	Late renewal fee (includes technician, instructor and agency)	\$ 20.00
I.	Verification of licensure or certification	\$ 25.00

J.	Listing of licensees (paper or electronic)	\$ 50.00
K.	Charge for insufficient funds	\$ 25.00
L.	Duplicate licenses	\$ 15.00

[16.24.5.8 NMAC - Rp, 16.24.5.8 NMAC, 2/5/14]

HISTORY of 16.24.5 NMAC:

History of Repealed Material:

16.24.5 NMAC, Fees, filed 5/14/2009 - Duration expired 7/21/2012.

NEW MEXICO ANIMAL SHELTERING BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 24 ANIMAL SHELTERING PROVIDERS PART 6 FORMULARY FOR EUTHANASIA TECHNICIANS

16.24.6.1 ISSUING AGENCY:

Regulation & Licensing Department,
Animal Sheltering Board.

[16.24.6.1 NMAC - Rp, 16.24.6.1 NMAC,
2/5/14]

16.24.6.2 SCOPE: This part
applies to licensees, certificate holders and
persons or agencies within the jurisdiction
of the board.

[16.24.6.2 NMAC - Rp, 16.24.6.2 NMAC,
2/5/14]

16.24.6.3 STATUTORY

AUTHORITY: These rules are
promulgated pursuant to the Animal
Sheltering Act, Sections 77-1B-5, 77-1B-
6.1 NMSA 1978.

[16.24.6.3 NMAC - Rp, 16.24.6.3 NMAC,
2/5/14]

16.24.6.4 DURATION:

Permanent.

[16.24.6.4 NMAC - Rp, 16.24.6.4 NMAC,
2/5/14]

16.24.6.5 EFFECTIVE DATE:

2/5/2014 unless a later date is cited in the
history note at the end of a section.

[16.24.6.5 NMAC - Rp, 16.24.6.5 NMAC,
2/5/14]

16.24.6.6 OBJECTIVE:

This
part lists the formulary for euthanasia
technicians.

[16.24.6.6 NMAC - Rp, 16.24.6.6 NMAC,
2/5/14]

16.24.6.7 DEFINITIONS:

[Reserved]

16.24.6.8 EUTHANASIA TECHNICIANS FORMULARY

GENERAL PROVISIONS: The
following general provisions shall apply to
the formulary:

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

C. a euthanasia technician
shall comply with all federal and state
laws that pertain to obtaining, possessing,
administering any drug;

D. a substance shall
only be approved for use if procured in
compliance with all federal and state laws;
the formulary does not supersede such laws;
and

E. 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) Analgesics/sedatives:

(a) acepromazine 10mg/ml

injectable

(b) xylazine 100mg/ml injectable

(2) Anesthetics

(a) ketamine HCL 100mg/ml

injectable

(b) tiletamine HCL and
zolazepam HCL 100mg/ml injectable

(3) Euthanasia solution

(a) sodium pentobarbital 260 mg/

ml injectable

(b) sodium pentobarbital 390 mg/

ml injectable

(c) sodium pentobarbital 392 mg/
ml powder for injection

(d) sodium pentobarbital and
phenytoin sodium combination solution for
injection

(4) Diluents

(a) sterile water for injection

(b) sterile normal saline for

injection

(c) bacteriostatic water for

injection

(d) bacteriostatic normal saline
for injection

[16.24.6.8 NMAC - Rp, 16.24.6.8 NMAC,
2/5/14]

HISTORY OF 16.24.6 NMAC:

History of Repealed Material:

16.24.6 NMAC, Formulary for Euthanasia

Technicians, filed 6/18/2010 - Duration
expired 7/21/2012.

NEW MEXICO OFFICE OF THE ATTORNEY GENERAL

TITLE 12 TRADE, COMMERCE AND BANKING CHAPTER 2 CONSUMER PROTECTION PART 14 MISREPRESENTATION OF AGE AND CONDITION OF MOTOR VEHICLES

12.2.14.1 ISSUING AGENCY:

Office of the New Mexico Attorney
General.

[12.2.14.1 NMAC - N, 4/1/2014]

12.2.14.2 SCOPE:

Misrepresentation of age and condition of
motor vehicles.

[12.2.14.2 NMAC - N, 4/1/2014]

12.2.14.3 STATUTORY

AUTHORITY: The New Mexico Unfair
Practices Act, NMSA 1978, Section 57-12-
13.

[12.2.14.3 NMAC - N, 4/1/2014]

12.2.14.4 DURATION:

Permanent.

[12.2.14.4 NMAC - N, 4/1/2014]

12.2.14.5 EFFECTIVE DATE:

April 1, 2014, unless a later date is cited at
the end of a section.

[12.2.14.5 NMAC - N, 4/1/2014]

12.2.14.6 OBJECTIVE:

A. The purpose of this rule
is to:

(1) deter the misrepresentation of
the age or condition of a motor vehicle in
motor vehicle sale transactions;

(2) protect retail buyers from
unfair and deceptive practices involving the
misrepresentation of the age or condition
of a motor vehicle in motor vehicle sale
transactions through uniform disclosure of
material information concerning the age or
condition of a motor vehicle. NMSA 1978,
Section 57-12-2(D)(14); and

(3) provide to sellers clear legal
standards as to what constitutes "to the best
of seller's knowledge" when selling motor
vehicles to retail buyers. NMSA 1978,
Section 57-12-6(B).

B. The attorney general's
office has long been concerned about
unfair and deceptive practices involving
the sale of motor vehicles to retail
buyers. The attorney general's consumer
protection division receives numerous
written complaints and telephone calls
alleging failure by sellers to (1) disclose
material information concerning the age or

condition of motor vehicles or (2) provide the mandatory affidavit. Sellers of motor vehicles have continually complained to the attorney general's office about the ambiguity of the affidavit requirement and over the years have been subject to litigation by retail buyers concerning the interpretation of "to the best of the seller's knowledge".

C. This rule interprets and clarifies unfair and deceptive trade practices involving the sale of motor vehicles as provided under the Unfair Practices Act. The attorney general has concluded that this rule is in the best interest of the health, safety and general welfare of the citizens of New Mexico.

[12.2.14.6 NMAC - N, 4/1/2014]

12.2.14.7 DEFINITIONS:

A. "Alteration" shall mean:

(1) the act or procedure of changing, modifying or repairing a motor vehicle's cab, chassis or body;

(2) the condition resulting from changing, modifying or repairing a motor vehicle's cab, chassis or body; or

(3) the modification to a motor vehicle's cab, chassis, or body; the alteration may, but need not necessarily, be the result of wreck damage. Goods are altered if, as measured against the reasonable expectations of the consumer, the characteristics or value of the motor vehicle are affected in a meaningful way by the changes, modifications or repairs. See *Hale v. Basin Motor Co.*, 110 N.M. 314, 317-318 (N.M. 1990).

B. "Body" shall mean the external structure of the motor vehicle, exclusive of the cab and chassis.

C. "Cab" shall mean the compartment of a motor vehicle where the driver and passengers sit.

D. "Calculation of cost for alteration or repair" shall mean calculating the cost of repair based upon industry accepted reverse engineering protocols and original equipment manufacturer "OEM" replacement parts.

E. "Chassis" shall mean frame and working parts of the motor vehicle, including standard factory equipment.

F. "Flat rate manual cost" shall mean the estimated cost of repair as indicated by a nationally recognized manual commonly used in the industry of auto repair.

G. "Inspection" shall mean inspection of the motor vehicle for any type of alteration or repair not consistent with I-CAR repair standards or equivalent industry standards for alteration or repair. Inspections shall be conducted with reasonable care.

H. "Inspection report"

shall mean the inspection report provided for in 12.2.14.11 NMAC of this rule or equivalent form. The inspection form shall include:

(1) the name of the seller and contact information;

(2) a description of the vehicle, including year, make, model, stock number and vehicle identification number;

(3) the vehicle condition report required by 12.2.14.9 NMAC of this rule;

(4) the odometer reading of the motor vehicle;

(5) a statement of the calculation and total cost for alteration or repair;

(6) a statement as to whether or not the alteration or repair causes safety issues;

(7) a statement as to whether or not the motor vehicle has frame damage;

(8) the identification and contact information of the qualified person who performed the inspection;

(9) the inspection date and the calculation and total cost for the motor vehicle inspection.

I. "Motor vehicle" shall mean every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from batteries or from overhead trolley wires, but not operated upon rails. This includes, but is not limited to, automobiles, trucks of all varieties, motor cycles, recreational vehicles, reconstructed motor vehicles, specially constructed motor vehicles, and road tractors, all of which may be for personal, household, or commercial use.

J. "Qualified person" shall mean either:

(1) a person who is ASE, I-CAR level II or qualified by any other equivalent industry recognized certification program, and has adequate experience with performing vehicle repairs in the areas of:

(a) painting and refinishing;

(b) structural and non-structural analysis and repair;

(c) mechanical and electrical components analysis and repair of motor vehicle cab, chassis, and body;

(d) inspection of vehicles for previous alteration or repair; or

(2) a person who possesses equivalent or similar knowledge, skills and experience as defined in this subsection.

K. "Repair or repairing" shall mean to restore or attempt to restore to I-CAR standards or equivalent industry standards a motor vehicle's cab, chassis, or body whether or not the damage resulted from a collision.

L. "Sales price" shall mean the actual stated price on the contract before the deduction of the value of any trade-in and shall not include such charges as taxes, registration fees, extended warranties,

service contracts, credit of disability insurance, or any other charges incidental to the sale.

M. "Seller" shall mean natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates which include either:

(1) any person who sells, solicits or advertises the sale of new or used motor vehicles to retail buyers and who is licensed pursuant to the Motor Vehicle Code, NMSA 1978, Section 66-4-1(A); or

(2) any person who sells four or more motor vehicles to retail buyers in a calendar year whether licensed to do so or not pursuant to NMSA 1978, Section 66-4-1(A).

N. "Seller's knowledge" shall mean "to the best of the seller's knowledge" pursuant to NMSA 1978, Section 57-12-6(B)(2) and does not necessarily mean actual knowledge, but shall mean knowledge that a prudent person would have if the person had exercised reasonable care or diligence. One who intentionally remains ignorant is chargeable in law with knowledge. See *Stevenson v. Louis Dreyfus Corp.*, 112 N.M. 97, 100 (N.M. 1991).

O. "Unibody" shall mean a motor vehicle construction technique in which the body is integrated into a single unit with the chassis rather than having a separate body-on-frame.

[12.2.14.7 NMAC - N, 4/1/2014]

12.2.14.8 AFFIDAVIT

REQUIRED: It is an unfair or deceptive trade practice for a seller of a motor vehicle to fail to provide the purchaser with an affidavit at the time of sale if it has been determined that the alterations or repairs to any part of the motor vehicle for which the fixed flat rate manual costs in the aggregate amounts to or exceeds six percent or of the sale price of the vehicle. The affidavit must:

A. describe the vehicle;

and

B. state, to the best of the seller's knowledge, what specific alterations or repairs have been done to the motor vehicle, including whether the motor vehicle title should have been branded salvage or has been branded salvaged.

[12.2.14.8 NMAC - N, 4/1/2014]

12.2.14.9 UNFAIR AND

DECEPTIVE TRADE PRACTICE: It is an unfair or deceptive trade practice for a seller of a motor vehicle to:

A. fail to obtain a reasonable inspection of the motor vehicle performed by a qualified person, prior to offering the motor vehicle for retail sale, in order to comply with the affidavit

requirements of the Unfair Practices Act NMSA, 1978, Section 57-12-6 (B);

B. fail to obtain an inspection report;

C. fail to provide to the retail buyer, prior to the sale, with a copy of the inspection report and any other reports obtained by the seller in connection to the inspection of the motor vehicle;

D. omit any information required to be disclosed on the inspection report;

E. state that the absence of any indication of an accident on a carfax, autocheck or other vehicle history report is proof that the vehicle has never been altered or repaired;

F. fail to disclose in writing the specific alteration(s) or repair(s) performed to the motor vehicle if the alteration(s) or repair(s) to any part of the motor vehicle amounts to six percent or more of the sales price of the motor vehicle, based on the flat rate manual costs in the aggregate;

G. fail to disclose in writing, if to the best of the seller's knowledge, the motor vehicle title should have been branded salvage or has been branded salvaged, if the motor vehicle is defined by law as salvaged pursuant to NMSA 1978, Section 66-1-4.16(C) or 18.19.3.50 NMAC through 18.19.3.52 NMAC;

H. fail to include the itemized cost for the inspection on the sales agreement as required by this rule;

I. charge the retail buyer for the inspection an amount above the actual amount paid by the seller for the inspection; or

J. fail to retain a copy of any and all motor vehicle reports and inspection reports for three years after the sale of the motor vehicle.

[12.2.14.9 NMAC - N, 4/1/2014]

12.2.14.10 REASONABLE

INSPECTION: The following motor vehicle inspection shall be deemed reasonable pursuant to NMSA 1978, Section 57-12-6(B):

A. obtaining publically available reports on the age or condition of the motor vehicle such as the national motor vehicle title information system report, carfax, or auto check;

B. inspecting the motor vehicle for evidence of repainting such as:
(1) differences in paint color or texture;

(2) mismatched sizes of metallic sparkle in the paint;

(3) embedded dirt or deep scratches in the top coat of the paint; and

(4) uneven paint thickness;

C. inspecting the motor

vehicle body and cab for evidence of any repair or alteration, with the inspection involving only minimal disassembly, for:

(1) uneven gaps between sheet metal panels;

(2) differences between the headlamps;

(3) paint overspray on moldings and trim;

(4) paint tape edges in the jams;

(5) paint chipped off of bolt

heads;

(6) paint missing around bolt heads or bolts not centered in the bolt hole;

(7) hammer damage;

(8) holes drilled and plugged in jams or shell of the motor vehicle;

(9) damage inside the trunk or under the spare tire; and

(10) signs of corrosion or lack of corrosion protection;

D. inspecting the motor vehicle chassis for evidence of such things as:

(1) pinched weld flange underneath the motor vehicle;

(2) weld sites;

(3) signs of repair to unibody structural parts;

(4) signs of buckles or non-OEM welding repair to unibody structural parts;

(5) signs of corrosion or lack of corrosion protection;

(6) any other alteration or repair that may have been performed to the chassis; and

(7) odometer alteration or repair;

E. inspecting the motor vehicle's caulking and seam sealer for differences and inconsistencies;

F. inspecting the motor vehicle's identification number tags;

G. inspecting the motor vehicle parts for labels that say "R-DOT";

H. inspecting the motor vehicle for any type of repairs not consistent with I-CAR repair standards or equivalent;

I. based upon any information or evidence obtained during the vehicle inspection performed pursuant to Subsections A-H of this section, perform any additional inquiry or inspection into the motor vehicle's age or condition appropriate to assure compliance with this rule.

[12.2.14.10 NMAC - N, 4/1/2014]

12.2.14.11 PREVIOUS

WRECK DAMAGE OR ALTERATION INSPECTION REPORT: The following information is an example of what should be contained within an inspection report form:

A. seller's name;

B. dealer license number;

C. address, including city, state, and zip code;

D. the year, make, model,

and stock number of the motor vehicle;

E. the motor vehicle identification number;

F. the exterior and interior color of the motor vehicle;

G. an odometer reading of the motor vehicle, including actual miles, and not actual miles;

H. a calculation of the total cost for alteration or repair;

I. a "yes" and "no"

check box should be used to indicate any inspection revealed safety issues; if "yes" is checked, then the inspection report shall identify the safety issues with particularity;

J. a "yes" and "no"

check box should be used to indicate any inspection revealed frame damage; if "yes" is checked, then the inspection report shall identify the frame damage with particularity;

K. the remainder of the inspection report form should be captioned "AGE AND CONDITION OF MOTOR VEHICLE CERTIFICATION";

L. for the following paragraphs and subparagraphs of this subsection, a "yes" and "no" check box should be checked for each item which is applicable; if "yes" is checked, then the report shall identify the alteration or repair with particularity and where on the vehicle the alteration or repair is located:

(1) inspection of the motor vehicle for evidence of repainting;

(a) differences in paint color or texture;

(b) mismatched sizes of metallic sparkle in the paint;

(c) embedded dirt or deep scratches in the top coat of the paint;

(d) uneven paint thickness;

(2) inspection of the motor vehicle body and cab;

(a) uneven gaps between sheet metal panels;

(b) differences between the headlamps;

(c) paint overspray on moldings and trim;

(d) paint tape edges in the jams;

(e) paint chipped off of bolt

heads;

(f) paint missing around bolt

heads or bolts not centered in the bolt hole;

(g) hammer damage;

(h) holes drilled and plugged in jams or shell of the motor vehicle;

(i) damage inside the trunk or under the spare tire;

(j) signs of corrosion or lack of corrosion protection;

(3) inspection of the motor vehicle chassis;

(a) pinched weld flange

underneath the motor vehicle;

(b) weld sites;

- (c) signs of repair to unibody structural parts;
- (d) signs of buckles or non-OEM welding repair to the unibody structural parts;
- (e) signs of corrosion or lack of corrosion protection;
- (f) signs of any other alteration or repair having been performed to the chassis;
- (g) odometer alteration or repair;
- (4) signs of differences and inconsistencies with the motor vehicle's caulking and seam sealer;
- (5) signs of tampering with motor vehicle's identification tags;
- (6) signs of motor vehicle parts labeled "R-DOT";
- (7) signs of any type of repairs not consistent with I-CAR collision repair standards or equivalent;
- M. date of inspection;
- N. calculation and total cost for inspection;
- O. the name of the business or individual who conducted the inspection;
- P. the name, and address of the business or individual who conducted the inspection, including city, state, and zip code;
- Q. the telephone number of the business or individual who conducted the inspection;
- R. the printed or typed name of the technician who conducted the inspection; and
- S. the signature of the technician who conducted the inspection.

[12.2.14.11 NMAC - N, 4/1/2014]

12.2.14.12 SEVERABILITY: If any part of this rule is held invalid, the remainder of the rule and applications thereof shall remain unaffected.

[12.2.14.12 NMAC - N, 4/1/2014]

HISTORY OF 12.2.14 NMAC: [RESERVED]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

Publisher's note: An incorrect amount was published in the last issue of the New Mexico Register for the amendment to Subsection G of 8.15.2.17 NMAC. The following table contains the correct amount.

G. Monthly reimbursement rates:

Licensed child care centers							
Infant		Toddler		Pre-school		School-age	
Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro
[\$521.37]	[\$463.75]	[\$470.72]	[\$434.63]	[\$440.01]	[\$408.02]	[\$390.64]	[\$377.96]
\$542.22	\$482.30	\$489.55	\$452.02	\$457.61	\$424.34	\$406.27	\$393.08
Licensed group homes (capacity: 7-12)							
Infant		Toddler		Pre-school		School-age	
Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro
[\$424.01]	[\$400.96]	[\$388.93]	[\$381.23]	[\$383.08]	[\$375.81]	[\$378.53]	[\$368.53]
\$440.97	\$417.00	\$404.49	\$396.48	\$398.40	\$390.84	\$393.67	\$383.27
Licensed family homes (capacity: 6 or less)							
Infant		Toddler		Pre-school		School-age	
Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro
[\$410.20]	[\$387.60]	[\$370.08]	[\$365.04]	[\$369.17]	[\$362.09]	[\$364.28]	[\$354.64]
\$426.61	\$403.10	\$384.88	\$379.64	\$383.94	\$376.57	\$378.85	\$368.83
Registered homes and in-home child care							
Infant		Toddler		Pre-school		School-age	
Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro
[\$278.74]	[\$258.00]	[\$264.00]	[\$217.69]	[\$242.00]	[\$220.00]	[\$242.00]	[\$198.00]
\$289.89	\$268.32	\$274.56	\$226.40	\$251.68	\$228.80	\$251.68	\$205.92

NEW MEXICO DEPARTMENT OF GAME AND FISH

The State Game Commission repeals its rule entitled Importation of Live Non-Domestic Animals, Birds and Fish, 19.35.7 NMAC (filed 7/9/2010) and replaces it with 19.35.7 NMAC Importation of Live Non-Domestic Animals, Birds and Fish, effective 1/31/2014.

The State Game Commission repeals its rule entitled Class A Park and Lakes, 19.35.9 NMAC (filed 3/31/2003) and replaces it with 19.35.9 NMAC Class A Park and Lakes, effective 1/31/2014.

NEW MEXICO DEPARTMENT OF GAME AND FISH

TITLE 19 NATURAL RESOURCES AND WILDLIFE CHAPTER 35 CAPTIVE WILDLIFE USES PART 7 IMPORTATION OF LIVE NON-DOMESTIC ANIMALS, BIRDS AND FISH

19.35.7.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.
[19.35.7.1 NMAC - Rp, 19.35.7.1 NMAC, 1-31-14]

19.35.7.2 SCOPE: Persons who desire to bring wildlife species into the state of New Mexico. It may include the general public, pet importers, holders of Class "A" park licenses, department permittees and others.

[19.35.7.2 NMAC - Rp, 19.35.7.2 NMAC, 1-31-14]

19.35.7.3 STATUTORY AUTHORITY: 17-1-14, 17-1-26 and 17-3-32.

[19.35.7.3 NMAC - Rp, 19.35.7.3 NMAC, 1-31-14]

19.35.7.4 DURATION:

Permanent.
[19.35.7.4 NMAC - Rp, 19.35.7.4 NMAC, 1-31-14]

19.35.7.5 EFFECTIVE DATE: January 31, 2014, unless a later date is cited at the end of a section.

[19.35.7.5 NMAC - Rp, 19.35.7.5 NMAC, 1-31-14]

19.35.7.6 OBJECTIVE:

To provide consistent criteria for the importation of live non-domesticated animals into New Mexico and to protect

native wildlife against the introduction of contagious or infectious diseases, undesirable species and address human health and safety issues.
[19.35.7.6 NMAC - Rp, 19.35.7.6 NMAC, 1-31-14]

19.35.7.7 DEFINITIONS:

A. "Accredited laboratory" A lab recognized for CWD testing by the New Mexico department of game and fish.

B. "Animal health emergency" A situation in which people or animals are at risk of exposure to infectious or contagious diseases as determined by the director.

C. "APHIS" Animal and plant health inspection service, United States department of agriculture.

D. "Applicant" Any person or entity that causes or submits a department application for importation.

E. "Certificate of compliance" An official department document declaring an applicant's ability to resume importation application eligibility.

F. "Certified Herd" A herd that has attained certified status as defined in the current USDA Chronic Wasting disease Program Standards.

G. "Closed herd sales" Sales of animals from a herd directly to the buyer in a manner that allows the buyer to transport the animals from the producer's premises directly to the buyer's premises without contact with animals from another herd, and without contact with other pens or transport facilities used by any other herd.

H. "Chronic Wasting Disease" or "CWD" is a transmissible spongiform encephalopathy of cervids.

I. "CWD-Exposed Animal" is an animal that is part of a CWD-positive herd, or that has been exposed to a CWD-positive animal or contaminated premises within the previous 60 months.

J. "CWD-Exposed herd" is a herd in which a CWD-positive animal resided within 60 months prior to that animal's diagnosis as CWD-positive.

K. "CWD-Positive herd" is a herd in which a CWD-positive animal resided at the time it was diagnosed and which has not been released from quarantine.

L. "CWD-Suspect animal" is an animal for which unofficial CWD test results, laboratory evidence, or clinical signs suggest a diagnosis of CWD, but for which laboratory results have been inconclusive or not yet conducted.

M. "CWD-Suspect herd" is a herd for which laboratory evidence or clinical signs suggest a diagnosis of CWD, but for which laboratory results have been inconclusive or not yet conducted.

N. "CWD-Trace-Back

herd" is an exposed herd in which a CWD-positive animal has resided during the 60 months prior to the diagnosis.

O. "CWD-Trace-Forward herd" is a CWD-exposed herd that has received CWD-exposed animals from a CWD-positive herd during the 60 months prior to the diagnosis of CWD in the CWD-positive herd.

P. "Dangerous animal" An animal that due to its nature, biology or its behavior, including predatory or venomous animals, that may present a risk to the health, safety or well-being of the public or other animals including native wildlife, domestic pets or livestock.

Q. "Department" Shall mean New Mexico department of game and fish.

R. "Director" Shall mean the director of the department of game and fish.

S. "Importer" Any person or entity that causes an animal to be brought, transported or shipped into New Mexico with the exception of common mail carriers and delivery service providers during the course of their regular duties.

T. "Invasive animal" Any non-native animal, except protected wildlife, including any aquatic invasive species (AIS), whose introduction into New Mexico may cause or is likely to cause harm to the economy, environment, protected wildlife, human health or safety.

U. "Isolation" A period of time imported animals are separated and observed. The observation pen must have fences at least eight feet high. The isolation pen must prevent nose-to-nose contact with all wild ungulates during the observation period.

V. "Mixed herd" A herd comprised of animals from different sources and held to allow contact or commingling.

W. "Mixed herd sales" Sales from sale barns, auctions, private arrangements, or other facilities that allow joint penning or adjacent penning of animals from more than one closed herd, or otherwise facilitate or permit commingling, direct contact, or holding, boarding, or sharing the premises by more than one herd simultaneous or successively in time.

X. "Non-domesticated animal" For the purposes of this rule, any animal species that is wild by nature not listed as semi-domesticated or protected under chapter 17 NMSA, 1978.

Y. "NPIP" National poultry improvement program.

Z. "Official Animal Identification" A device or means of animal identification approved by USDA to uniquely identify individual animals nationally. The animal identification must include a nationally unique identification

number that adheres to one of the following:

- (1) national uniform ear tagging system.
- (2) animal identification number (AIN)
- (3) premises-based number system using a premises identification number (PIN) in conjunction with a livestock production numbering system
- (4) any other numbering system approved by USDA for the identification of animals in commerce.

AA. "Protected wildlife" Shall mean those taxonomic groups of mammals, birds and fish listed in Chapter 17 NMSA, 1978, including any species that are listed as either state or federally threatened or endangered.

BB. "Release from captivity" For the purpose of this rule, the act of removing from confinement, letting go, liberating or setting free any imported, live non-domesticated animal into the wild.

CC. "Semi-domesticated animal" For the purpose of this rule, the director may designate an animal species as semi-domesticated in those instances where individual members of such species are commonly tamed, raised, bred or sold in captivity.

DD. "Species importation list" A list containing protected, non-game and semi-domesticated animal species established, maintained, updated or amended by the director of the New Mexico department of game and fish. The species importation list may contain importation requirements, restrictions and conditions for each animal species listed.

EE. "Qualified expert" Only a person officially designated by the director to import a specific non-domesticated animal.

FF. "Undesirable animal" An animal that may have adverse impacts to health, management or safety.

GG. "USDA" United States department of agriculture.
[19.35.7.7 NMAC - Rp, 19.35.7.7 NMAC, 1-31-14]

19.35.7.8 IMPORTATION OF LIVE NON-DOMESTICATED ANIMALS:

It shall be unlawful to import any live non-domesticated animal into New Mexico without first obtaining appropriate permit(s) issued by the director except those animals identified within the species importation list group I. Permits will only be issued when all application requirements and provisions have been met. Failure to adhere to or violation of permit provisions may result in the applicant/importer becoming ineligible for importation(s). The pendency or determination of any administrative action or the pendency or determination of a criminal prosecution for

the same is not a bar to the other.

[19.35.7.8 NMAC – Rp, 19.35.7.8 NMAC, 1-31-14]

19.35.7.9 [Reserved]

19.35.7.10 DIRECTOR'S AUTHORITY:

A. Species importation list: the director of the New Mexico department of game and fish shall develop a species importation list. The species importation list shall be established, maintained, updated or amended by the director as species information and concerns become available and are identified. The species importation list shall be grouped into the following minimum importation "groups" based on the following criteria.

(1) Species importation list group I are designated semi-domesticated animals and do not require an importation permit.

(2) Species importation list group II may be for live non-domesticated animals that are not known to be either invasive or dangerous and do not present a known risk to the health, safety or well-being of the public, domestic livestock or to native wildlife and their habitats.

(3) Species importation list group III may be for live non-domesticated animals that present minimal or manageable concerns that will require specific provisions that must be met prior to issuing an importation permit to address health, safety or well-being of the public, domestic livestock or to native wildlife and their habitats.

(4) Species importation list group IV may be for live non-domesticated animals that are considered dangerous, invasive, undesirable, state or federal listed threatened, endangered, a furbearer or any other species of concern as identified by the director. The importation of these species are prohibited for the general public but may be allowed for, scientific study, department approved restoration and recovery plans, zoological display, temporary events/entertainment, use as service animal or by a qualified expert.

(5) Any species of live non-domesticated animal not currently on the species importation list will be designated group IV until such time as another determination is made by the director.

B. Non-domesticated animal importation: the director may, in times of animal health emergency, suspend all importation activities or suspend importation of selected taxa for indefinite periods of time to protect wild and domestic animals from infectious disease epidemics and to protect the people of New Mexico from zoonoses.

C. Non-domesticated animal intrastate movement: the director

may suspend intrastate movement in an animal health emergency.

D. Eligibility requirements for importation (cooperative compliance): the director may declare any applicant or importer who fails to comply with any importation conditions or provisions as ineligible for future importation permits or ability to supply animals into New Mexico until all permit violations are corrected and the appropriate certificate of compliance fees are paid in full.

(1) The director may require an applicant to obtain a certificate of compliance prior to becoming eligible to import any live non-domesticated animals and may impose additional corrective measures in those instances where violations of this provision have been identified.

(2) The director may impose a cease-and-desist order that makes an applicant ineligible to apply for an importation permit for up to a year in those instances where corrective measures have not been implemented or repeated violations have occurred.

E. Certificate of compliance fee: the director shall determine the appropriate certificate of compliance fee per violation not to exceed \$500.00 based on the following criteria:

(1) department expenses including manpower, travel, inspection and compliance monitoring;

(2) department office expenses including mailing, shipping, certificate issuance;

(3) animal care, treatment, housing and feeding;

(4) other miscellaneous expenses.

F. Qualified expert: the director shall determine the process and the requirements for a person to be designated a qualified expert for each applicable species.

(1) The director may require an applicant to provide specific qualifications including, but not limited to the following: professional references, experience, training, education and facility specifications.

(2) The determination to approve or deny a qualified expert designation by the director is final and is not subject to appeal.

G. Application notices and documents.

(1) The director shall determine required forms, applications and documents to carry out the provisions of this rule.

(2) The director shall determine noticing and posting provisions to carry out the provisions of this rule.

(3) The director shall determine the permit and application conditions and requirements to carry out the provisions of this rule.

H. The director shall

determine the process and requirements for re-entry into the state.

I. The director shall determine the process for expediting applications and permits including an additional application fee of \$25.00. [19.35.7.10 NMAC - Rp, 19.35.7.10 NMAC, 1-31-14]

19.35.7.11 [Reserved]

19.35.7.12 APPLICATION FOR IMPORTATION:

A. Any applicant requesting an importation permit for non-domesticated animals must submit the following information with the application:

(1) a containment or confinement plan indicating where and how the species will be maintained;

(2) a current and valid certificate from an accredited veterinarian certifying that each animal or rearing facility of origin has been inspected and is in good general health, disease free or that each animal or rearing facility of origin tests disease free for any specific disease(s) following the testing requirements and procedures as identified by the department during the application process, except;

(a) the department may approve an animal supplier that is currently enrolled in an accredited animal breeding program or facility health monitoring standards such as NPIP, AZA, or other government sanctioned program;

(b) the department may approve detailed and verifiable facility of origin health monitoring plans and records to be submitted by an organization(s) in lieu of a health or rearing facility inspection certificate from an accredited veterinarian;

(3) proof from the county and city into which the animal will be imported and held that possession of the animal is allowed;

(4) proof that all necessary federal permits have been obtained;

(5) proof that the requested species does not possess or have the immediate potential to carry infectious or contagious diseases; and

(6) confirmation by the applicant or person in authority representing the applicant agreeing to any conditions and provisions listed on the respective permit; and

(7) any importing person or entity must notify the department of game and fish within 24 hours of any disease indications or symptoms that manifest themselves among the imported animals.

B. Additional conditions for the importation of a dangerous animal; applicant shall agree to the following provisions before an importation permit is approved:

(1) enter into a department approved written agreement releasing the department from liability;

(2) agree to meet all department approved posted warning requirements;

(3) agree to provide a department approved written warning to any person receiving such animal;

(4) government agencies or other entities as designated by the director may be exempted from the liability or warning requirements in this subsection.

C. All application fees are non-refundable.

[19.35.7.12 NMAC - Rp, 19.35.7.12 NMAC, 1-31-14]

19.35.7.13 TEMPORARY

IMPORTATION: Importation into the state for exhibition, advertising, movies etc. may be approved on an expedited basis provided that the animal will not be in the state for a period of more than 30 days. Specific requirements for the animals will be listed on the application and permit. Specific requirements for importation may be listed on the application. The department will have the final authority to list all conditions on the permit that will be required prior to final approval.

[19.35.7.13 NMAC - Rp, 19.35.7.13 NMAC, 1-31-14]

19.35.7.14 IMPORTATION OF CERTAIN FISH OR FISH EGGS INTO NEW MEXICO: All fish species or eggs of the families salmonidae, esocidae, percichthyidae, ictaluridae, centrarchidae, percidae, may be imported into the state provided that all conditions stated on the application and permit are met, including the following:

A. the name of department approved supplier pursuant to this regulation;

B. description of water into which fish will be released is provided; description must include: legal owner of water; legal description of location (township, range, section); county; name of water; size of water (surface acre-lake; miles-stream); source and discharge of water; major use of water; a map of sufficient size and detail to allow the water to be located by someone unfamiliar with the area shall be included;

C. species, size, pounds, and number of fish to be imported will be specified;

D. purpose of importation will be specified;

E. full description of person or persons requesting importation, to include: name, address, telephone number, name of contact person;

F. GPS coordinates (latitude and longitude in degree decimal

minutes (DDM) using WGS 84 datum for each location where fish are stocked. [19.35.7.14 NMAC - Rp, 19.35.7.14 NMAC, 1-31-14]

19.35.7.15 APPROVED SUPPLIERS OF FISH OR FISH EGGS FOR IMPORTATION INTO NEW MEXICO:

A. The department will maintain a listing of approved fish suppliers.

B. All approved fish suppliers or their agent must carry a department-issued copy of the importation permit while transporting fish to the approved release site in New Mexico.

C. Approved supplier or their agent must notify the department of intended port of entry for importation of fish or fish eggs into New Mexico.

D. Approved supplier may be required to provide a presence/absence disease history (e.g., furunculosis bacterium, enteric redmouth bacterium, proliferative kidney disease, ceratomyxosis of salmonids, etc.) of the hatchery facility if requested by the New Mexico department of game and fish.

E. Approved suppliers shall meet the criteria and provide pathogen-free certification as specified herein.

F. Salmonids:

(1) For the infectious hematopoietic necrosis virus (IHNV), infectious pancreatic necrosis virus (IPNV), and viral hemorrhagic septicemia (VHS).

(a) Disease testing will be conducted by another state wildlife agency, United States fish and wildlife service; USDA certified source or other source approved by the New Mexico department of game and fish.

(b) Disease testing on fish must use American fisheries society (AFS) blue book procedures - "*suggested procedures for the detection and identification of certain finfish and shellfish pathogens*, 4th edition 1994".

(c) Disease testing will be conducted on an annual basis; annual inspection must have occurred within the previous 12 months of application date.

(d) 60 fish per lot will be sampled.

(e) For all lots of fish not originating on facility, supplier must provide a historical account documenting fish were reared only at New Mexico department of game and fish approved aquaculture facilities.

(2) Salmonids -for the whirling disease pathogen and bacterial kidney disease.

(a) Disease testing will be conducted by another state wildlife agency, United States fish and wildlife service;

USDA certified source or other source approved by the New Mexico department of game and fish.

(b) Lots of fish older than six months will be sampled.

(c) 60 fish per lot will be sampled.

(d) Inspection will include at least one lot of susceptible salmonids (rainbow trout, cutthroat trout, rainbow-cutthroat hybrids) which has been on the hatchery's water source for at least 10 months.

(e) Disease testing will be conducted on an annual basis. Annual inspection must have occurred within the previous 12 months of application date.

(f) Positive findings of whirling disease by pepsin-trypsin digestion shall be considered presumptive; positive findings of whirling disease by histology shall be considered confirmatory.

(g) For all lots of fish not originating on facility, supplier must provide a historical account documenting fish were reared only at New Mexico department of game and fish approved aquaculture facilities.

(h) Supplier may be required to provide a whirling disease history of the hatchery facility if requested by the New Mexico department of game and fish.

(i) Presumptive findings: Any presumptive findings of disease with no confirmatory testing shall be deemed a positive finding of the disease.

(j) Positive findings of disease: Any facility deemed to have tested positive, by confirmatory findings or presumptive findings without confirmatory testing, under this rule shall be barred from importation into the state of New Mexico until the facility is shown to be pathogen free for a minimum of two consecutive years and has met all other requirements.

(k) Renovated facilities: A facility that has been deemed positive under this rule and has undergone complete renovation may apply for importation privileges as a new facility once it has had at least one annual inspection and has met all other requirements. Complete renovation for the purposes of this rule shall be defined as a facility that has: 1) closed, secured, and sanitized all water sources, 2) confined all water conveyance to closed sealed pipes, and 3) constructed all rearing spaces out of hard surfaced materials. Proof of renovation must be provided with the application for importation privileges. On-site inspection of the facility after renovation may be required prior to authorization to import.

G. Warm water fish: For channel catfish imported into New Mexico.

(1) Disease testing will be conducted by another state wildlife agency, United States fish and wildlife service; USDA certified source or other source approved by the New Mexico department of

game and fish.

(2) Disease testing will be conducted on an annual basis. Annual inspection must have occurred within the previous 12 months of application date.

(3) Channel catfish will be tested for *edwardsiella ictaluri* (hole in the head disease).

(4) Approved supplier will document whether fish on the facility have ever been diagnosed with channel catfish virus.

H. Triploid grass carp: A notarized certificate of triploidy issued by another state wildlife agency, United States fish and wildlife service, USDA certified source or other source approved by the New Mexico department of game and fish must be provided for all grass carp imported into New Mexico.

I. Approved suppliers shall provide signed written assurance to the department that the fish rearing facilities are free of aquatic nuisance species (ANS) and aquatic invasive species (AIS). Failure to provide this assurance shall be reason to deny importation privileges. Approved suppliers shall be liable for any introduction of ANS or AIS caused by their actions. [19.35.7.15 NMAC - Rp, 19.35.7.15 NMAC, 1-31-14]

19.35.7.16 [Reserved]

19.35.7.17 IMPORTATION CONDITIONS FOR THE FAMILIES BOVIDAE, ANTILOCAPRIDAE AND CERVIDAE: All live protected wildlife species of the families bovidae, antilocapridae, and cervidae imported in the state of New Mexico shall meet the following criteria.

A. Be permanently identified with any 2 of the following devices, one of which must be an official animal identification. All identification data shall be registered with the department:

(1) implanted electronic identification device.

(2) ear tag with park identification number.

(3) tamper-proof ear tag with imprinted national identification number.

(4) USDA metal ear tags.

B. Be examined by an accredited veterinarian prior to importation. Each animal shall be accompanied by a pre-approved health certificate, certifying a disease-free status.

C. Test negative for brucellosis. Serum testing shall be done not more than 30 days prior to importation. All serum samples shall be tested by a cooperative state federal brucellosis laboratory.

D. Test negative for bovine tuberculosis not more than 90 days prior to

importation. Animals to be imported must originate from a herd that had a negative whole-herd tuberculosis test not more than 12 months prior to importation or have a current "tuberculosis free herd" certificate issued from the state of origin through a USDA accreditation program. Bovine tuberculosis testing must be performed with the current USDA approved method and be conducted by a federally accredited veterinarian. Exception: Wild sheep are exempt from this testing requirement.

E. Only cervids enrolled and in the state CWD herd certification program and from a herd that has achieved certified status, and that does not show clinical signs associated with CWD may be imported into New Mexico.

(1) No cervid shall be allowed to enter the state if it has had any contact with a CWD suspect, exposed, positive, trace-forward or trace-back animal within 60 months prior to time of importation.

(2) No cervid coming through mixed herd sales or auctions shall be allowed to enter the state. Only animals from closed sales may be imported.

(3) No cervid shall enter the state in a conveyance that has held CWD suspect, exposed, positive, trace-forward or trace-back animals.

F. All elk to be imported into the state of New Mexico shall be tested for genetic purity. Only Rocky Mountain elk (*cervus elaphus nelsoni*) will be allowed to be imported into the state of New Mexico. Any elk showing red deer hybridization or hybridization of other elk subspecies will not be allowed into the state. All testing shall be done only by a New Mexico department of game and fish approved laboratory.

G. All progeny from female elk impregnated prior to importation into New Mexico shall be tested for hybridization of red deer and other elk subspecies.

H. White-tailed deer subspecies to be imported into the state of New Mexico must have originated and must exist west of the 100th meridian and test negative for meningeal worm.

I. Be permitted in compliance with Subsection A of 19.31.1.10 NMAC.

(1) Cost of testing: all testing will be at owner's expense.

(2) After entering the state, all animals shall be held in a separate facility by the owner and/or importer. All imported animals, prior to release, may be inspected at any time by a department of game and fish official or designee.

(3) Owners/importers must notify the department of game and fish within 24 hours of any disease indications or symptoms that manifest themselves

among the imported animals prior to final inspection.

(4) Animals shall be held in isolation in the event of an animal health emergency as declared by the director.

(5) Final inspection / permit validation: No animals may be released from the separate facility into the class A park or other enclosure until the owner has received a release approval signed by a department of game and fish official. [19.35.7.17 NMAC - Rp, 19.35.7.17 NMAC, 1-31-14]

19.35.7.18 INTRASTATE TRANSPORTATION FOR THE FAMILIES BOVIDAE, ANTILOCAPRIDAE AND CERVIDAE:

A. Transporting requirements: All live cervids transported within the state of New Mexico shall be legally possessed and permanently identified with any 2 of the following devices, one of which must be an official animal identification. All identification data shall be registered with the department:

(1) implanted electronic identification device.
(2) ear tag with park identification number.

(3) tamper-proof ear tag with imprinted national identification number.

(4) USDA metal ear tags.

B. The director may suspend intrastate movement in an animal health emergency. [19.35.7.18 NMAC- Rp, 19.35.7.18 NMAC, 1-31-14]

19.35.7.19 RELEASE FROM CAPTIVITY FOR IMPORTED

ANIMALS: No person shall release from captivity an imported animal into New Mexico except by obtaining a release permit from the director. The transfer of an imported animal from one person to another person does not constitute a release from captivity.

A. Prior to approval by the director an applicant must:

(1) submit a plat of the release area;

(2) submit verification that landowners, tribal officials, state officials, federal officials and county officials that may be directly affected by the release have been notified of the potential release in writing and have been given 20 days to respond to the release; responses must be submitted with the application; it is the responsibility of the applicant to notify the above and submit responses to the department; failure to notify as indicated herein or to submit responses will result in the application being rejected until this condition is met and any compliance fees are paid;

(3) demonstrate that the intended release is provided for in state or federal resource or species management plans or strategies (CWCS).

B. Any individual or group of isolated animals in which signs of infectious or contagious disease is evident will not be released, will remain in isolation, and, at the recommendation of the state veterinarian:

(1) the animals shall be treated and restored to health until they no longer pose a threat of infection to wild, free ranging wildlife or to other captive animals in the facility; or

(2) the isolated animals shall be destroyed and remains will be disposed in a manner conforming to state, federal or local rules and regulations.

C. The director shall not approve any release permit that conflicts with current conservation management. [19.35.7.19 NMAC - Rp, 19.35.7.19 NMAC, 1-31-14]

19.35.7.20 [Reserved]

19.35.7.21 DENIAL OF PERMIT

APPLICATION: the appropriate department division chief shall notify the applicant of a denial to import non-domesticated animals in writing. A denied application will not be further considered unless the applicant is granted an allowance through the director's review or the commission appeal process.

[19.35.7.21 NMAC - Rp, 19.35.7.21 NMAC, 1-31-14]

19.35.7.22 IMPORTATION

PERMIT APPEAL PROCESS: the denial of an importation permit may only be set aside if each step in the application and appeal process is adhered to sequentially and the appeal is conducted in accordance with the following procedures.

A. Director's review: any applicant whose importation permit application has been denied may request a review by the director in accordance with the following procedures.

(1) The applicant must submit by certified mail a written request to the director within 30 days of denial.

(2) A request for the director's review must contain the reason for the objection.

(3) The director will consider any additional evidence and information that was not previously considered in the initial denial.

(4) The director will consider any conflicts with native wildlife, threats to human health, domestic animals or livestock and qualified expert designation when making a determination.

(5) The designation within a

specified group on the director's species importation list cannot be used as the basis for review or appeal.

(6) The director shall make a determination and send the applicant his decision within 45 days.

(7) The determination to approve or deny a qualified expert designation by the director is final and is not subject to appeal.

B. Commission appeal: any applicant may appeal the decision by the director in accordance with the following procedures.

(1) The applicant must submit by certified mail a written appeal to the chairman of the state game commission within 20 days of denial by the director.

(2) The appeal to the chairman must contain the reason for the objection.

C. Basis for decision: the commission may set aside the decision of the director only if;

(1) the commission determines that the decision of the director was arbitrary or capricious;

(2) the decision of the director was not based on law or regulation;

(3) the appellant provides additional data or proves significant evidence that contradicts the data of the department;

(4) the decision of the commission shall be final.

D. An appeal filed with the commission will be heard at the next scheduled commission meeting subject to agenda item availability and related time constraints.

[19.35.7.22 NMAC- Rp, 19.35.7.22 NMAC, 1-31-14]

19.35.7.23 EXCEPTIONS:

Employees of the New Mexico department of game and fish and other state agencies acting in the course of their official duties are not required to have an importation permit. However, all disease testing requirements specified in this rule must be met prior to importation.

[19.35.7.23 NMAC- Rp, 19.35.7.23 NMAC, 1-31-14]

HISTORY OF 19.35.7 NMAC:

NMAC History:

19 NMAC 31.1, Hunting and Fishing - Manner and Method of Taking, filed 3-1-95. 19.35.7 NMAC, Importation of Live Non-Domesticated Animals, Birds and Fish, filed 3-17-00.

History of Repealed Material:

19.35.7 NMAC, Importation of Live Non-Domesticated Animals, Birds and Fish, filed 3-17-00 - Repealed effective 7-9-10. 19.35.7 NMAC, Importation of Live Non-Domesticated Animals, Birds and Fish, filed 7-9-10 - Repealed effective 1-31-14.

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

**TITLE 19 NATURAL
RESOURCES AND WILDLIFE
CHAPTER 35 CAPTIVE
WILDLIFE USES**

**PART 9 CLASS A PARK AND
LAKES**

19.35.9.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.

[19.35.9.1 NMAC - N, 9-28-01]

19.35.9.2 SCOPE: Persons who desire to hold wildlife species in the state of New Mexico. This will include holders of class "A" park and lake licenses.

[19.35.9.2 NMAC - N, 9-28-01]

19.35.9.3 STATUTORY

AUTHORITY: 17-1-14, 17-1-26, 17-2-3, 17-2-7, 17-2-10, 17-4-8, 17-4-9, 17-4-10, 17-4-11, 17-4-12, 17-4-13, 17-4-14, 17-4-15, 17-4-16, 17-4-17, 17-4-18, 17-4-19, 17-4-20, 17-4-21, 17-4-22, 17-4-23, 17-4-24, 17-4-25, 17-4-26, 17-4-27, 17-4-28.

[19.35.9.3 NMAC - N, 9-28-01]

19.35.9.4 DURATION:

Permanent.

[19.35.9.4 NMAC - N, 9-28-01]

19.35.9.5 EFFECTIVE DATE:

September 28, 2001, unless a later date is cited at the end of a section.

[19.35.9.5 NMAC - N, 9-28-01]

19.35.9.6 OBJECTIVE: To provide consistent criteria for the possession and sale of privately owned wildlife held in New Mexico. To provide disease testing and general requirements in order to protect native wildlife and address human health and safety issues.

[19.35.9.6 NMAC - N, 9-28-01]

19.35.9.7 DEFINITIONS:

A. Facility: the area of a class A park surrounded by a fence, and all buildings, isolation pens, loading chutes, gates, waters, and other structures used in the class A park operation.

B. Feed: all forage grown outside the facility and transported in, all forages compounded and packaged for commercial distribution, and all dietary supplements.

C. Water: The system for delivering water to animals in a class A park including but not limited to wells, streams, ponds, troughs, and water catchments.

D. Animal health emergency: A situation in which people or animals are at risk of exposure to infectious

or contagious diseases.

E. Quarantine: A status declared for any park in which an animal health emergency has occurred. No animal ingress or egress shall be permitted until the animal health emergency has ended.

F. Record: include all vital documents and computer data kept for each animal. These documents include but are not limited to breed registries, importation permits, bills of sale, health certificates, veterinary diagnoses, scheduled and unscheduled health management actions, reproductive outcomes, etc.

G. Permit owner: That person or persons to whom the class A park or lake permit is issued. This person(s) may be a lessee on the land designated for the class A park or lake.

H. CWD: Chronic wasting disease, a transmissible spongiform encephalopathy of cervids.

I. Positive herd: A herd in which a CWD positive animal resided at the time it was diagnosed and which has not been released from quarantine.

J. Suspect herd: A herd for which laboratory evidence or clinical signs suggest a diagnosis of CWD, but for which laboratory results have been inconclusive or not yet conducted.

K. Exposed herd: A herd in which a CWD positive or exposed animal has resided 60 months prior to the diagnosis.

L. Trace-back-herd: An exposed herd in which a CWD positive animal resided in any of the 60 months prior to the diagnosis

M. Trace-forward herd: An exposed herd that has received exposed animals from a positive herd within 60 months prior to the diagnosis of CWD in the positive herd.

N. Shooter animals: Animals designated by an owner or his designee for hunting or harvesting in the park.

O. Single fence: A park surrounded by one continuous fence.

P. Double fence: A park surrounded by two (2) fences, each continuous with one fence surrounding the other and sufficient to prevent nose to nose contact with similar species.

Q. Quarantine fence: A fence, inside or out of a park that is constructed in an animal health emergency.

R. CWD profile: A deer or elk that is at least 12 months of age (adult) that is emaciated and exhibits some combination of clinical signs including abnormal behavior, increased salivation, tremors, stumbling, incoordination, difficulty in swallowing, excessive thirst, and excessive urination.

S. Whole herd or complete

monitoring: Participation by park owners or their designee, where every brainstem (obex) is successfully submitted to an accredited laboratory for CWD testing, regardless if the death is natural or not, following the director's CWD monitoring standards.

T. Herd monitoring: Voluntary participation by park owners or their designee, where brainstem (obex) is successfully submitted to accredited laboratory for CWD testing, following the director's CWD monitoring standards.

U. CWD test sample: Shall be comprised of the brainstem containing the obex region and a sample of cerebellum both identified and preserved in 10% buffered formalin and not frozen. A second sample of cerebellum shall be identified and retained frozen for further testing if required.

[19.35.9.7 NMAC - N, 9-28-01; A, 05-15-02; A, 03-31-03]

**19.35.9.8 POSSESSION
AND RETENTION OF PROTECTED
SPECIES LIVE ANIMALS, BIRDS
AND FISH:**

It shall be unlawful to possess protected species of live animals, birds or fish, as defined in 17-2-3 NMSA 1978, in New Mexico without first obtaining appropriate permits issued by the director of the department of game and fish. Such permits will be issued only for those purposes named in Subsection A of 19.31.10.10 NMAC as described herein. New permits will not be issued until all conditions and/or appeal processes listed herein have been satisfied. A violation of the provisions herein shall subject the permittee or licensee to denial or revocation as described under authority of 17-1-14, 17-3-34 NMSA 1978 and 19.31.2 NMAC.

A. Only members of the following families of fish (except as noted in Subsections D, and E of 19.35.7.8 NMAC) will be considered for retention in New Mexico class A lakes:

- (1) salmonidae
- (2) esocidae
- (3) percichthyidae
- (4) ictaluridae
- (5) centrarchidae
- (6) percidae

B. Only members of the following families of mammals and birds will be considered for retention in New Mexico class A parks: Protected mammals and birds under 17-2-3 NMSA 1978.

C. Permission may be granted by the state game commission to retain prohibited species into New Mexico upon demonstration by the applicant that no possible conflict with native animals, human health or livestock will occur, upon showing of good cause, and/or upon requiring that certain additional conditions are met by the

applicant, and does not conflict with any other law, rule or ordinance.

[19.35.9.8 NMAC - N, 9-28-01]

19.35.9.9 POSSESSION CONDITIONS AND HEALTH

CERTIFICATION: All live protected species of the families bovidae, antilocapridae, and cervidae retained in the state of New Mexico shall meet the following criteria:

A. All class A parks with cervids must participate in a CWD monitoring program if any animal shows a CWD profile, or is identified to come from a positive herd, suspect herd, exposed herd, trace-back-herd or trace-forward herd. All other CWD testing will be voluntary. All voluntary participants in CWD testing will be able to choose either whole herd monitoring or herd monitoring. Regardless of the testing standard chosen, all participants must collect two (2) samples per animal for CWD testing. The formalin preserved brainstem and portion of cerebellum will be submitted for testing and the remaining cerebellum section will be retained frozen for further testing and verification or until written negative results from the submitted samples have been received. Participants must adhere to all of the director's CWD monitoring standards, and when in compliance, will receive an annual certificate. Anyone not adhering to the standards will not receive a certificate and lose their herd status for CWD monitoring accreditation. An owner may appeal this loss of certification to the state game commission.

(1) Testing must be done at the expense of the park owner.

(2) Testing shall be done only at a lab certified for CWD testing by the national veterinary services Laboratory, Ames, IA.

(3) Official statements of CWD testing results from the laboratory must be retained by owners and presented to the department annually.

(4) CWD testing and monitoring shall be established by the director and conform to the director's CWD monitoring standards.

B. Any live cervid leaving the park must be accompanied by a health certificate by an accredited veterinarian.

C. Any protected wildlife leaving a park or lake must also be accompanied by a bill of sale or invoice.

D. Owners must maintain records of animals handled inside the park. Records must be available to the department for inspection annually. These records shall include but not be limited to:

(1) Each animal in parks enrolled in the whole herd program must have at least one unique tattoo inside the ear.

(2) Each animal must have records of its origin and the records must be kept current and available for the lifetime of the animal:

(a) bill of sale if the animal was purchased or donation receipt;

(b) importation permit if the animal was imported into New Mexico;

(c) health certifications of the herd of origin;

(d) birth date and parentage if know and born on the park;

(e) registration records if applicable.

(3) Each animal must have reproductive records if known:

(a) number of offspring produced;

(b) dates of birth;

(c) abortions detected;

(d) failures to conceive.

(4) Records must be kept of all deaths if known:

(a) date of death;

(b) result of CWD testing. CWD testing is mandatory for all animals showing CWD profile in addition to any testing required for a CWD monitoring program;

(c) reason of death including records of veterinary treatment;

(d) results of necropsy if applicable;

(e) name and address of successful hunters for all shooter animals killed.

(5) Health records must be kept and maintained if tested or treated:

(a) vaccinations received and dates;

(b) sickness or disease, treatments, amounts of medications administered, and dates;

(c) non-disease related treatments and dates, such as wormings or supplements.

(6) Records of cut antler harvested:

(a) amounts and dates of harvest;

(b) lists of buyers and dates of sales.

(7) Records of live animal sales:

(a) bills of sales;

(b) names and addresses of buyers;

(c) destinations, dates, and modes of live animal transport away from the park.

E. Feed containing animal products or by-products shall not be administered to cervids.

F. Any positive test for CWD shall constitute an animal health emergency. The department must be notified within 24 hours of the diagnosis. This notification requirement will only be considered met if the owner or designee talks directly to the department's game and fish dispatch at 1-505-827-9376.

(1) The park shall be under

immediate indefinite quarantine. All gates shall remain closed, and all existing fences shall remain standing and maintained at the owner's expense.

(2) The director shall determine what actions will be taken to contain, control, and prevent the immediate spread of the animal health emergency.

The director or his designee shall seek consultation and recommendations from health and disease specialists and will update the commission on these recommendations. The commission will determine the degree of contamination as well as what actions to take or implement on quarantine, treatment, disinfection, isolation, indemnification and destruction.

(3) Owners shall submit all herd records to the department within 72 hours of the diagnosis, and notify all owners of trace-forward and trace-back herds of the positive CWD diagnosis within 72 hour of the diagnosis.

G. Domestic sheep shall not be kept within the boundaries of the park unless the herd is enrolled in the USDA scrapies program.

H. All live protected species of the family salmmonidae retained for propagation and sale outside of the class A lake shall meet the following criteria:

(1) Test annually meeting the same requirements as specified as 19.35.7 NMAC.

(2) Any positive test for any of the pathogens listed in 19.35.7 NMAC shall constitute an animal health emergency. The department must be notified within 24 hours of the diagnosis. This notification requirement will only be considered met if the owner or designee talks directly to a department person either by phone or in-person.

(a) The lake shall be under immediate indefinite quarantine.

(b) Owners shall submit factual copies of all records to the department within 72 hours of the diagnosis, and notify all owners of trace-forward and trace-back lots of fish of the positive diagnosis within 72 hours of the diagnosis.

[19.35.9.9 NMAC - N, 9-28-01; A, 05-15-02; A, 03-31-03]

19.35.9.10 ANIMAL HEALTH

EMERGENCIES: Upon identification of an animal health emergency the director shall determine what immediate actions will be taken to contain, control, and prevent spread of the animal health emergency giving due consideration and direction on quarantine, treatment, disinfection, isolation, indemnification and destruction. The director or his designee shall seek consultation and recommendations from health and disease specialists and update the commission on these recommendations.

The commission will determine the degree of contamination as well as what other actions to take or implement on quarantine, treatment, disinfection, isolation, indemnification and destruction. The director will notify and periodically update the following persons or agencies on the status of the animal health emergency and should consist of at least:

A. the park owner or land management agency representative and/or their legal counsel;

B. the department's assistant attorney general representative;

C. the state veterinarian;

D. the USDA area veterinarian in charge.

E. Escaped animals:

However, if in the opinion of the director, any escaped animal poses a health emergency it shall be captured by the department of game and fish and if necessary destroyed.

[19.35.9.10 NMAC - N, 9-28-01; A, 05-15-02; A, 03-31-03]

19.35.9.11 INTRASTATE TRANSPORTATION:

A. All live cervids transported within the state of New Mexico shall:

(1) be permanently identified with any 2 of the following, implanted with an electronic identification device, tagged with a tamper proof ear tag, and/or tagged with USDA metal ear tags; all numbers shall be registered with the department of game and fish;

(2) be legally possessed;

(3) can only be transferred to other class A park facilities; unless sold for immediate consumption; or

(4) shipped following all applicable laws.

B. Any individual(s) transporting live fish from a class A lake shall:

(1) be required to seek importation and release permits through the process outlined in 19.35.7 NMAC;

(2) legally possess the fish;

(3) ship following all applicable laws.

[19.35.9.11 NMAC - N, 9-28-01]

19.35.9.12 CLASS A PARK AND LAKE APPLICATION AND PERMITTING OF NEW PARKS: New class A park and lake applications will be accepted anytime during the license year. All park and lake licenses will expire March 31st and must be renewed. Applicants or designee shall provide completely factual information on all application and supplemental material requested, included but not limited to:

A. name of owner, address,

telephone number, name of contact person;

B. complete legal description of park or lake, including location (township, range, section); county; size of park or lake (surface acres-lake or water; major use of water; a map of sufficient size and detail to allow the park or water to be located by someone unfamiliar with the area shall be included;

C. species, size, pounds, and number of wildlife to be retained will be specified;

D. purpose of park or lake will be specified;

E. that each park or lake facility shall meet all the specifications listed on the application prior to final approval and no permit will be approved until all conditions and inspections have been completed by a department of game and fish designee;

F. Inclusion of annual fee for processing of application as per 19.30.9 NMAC.

[19.35.9.12 NMAC - N, 9-28-01]

19.35.9.13 RENEWAL OF CLASS A PARKS AND LAKES:

All applicants renewing their class A license shall apply to the department by May 1st of each year and must be received by the close of the business day. Any renewal application received after May 1st will be assessed an administrative fee of \$250.00 in addition to the normal application fee. Any class A park or lake failing to send in or renew their application by June 1st will be deemed delinquent and revocation action may commence following 19.31.2 NMAC.

[19.35.9.13 NMAC - N, 9-28-01]

19.35.9.14 CLASS A PARK AND LAKE FACILITY DESIGN, INSPECTION AND RECORDS:

A. Park enclosure: Each class A park facility shall, at a minimum, conform to all rules listed below and on the application:

(1) No park shall exceed 3200 acres. Any additional acres will result in another class A park and will be considered as a separate park. All conditions of application and renewal shall be adhered to.

(2) Fence height shall be at least seven and one-half feet (7 ½') from ground level to the top wire or fence top. Fence shall be continuous from bottom to top, even if multiple layers must be used.

(3) Fence wire must be a woven wire mesh, consisting of a top and bottom wire at least 12 gauge or its equivalent. Mesh measures shall not exceed six inch by seven (6"X7") openings.

(4) Fence wire shall be taught enough to not allow bottom or top wire mesh to be pushed or maneuvered up or out of the way by force. If this occurs wire

must either be re-stretched or bolstered in some other permanent fashion.

(5) Fence wire must be maintained securely 4 inches (4") or less to the ground. Any fencing that is found to be greater than 4 inches above the ground shall not constitute a proper fence and shall be aproned with permanent material.

(6) All fences must be securely fastened to the posts.

(7) Barbwire may be used on the bottom or top horizontal wires at the owner's discretion.

(8) Posts shall be metal "T" posts, pipe or wooden (at least three and one-half inches (3.5") in diameter; and must be pressure treated with a preservative).

(9) Posts shall be set firmly in the ground and not subject to dislodging.

(10) Posts shall be spaced at intervals not to exceed 18 feet (18') with T-posts or wood; or not to exceed 20 feet (20') on metal pipe.

(11) Parimeter gates shall be constructed to at least the same specification as fence; mesh and height with no more than 4 inches from ground to gate bottom.

(12) All water gaps and arroyos shall be constructed to withstand normal flooding and maintain enclosure.

(13) All fence right-of-ways shall be cleared for a distance of seven and one-half feet (7 ½') on each side of the fence and all dead timber with a height greater than the distance of the fence shall be felled.

(14) Class A park fences shall be constantly maintained as described above, if found contrary, the owner or his designee shall immediately repair any substandard material or specifications. It is the intent of this section that all fences shall be maintained in a game-proof condition at all times and prevent the passing of the game held therein.

(15) All working pens, corrals and holding pens used for processing or temporarily holding animals shall be located inside the park.

(16) If the park fence is to border any other property (private or public) then a signed affidavit must be executed by the park owner to ensure correct placement of fence and verify ownership of property.

B. Park design:

(1) All feeding or baiting sources shall be at least 100 feet from any exterior fence, except holding pens or working facilities.

(2) No placement of feed or bait shall be allowed until the park license has been completely issued and the gates to park closed.

(3) Gates shall remain open until the final inspection and approval by a department designee.

C. Lake enclosure: Each class A lake facility shall conform to all

rules listed below and on the application:

(1) All bodies of water and channels connecting a series or group of lakes under one license shall be identified upon each application.

(2) List and describe all screens and/or other appliances that prevent ingress and egress of fish into and out the bodies of water.

(3) A map of the lake facility and surrounding watershed shall be provided by the applicant upon application.

D. Facility inspections of parks and lakes: Once application is made to the department, the proposed site shall be subject to inspections by a department representative at any reasonable time. Inspections shall also occur at least once per year, upon receipt of renewal of application to inspect the facility and fence integrity. All inspections will be limited to the facility and the animals held therein.

E. Natural disasters: Every owner or his designee shall immediately notify the department of any natural disasters that threaten or compromise the integrity of the facility. The owner or designee must make every effort to maintain animal(s) inside the facility. It shall be unlawful for any owner or designee to intentionally release animals endangered by a natural disaster.

F. Animal escapes: Every owner or his designee shall immediately notify the department of any animal(s) that escapes from a park or lake. It shall be reported when, where, how many and what kind and if possible, sex of escaped animals. Any owner or designee shall immediately attempt to recapture escaped animals after the department has been notified and make every reasonable effort to capture escaped animals and return them to their facility.

G. Park and lake closure or termination: Any park or lake failing to renew by May 1 or each license year will be considered as failing to properly renew and subject its license to revocation according to 19.31.2 NMAC if this should be necessary. Any park, enclosure or lake maintained after May 1st without a license shall be considered in violation of 17-4-9 NMAC this section. No animal shall be released into the wild, but held until certified with disease free status by that testing required by the director. Nothing in this section shall prevent the owner from legally disposing of his property provided that the number of game animals or fish shall not be lessened by disposition from his or her initial application survey or information filed with the department. However disposition must occur immediately as required by all applicable laws.

H. Records:

(1) Any animal disposed or sold from a park or lake must be accompanied

by an invoice signed by the owner or his designee and state the following:

(a) park or lake name and license number;

(b) date of disposition or sale;

(c) kind, number and sex of game animals included in disposition or sale, or if fish, the approximate weight and number.

(2) Each owner shall submit a year-end report to the director by May 1st and state the following: total kind, number and sex of game animals disposed or sold, or if fish, the approximate weight and number for the previous license year.

(3) Owners or his designee shall maintain all health records obtained or created of each animal handled, tested or treated by a certified veterinarian at least for 2 years after the animal has been disposed of. These records shall also include all births, vaccinations (date and type), official lab results and final disposition including death, harvest, etc.

(4) Final disposition if known, shall be documented of every class a park or lake animal.

(5) All such records listed in this section shall be made available for immediate inspection upon request by the director. Any owner or designee that knowingly provides inaccurate or false records will be deemed in violation of this section and subject to revocation proceeding's pursuant to 19.31.2 NMAC

I. Existing parks: Parks permitted prior to August 23, 2001 of this regulation will have five (5) years to bring their park into compliance with this regulation. However, all possession conditions and health certification are mandatory and must begin immediately, even for existing class A parks and lakes. [19.35.9.14 NMAC - N, 9-28-01]

19.35.9.15 DENIAL AND

REVOCATION: Each class A park and lake shall be subject to permit denial or revocation if found to be in violation of this rule or Chapter 17 NMSA 1978. No park or lake application will be approved if fencing or other barrier materials were purchased and/or installed by the department until all costs associated the fencing have been reimbursed back to the department through the appropriate fund.

[19.35.9.15 NMAC - N, 9-28-01]

HISTORY OF 19.35.9 NMAC:
[RESERVED]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.3 NMAC, Section 11, effective 01/31/14.

19.31.3.11 RESTRICTIONS:

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

B. Validity of license or permit: All permits or licenses shall be valid only for the specified dates, eligibility requirements or restrictions, legal sporting arms, bag limit and area. Except that a permit or license will be valid on the contiguous deeded land of private property that extends into an adjacent GMU that is open to hunting for that species, when the license holder is in possession of current, valid written permission from the appropriate landowner. This exception shall only apply when the adjacent unit has the same restrictions as to weapon type, bag limit, season dates and license availability.

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

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

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

to deployment by the United States military that prohibits the licensee from hunting.

F. Donation of permits or licenses: Upon written request from a licensee or their official representative, the director may grant the donation of a hunting license for transfer to a [person] youth 17 years of age or younger who has been qualified through an approved nonprofit [wish-granting] organization that promotes youth hunting, fishing and trapping activities. The donor of the license shall not be eligible for a refund of license or application fees. When a transfer of a license results in a higher license fee due to differences between the original licensee and the new licensee (age, residency, etc.), the difference shall be paid prior to issuance of a license or permit. The state game commission must approve any nonprofit [wish-granting] organizations [that] prior to their participation in receiving, identifying [and] or submitting recipients for donated licenses or permits. However, a once-in-a-lifetime licensee may be reinstated as eligible to participate in future drawings for the same species and hunt type if the licensee donated his or her license to an individual qualified by an approved nonprofit [wish-granting] organization. Donation of a once-in-a-lifetime license will not prohibit the donor from applying for and receiving another license for the same species and restrictions in the future.

G. More than one application: It shall be unlawful to submit more than one application per species for any license issued through a special drawing, unless otherwise permitted by regulation.

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

I. Mobility impaired (MI) deer, elk, oryx, or antelope license qualifications: To hold a mobility impaired deer, elk, oryx, or antelope license, a person must submit verifiable documentation on the proper department form that is attested to by a certified medical physician that

the individual has a mobility restriction which limits their activity to a walker, wheelchair, or two crutches, or severely restricts the movement in both arms or who has a combination of permanent disabilities which cause comparable substantial functional limitation and then obtain department approval for MI hunt eligibility. Every person qualified as MI shall have their card/eligibility expire 48 months from the department's approval date or issuance date, whichever is later, and must resubmit their application and obtain department approval as required above prior to being eligible to apply for any MI hunt.

J. Youth hunts: Only applicants who have not reached their 18th birthday by the opening day of the hunt are eligible to apply for or participate in a youth only hunt. Applicant for firearm hunts must provide hunter education certificate number on application.

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

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

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

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

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

P. Youth encouragement hunts: Only youth hunters as defined

by 19.31.3.11 NMAC that successfully fulfilled all application requirements and responsibilities for draw hunts for deer, elk, antelope, ibex, oryx, or bighorn sheep in the current license year and were unsuccessful in drawing any licenses or permits will be eligible to apply for licenses for these hunts for 14 days subsequent to the original posting of availability of these hunts on the department website. Licenses remaining after the first 14 days of availability shall be available to any youth hunters as defined by 19.31.3.11 NMAC and eligible to purchase an elk license.

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

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

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

[19.31.3.11 NMAC - Rp, 19.31.3.11 NMAC, 12-30-04; A, 6-30-05; A, 9-30-05; A, 10-31-05; A, 3-31-06; A, 6-15-06; A, 4-1-07; A, 8-15-07; A, 3-16-09; A, 3-15-11; A, 9-30-11; A, 1-31-12; A, 1-31-14]

NEW MEXICO LIVESTOCK BOARD

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 32 BRANDS, OWNERSHIP, AND TRANSPORTATION OF ANIMALS
PART 6 HORSE SHELTER RESCUE FUND

21.32.6.1 ISSUING AGENCY:
New Mexico Livestock Board
[21.32.6.1 NMAC - N, 01/31/2014]

21.32.6.2 SCOPE: This rule establishes procedures for the distribution

by the New Mexico Livestock Board of monies from the horse shelter rescue fund.
[21.32.6.2 NMAC - N, 01/31/2014]

21.32.6.3 STATUTORY

AUTHORITY: Sections 77-2-1, 77-2-7, 77-2-30 and 77-2-32, NMSA 1978.
[21.32.6.3 NMAC - N, 01/31/2014]

21.32.6.4 DURATION:

Permanent.
[21.32.6.4 NMAC - N, 01/31/2014]

21.32.6.5 EFFECTIVE DATE:
01-31-2014 unless a later date is cited at the end of a section.
[21.32.6.5 NMAC - N, 01/31/2014]

21.32.6.6 OBJECTIVE: To establish rules to administer the horse shelter rescue fund and to provide methods and procedures for the distribution by the board of monies in that fund to horse rescue and retirement facilities that are registered by the board pursuant to Section 77-2-30, NMSA 1978, as implemented by 21.30.5 NMAC.
[21.32.6.6 NMAC - N, 01/31/2014]

21.32.6.7 DEFINITIONS:
[RESERVED]
[21.32.6.7 NMAC - N, 01/31/2014]

21.32.6.8 DISBURSEMENTS FROM FUND:

A. Subject to the availability of money in the horse shelter rescue fund, monies in the fund may be distributed to reimburse registered horse rescue and retirement facilities to defray the feeding and care expenses incurred by those facilities whenever they provide care and feed to animals that have been placed there by the board or other government agency in accordance with Chapter 77, Articles 2 through 18, NMSA 1978, after owner surrender, the estray process or seizure or court-ordered disposition.

B. Subject to the availability of money in the horse shelter rescue fund, monies in the fund may be distributed to registered horse rescue and retirement facilities, which make application to the board for a grant from the fund, in such amounts as the board determines, in its discretion, are reasonable and appropriate based on its evaluation of the facility's need, the adequacy of care being provided, the volume of animals that are located at the facility, the monetary limitations of grant fund assistance, the number of applications in light of fund limitations and the need to prioritize assistance as deemed appropriate by the board.

C. In no event is the board obligated to distribute monies for

the purposes described in Subsections A and B above and beyond that amount that the board determines, in its discretion, is available for expenditure from the horse shelter rescue fund.
[21.32.6.8 NMAC - N, 01/31/2014]

HISTORY OF 21.32.6 NMAC:
[RESERVED]

NEW MEXICO LIVESTOCK BOARD

This is an amendment to 21.30.6 NMAC, Section 11, effective 01/31/2014.

21.30.6.11 REGULATORY ACTION:

A. ~~[Public grazing and grazing associations. All bulls commingling in grazing association and/or public lands, regardless if private or multiple user permits, shall have the official T. fetus bull test conducted annually. Virgin bulls added to a herd are exempt from testing requirements during their first breeding season.~~

~~(1) If a bull is found positive, the entire bull population, regardless of owners, will be required to have three consecutive negative tests prior to turn out time.]~~

Commingled grazing. All non-virgin bulls commingling in grazing associations or multiple permittee allotments or leases, shall have the official T. fetus bull test conducted annually prior to turn out. A new official test will be required each time the bull(s) enter a different grazing association or multiple permittee allotment or lease.

(1) If a bull is found positive, the entire bull population present on the allotment or lease, regardless of ownership, will be required to have an official T. fetus test conducted. All positive bulls shall be identified with the official New Mexico livestock board "N" brand and be sold for slaughter only. All test negative bulls belonging to the same owner(s) will be required to have a second negative test prior to turn out and a third negative official test after the bull(s) are removed from the grazing association or multiple permittee allotment or lease.

(2) Any stray non-virgin bull from an untested group that enters the grazing area of tested animals may be held under quarantine until the bull has one or more official T. fetus test(s) conducted. The test(s) shall be the responsibility of the bull's owner. The conditions of the quarantine and number of tests will be determined by the state veterinarian.

B. Positive T. fetus bull & herd. Any confirmed T. fetus bovine and its herd (as defined by state animal health officials) shall immediately be placed under quarantine and will continue under

quarantine until the following rules are completed.

(1) Positive T. fetus bulls shall be identified with the official New Mexico livestock board "N" fire brand.

(2) Positive T. fetus bulls shall be quarantined and sent directly to slaughter or to public livestock market for slaughter only. A quarantined feed period may be allowed under special conditions. Positive bulls may be required to move on an official USDA 1-27 permit.

(3) All other bulls in a positive T. fetus herd shall test negative to three consecutive official T. fetus tests at least seven days apart. The third T. fetus test will be completed within 12 months of T. fetus confirmation in the herd and will be conducted after the bulls have had breeding exposure to the cow herd. The bulls will be removed from the cow herd at least seven days prior to the official T. fetus test. If more than 12 months have passed since confirmation of T. fetus in the herd, the state veterinarian may require additional T. fetus testing prior to release of quarantine. The initial negative T. fetus test is included in the three negative tests.

(4) If a disease management plan has not been developed and activated within 30 days of confirmation of T. fetus infection in the herd, all cattle, except steers and spayed heifers, will be required to go directly to slaughter upon leaving the ranch.

C. Reproductive bovine females from a positive T. fetus herd.

(1) Females over 12 months of age (not known to be virgin heifers) from a positive T. fetus herd may be sold direct to slaughter or quarantined on the premises of origin. Individual females will be released from quarantine when there are three consecutive negative T. fetus tests of the entire bull population and the cow(s) has a calf at side with no exposure to other than known negative T. fetus bulls since parturition, has documented 120 days of sexual isolation or is determined by an accredited veterinarian to be at least 120 days pregnant. Heifers known to be virgin at the time of turnout or heifers exposed only to known negative T. fetus bulls and not yet 120 days pregnant are allowed.

(2) Open females shall be sold to slaughter or held in isolation from all bulls for 120 days. Any female sold to slaughter through a livestock market shall be identified with an official New Mexico positive T. fetus tag during the quarantine period.

(3) Breeding by artificial insemination is allowed during the quarantine period and cows confirmed by an accredited veterinarian to be at least 120 days pregnant as well as cows documented to have 120 days sexual isolation will be released from quarantine.

(4) If a disease management plan has not been developed and activated within 30 days of confirmation of T. fetus infection in the herd, all cattle, except steers and spayed heifers, will be required to go directly to slaughter upon leaving the ranch.

D. Regulatory action.

(1) Any stray non-virgin bull from an untested group that enters land of another and commingles with a negative herd may be held under quarantine until the bull has one or more official T.fetus test(s) conducted.

(2) The test(s) shall be the responsibility of the bull(s) owner. The conditions of the quarantine and the number of test(s) will be determined by the state veterinarian.

E. Neighboring facilities of a positive T. fetus herd.

(1) All facilities that share a common boundary with a positive T. fetus herd may be required to test all of the bulls on the facility at their own expense. The decision to require such testing will be made by the state veterinarian based on results of epidemiological investigation.

(2) Any exposed herds found positive on testing will be designated as a positive T. fetus herd.

[21.30.6.11 NMAC - N, 7/15/05; A, 2/26/10; A, 01/31/2014]

NEW MEXICO LIVESTOCK BOARD

This is an amendment to 21.32.4 NMAC, Sections 8 and 10, effective 01/31/2014

21.32.4.8 IMPORT REQUIREMENTS FOR CATTLE, INCLUDING BISON:

A. A health certificate or other approved New Mexico livestock board document from the state of origin and a New Mexico entry permit are required on all shipments of cattle entering New Mexico.

B. Upon arrival at destination, the owner or agent must notify the New Mexico livestock board inspector in order to make the arrangements for inspection of the shipments prior to commingling with other cattle or release to pasture.

C. The inspection will be for the purpose of determining that the shipment has met all applicable import requirements including but not necessarily limited to: scabies dipping, brucellosis testing, tuberculosis testing, brand regulations and inspection to confirm the shipment does conform to the description of the animals as stated on the required permit and health certificate.

D. The test charts and dipping certificates, when applicable, shall

remain with the shipment upon arrival; otherwise the shipment will be quarantined until evidence has been presented.

E. There will be an import inspection charge to be paid at completion of the inspection, except when there is a waiver of import inspection and/or fees for import cattle moving in accordance with a commuter agreement as described in Subsection F of 21.32.3.8 NMAC, below.

F. Import inspections and/or fees will be waived upon request of the owner of bona fide and approved Colorado or Arizona and New Mexico commuter cattle when that owner brings commuter cattle to New Mexico as part of his/her normal commuter cattle operation and when the following conditions are met:

(1) the owner notifies the appropriate New Mexico livestock board inspector prior to movement and furnishes the appropriate New Mexico livestock board inspector with a valid copy of the Colorado or Arizona export inspection within forty-eight hours (two days) after arrival in New Mexico; and

(2) the owner understands that the New Mexico livestock board inspector may conduct a spot check inspection of arriving cattle for which no fee will be charged; and

(3) Colorado and Arizona maintain at least "A" status in the brucellosis eradication program; and

(4) the Colorado board of stock inspection or the Arizona livestock board has conducted a visual and complete inspection of the commuter herd owner's cattle departing Colorado or Arizona; and

(5) all of the cattle arriving from Colorado or Arizona are owned by the commuter herd operator and are those cattle and their offspring, which were originally shipped from New Mexico to Colorado or Arizona and are now returning to New Mexico; none of the cattle arriving are cattle which were introduced into the herd in Colorado or Arizona from sources other than the owner's bona fide and approved commuter herd; and

(6) all health requirements for commuter herd operations are met, to include necessary health certificates and permits.

[3/1/99; 21.32.4.8 NMAC - Rn, 21 NMAC 32.4.8, 12/31/2007; A, 10/30/2008; A, 01/31/2014]

21.32.4.10 TUBERCULOSIS TEST REQUIREMENTS FOR CATTLE AND BISON:

All sexually intact import dairy cattle 4 months of age or older must have a negative tuberculin test within 30 days prior to entry regardless of the status of the state of origin or TB free herd. Exception: May be consigned to a licensed New Mexico auction, where they will be "N" branded, sold for slaughter only and

sent directly to slaughter or a licensed New Mexico feedlot.

[3/1/99, 2/29/2000; 21.32.4.10 NMAC - Rn & A, 21 NMAC 32.4.10, 12/31/2007; A, 12/15/2011; A, 01/31/2014]

NEW MEXICO LIVESTOCK BOARD

This is an amendment to 21.32.10 NMAC, Section 11, effective 01-31-2014

21.32.10.11 BRAND RECORDING FEES

A. The fee for recording a New Mexico livestock brand, pursuant to Sections 77-2-7.4 and 77-2-29, NMSA 1978, is one hundred dollars (\$100.00).

B. The fee for re-recording a New Mexico livestock brand, pursuant to Sections 77-2-7.12 and 77-2-29, NMSA 1978, is one hundred dollars (\$100.00).

C. The fee for transferring ownership of a recorded brand, pursuant to Sections 77-2-7.1 and 77-2-29, NMSA 1978, is one hundred dollars (\$100.00).

D. The fee for recording, or re-recording, a holding brand, pursuant to Sections 77-2-7.9 and 77-2-29, NMSA 1978, is one hundred dollars (\$100.00).

E. For the purpose of affording convenience and ease to brand owners and to lessen the administrative burden and expense to the board, and recognizing that the board causes brand re-recordings to occur every three years as permitted by Section 77-2-7.12, NMSA 1978, an option is offered to brand owners to re-record in optional periods of three years, six years, nine years or twelve years, according to the following fee schedule:

(1) The fee to re-record for a three-year period is one hundred dollars (\$100.00), payable at the commencement of that re-recording period.

(2) If re-record is desired for a six-year period, the fee is two hundred dollars (\$200.00), payable at the commencement of that re-recording period.

(3) If re-record is desired for a nine-year period, the fee is three hundred dollars (\$300.00), payable at the commencement of that re-recording period.

(4) If re-record is desired for a twelve-year period, the fee is four hundred dollars (\$400.00), payable at the commencement of that re-recording period.

F. Brand owners are responsible for updating their current address with the board in order to receive timely communication regarding their re-recording opportunities and obligations.

G. In accordance with Sections 77-2-7.9 and 77-2-29 NMSA 1978, owners of holding brands who desire to extend the duration of a holding brand beyond one year must re-apply annually

and must pay the annual renewal fee of one hundred dollars (\$100.00).

H. When owners of dairy cattle and owners of feedlots re-record their brand or register the alternative to branding as permitted by Section 9 and 10 of 21.32.2 NMAC, they must utilize the same re-recording period chosen for brand re-recording. As provided by those rules, the fee for registering the alternative is the same as, and is in addition to, the fee for brand re-recording.

[3-1-99, 21.32.10.11 NMAC – Rn & A, 21 NMAC 32.10.11, 7-31-2000; A, 07-01-05; A, 07-01-2011; A, 01-31-2014]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.6.3 NMAC, Section 16, effective 1/31/14.

3.6.3.16 NEW MEXICO CERTIFIED APPRAISER

CERTIFICATION: The purpose of the New Mexico certified appraiser certificate is to recognize professionalism and competency in the valuation of property for property taxation purposes. Certified appraisers may use this designation in conjunction with the valuation of a wide range of property as it is customarily defined in their assessment jurisdiction in accordance with New Mexico property tax division's commitment to excellence. To qualify for certification, the following general educational requirements must be fulfilled.

A. To receive a New Mexico certified appraiser certificate from the New Mexico taxation and revenue department an individual must have received credit for the following qualifying educational courses:

(1) IAAO Course 101, *fundamentals of real property appraisal* (30 hours);

(2) IAAO Course 102, *income approach to valuation* (30 hours);

(3) IAAO Course 300, *fundamentals of mass appraisal* (30 hours); and

(4) 30 hours of any of the following:

(a) IAAO Course 201, *appraisal of land*;

(b) IAAO Course 112, *income approach to valuation II*;

(c) IAAO Course 311, *residential modeling concepts*;

(d) IAAO Course 312, *commercial/industrial modeling concepts*; or

(e) IAAO Course 320, *multiple regression analysis*.

B. To receive qualifying

credit for a course, an individual must pass the test with a score of seventy percent or better.

C. Courses taken to satisfy the qualifying educational requirements shall not be repetitive in nature; each course completed shall be credited toward the required number of qualifying education hours, shall represent an increase in appraiser's knowledge and none may be taken online.

D. Courses approved by the New Mexico board of real estate appraisers as qualifying education are allowed but must be at least 30 hours each, not taken online, similar to the above requirements and approved by property tax division prior to the completion of the course.

E. An individual who has received an equivalent real property appraiser certification or licensing from the New Mexico board of real estate appraisers and successfully completed the IAAO Course 300 may seek a waiver of all other educational requirements by submitting a copy of the individual's license/certificate to the property tax division for consideration.

F. An approved IAAO or New Mexico board of real estate appraisers, uniform standards of professional appraisal practice course is highly encouraged at any time during the certification process and for continuing education hours after certification.

G. A minimum of 30 hours of continuing education should be completed every three years by all certified appraisers. Continuing education hours may be completed online and can be IAAO or New Mexico board of real estate appraisers approved courses. Certified appraisers are responsible for maintaining the necessary documentation to demonstrate compliance with the continuing education requirements in this rule.

H. Courses for continuing education credit shall have significant intellectual or practical content and shall deal primarily with matters directly related to appraisal practice or to the ethical obligations of certificate holders. The primary objective of such courses shall be consistent with the taxation and revenue department's charge to protect the public and to increase the professional competency of certificate holders.

[3.6.3.16 NMAC - N, 1/31/14]

End of Adopted Rules Section

Submittal Deadlines and Publication Dates 2014

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Issue Number 3	February 3	February 14
Issue Number 4	February 17	February 28
Issue Number 5	March 3	March 14
Issue Number 6	March 17	March 31
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