

# New Mexico Register

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

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# New Mexico Register

Volume XXVIII, Issue 12

June 27, 2017

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## Notices of Rulemaking and Proposed Rules

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

#### NOTICE OF PUBLIC MEETING AND PUBLIC HEARING

##### Notice of Public Meeting and Public Hearing

The State of New Mexico, through its Oil Conservation Commission hereby gives notice pursuant to law and Commission rules of the following meeting and public hearing to be held at 9:00 a.m. on **July 13, 2017**, in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, before the Oil Conservation Commission. A preliminary agenda will be available to the public no later than two weeks prior to the meeting. A final agenda will be available no later than 72 hours preceding the meeting.

##### **Case No. 15726 IN THE MATTER OF: PROPOSED AMENDMENTS TO SECTION 19 OF 19.15.16 NMAC AND SECTION 16 OF 19.15.7 NMAC, EXTENDING THE TIME FOR REPORTING COMPLETION OF WELLS FROM 20 TO 45 DAYS, AND PROPOSED FURTHER AMENDMENT OF SECTION 19 OF 19.15.16 NMAC TO REQUIRE OPERATORS TO REPORT CERTAIN INFORMATION REGARDING HYDRAULICALLY FRACTURED WELLS IN THE FRAC FOCUS CHEMICAL DISCLOSURE REGISTRY**

The proposed rule amendments are intended to (a) extend the time for reporting completion of wells from 20 to 45 days, and (b) require that disclosures concerning hydraulically fractured wells be made to the extent, and on forms prescribed by, Frac Focus, in lieu of existing Oil Conservation Division (OCD) requirements and forms, and to that end:

(1) amending 19.15.16 NMAC by amending Section 19 to change the date for completion reporting and to require filing of fracturing disclosures through Frac Focus, and (2) amending 19.15.7 NMAC by amending Section 16 thereof to conform the requirements of that rule to amended Section 19 of 19.15.16 NMAC, as proposed.

The proposed rule amendments and the meeting agenda are available from the Commission Clerk, Florene Davidson at (505) 476-3458 or can be viewed on the Hearings Page at the Oil Conservation Division's web site at <http://www.emnrd.state.nm.us/ocd>. Persons **recommending modifications** to the proposed rule amendment must file a notice of recommended modifications with the Commission Clerk no later than 5:00 p.m. on **June 28, 2017**.

The notice must include the text of the proposed rule amendments, an explanation of the impact of the recommended modifications and reasons for adopting the modifications. Persons intending to provide **written comments** on the proposed rule amendments must submit their written comments no later than 5:00 p.m. on **July 6, 2017**, to the Commission Clerk. Persons intending to offer technical testimony at the hearing must file six copies of a **Pre-hearing Statement** conforming to the requirements of 19.15.3.11 NMAC, and six copies of all exhibits the person will offer as evidence at the hearing, no later than 5:00 p.m. on **July 6, 2017**. Proposed modifications and written comments may be hand-delivered or mailed to Ms. Davidson at 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at (505) 476-3462. Pre-hearing Statements must be hand-delivered or mailed to Ms. Davidson at the above address.

If you are an individual with disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the

hearing, please contact Ms. Davidson at (505) 476-3458 or the New Mexico Relay Network at 1-800-659-1779. Public documents can be provided in various accessible formats. Please contact Ms. Davidson if a summary or other type of accessible form is needed. A party who plans on using projection equipment at a hearing must contact Florene Davidson seven (7) business days prior to the hearing, requesting the use of the projection equipment. Wireless internet is available; however, the party must provide its own laptop computer.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 14th day of June, 2017.

#### STATE OF NEW MEXICO OIL CONSERVATION DIVISION

**David Catanach**  
**Director, Oil Conservation Division**  
**S E A L**

### ENVIRONMENT DEPARTMENT

#### NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.6.2 NMAC – GROUND AND SURFACE WATER PROTECTION

The New Mexico Water Quality Control Commission ("WQCC") will hold a public hearing to consider proposed amendments to various sections of 20.6.2 NMAC, Ground and Surface Water Protection, beginning at 9:00 a.m. on November 14, 2017 through November 16, 2017, in Room 307 of the New Mexico State Capitol Building, 490 Old Santa Fe Trail, Santa Fe, New Mexico.

The proposed amendments, docketed as WQCC 17-03 (R), include amendments proposed by the New Mexico Environment Department's ("NMED") Ground Water Quality Bureau, and may potentially include

proposed amendments from other parties that are logical outgrowths of NMED's proposals. Proposed amendments include the addition of several definitions, modifications to variance procedures, changes to the numeric standards to bring those standards more in line with the Maximum Contaminant Levels for each pollutant as specified by the U.S. Environmental Protection Agency under the federal Safe Drinking Water Act, restructuring of the provisions on technical infeasibility and alternative abatement standards, adding an exemption for facilities or activities subject to the authority of the Environmental Improvement Board, and other proposals. The petitions and proposed amendments may be viewed on the WQCC's website, at [www.env.nm.gov/general/wqcc-17-03-r/](http://www.env.nm.gov/general/wqcc-17-03-r/), or during regular business hours by contacting Pam Castaneda, Commission Administrator, 1190 S. St. Francis Drive, Room S-2102, Santa Fe, New Mexico 87502, (505) 827-2425.

The hearing will be conducted in accordance with and pursuant to the New Mexico Water Quality Act, NMSA 1978, § 74-6-6, the Water Quality Control Commission Rulemaking Procedures, 20.1.6 NMAC, and the *Revised Procedural Order*, issued June 2, 2017. A copy of the *Revised Procedural Order* is available on the WQCC's website or may be obtained from the Commission Administrator at the address and phone number above. All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce relevant exhibits and to examine witnesses testifying at the public hearing.

Persons desiring to propose amendments to 20.6.2 NMAC not contained in NMED's Petition, but limited to logical outgrowths of NMED's proposed amendments shall file such proposed amendments with the WQCC no later than 5:00 p.m. on July 27, 2017. Such proposed

amendments shall be accompanied by a statement of reasons for the proposed regulatory change.

Persons desiring to present technical testimony at the hearing must file with the WQCC a written notice of intent. The notice of intent to present technical testimony shall:

- identify the person for whom the witness(es) will testify;
- identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background;
- if the hearing will be conducted at multiple locations, indicate the location or locations at which the witnesses will be present;
- include a copy of the direct testimony of each technical witness in narrative form, and state the estimated duration of the direct oral testimony of that witness;
- include the text of any recommended modifications to the proposed regulatory change; and
- list and attach all exhibits anticipated to be offered by that person at the hearing.

The deadline for filing notices of intent is September 11, 2017 at 5:00 p.m. in the Commission Administrator's office. All documents filed in this matter, including notices of intent, must be filed with a single-sided original and twelve copies; two of which must be hard copies, and ten of which may be electronic copies. Any person may offer non-technical public comment at the hearing or submit a non-technical written statement in lieu of oral testimony at or before the hearing.

In order to present technical testimony rebutting the testimony of another party at the hearing, a person must file a notice of intent to present rebuttal testimony no later than 5:00 p.m. on October 13, 2017. The notice shall comply with the requirements set out above. In addition, if a party takes a position on proposed changes of other

parties, the notice shall include the basis for that support or opposition.

The WQCC may make a decision on the proposed regulatory change at the conclusion of the hearing, or the WQCC may convene a meeting after the hearing to consider action on the proposal.

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Pam Castaneda, WQCC Administrator at least 14 days prior to the hearing date at P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone (505) 827-2425 or email [pam.castaneda@state.nm.us](mailto:pam.castaneda@state.nm.us). (TDD or TTY) users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972.

If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kristine Pintado, Non-Discrimination Coordinator  
New Mexico Environment Department  
1190 St. Francis Dr., Suite N4050  
P.O. Box 5469  
Santa Fe, NM 87502  
(505) 827-2855  
[nd.coordinator@state.nm.us](mailto:nd.coordinator@state.nm.us)



**AVISO DE AUDIENCIA PÚBLICA  
PARA CONSIDERAR LAS  
ENMIENDAS PROPUESTAS  
PARA  
20.6.2 NMAC – PROTECCIÓN  
DE AGUAS SUBTERRÁNEAS Y  
AGUAS SUPERFICIALES**

La Comisión de Nuevo México para el Control de la Calidad del Agua (WQCC por su sigla en inglés) celebrará una audiencia pública para considerar las enmiendas propuestas para varias secciones de 20.6.2 NMAC, Protección de aguas subterráneas y aguas superficiales, que comenzará a las 9:00 de la mañana del 14 de noviembre de 2017 y continuará hasta el 16 de noviembre de 2017, en la Sala 307 del Edificio del Capitolio Estatal de Nuevo México, 490 Old Santa Fe Trail, Santa Fe, Nuevo México.

Las enmiendas propuestas, designadas como WQCC 17-03 (R), incluyen enmiendas propuestas por la Oficina para la Calidad de las Aguas Subterráneas del Departamento del Medio Ambiente de Nuevo México (NMED por su sigla en inglés), y potencialmente podrá incluir enmiendas propuestas por otras partes interesadas, como consecuencia lógica de las propuestas del NMED. Las enmiendas propuestas incluyen la incorporación de varias definiciones, modificaciones de los procedimientos para desviaciones, cambios en los estándares numéricos para ajustarlos a los Niveles Máximos de Contaminantes para cada contaminante en particular según lo especificado por la Agencia de Protección Ambiental de los Estados Unidos conforme a la Ley federal para el agua potable segura, restructuración de las disposiciones relativas a imposibilidades técnicas y estándares alternativos de abatimiento, agregado de una exención para instalaciones o actividades sujetas a la autoridad de la Junta para el Mejoramiento Ambiental, entre otras propuestas. Las peticiones y las enmiendas propuestas podrán examinarse en el sitio web de la WQCC en [www.env.nm.gov/general/wqcc-17-03-r/](http://www.env.nm.gov/general/wqcc-17-03-r/), o durante el

horario normal de oficina por medio de la Administradora de la Comisión: Pam Castaneda, Commission Administrator, 1190 S. St. Francis Drive, Room S-2102, Santa Fe, New Mexico 87502, (505) 827-2425.

La audiencia se llevará a cabo conforme a la Ley de Nuevo México para la Calidad del Agua, NMSA 1978, § 74-6-6, los Procedimientos de Reglamentación de la Comisión para el Control de la Calidad del Agua, 20.1.6 NMAC, y la *Orden de Procedimientos Revisada*, que fue emitida el 2 de junio de 2017. Los interesados podrán examinar la *Orden de Procedimientos Revisada* en el sitio web de la WQCC u obtenerla a través de la Administradora de la Comisión, en la dirección y el número de teléfono antes indicados. Los interesados tendrán una oportunidad razonable durante la audiencia para presentar pruebas pertinentes, datos, puntos de vista y argumentos, oralmente o por escrito, de presentar documentos y objetos de prueba pertinentes y de interrogar a los testigos que testifiquen en la audiencia pública.

Los interesados en proponer enmiendas a 20.6.2 NMAC que no estén incluidas en la Petición del NMED, pero que se limiten a las consecuencias lógicas de las enmiendas propuestas por el NMED, deberán presentar dichas enmiendas propuestas ante la WQCC antes de las 5:00 de la tarde del 27 de julio de 2017. Dichas enmiendas propuestas deben estar acompañadas de una declaración de los motivos del cambio normativo propuesto.

Las personas que deseen presentar testimonio de carácter técnico durante la audiencia deberán presentar ante la WQCC un aviso de intención por escrito. El aviso de intención de presentar testimonio técnico deberá:

- identificar a la persona para quien testificará/n el/los testigo/s;
- identificar a cada testigo técnico que la persona tenga la intención de presentar, y establecer

las cualificaciones de cada testigo, incluso una descripción de sus antecedentes educativos y laborales;

- si la audiencia se realizara en diferentes lugares, indicar el lugar o los lugares en los que el/los testigo/s estará/n presente/s;
- incluir una copia del testimonio directo de cada testigo técnico en forma narrativa, e indicar la duración prevista del testimonio oral directo de ese testigo;
- incluir el texto de toda modificación recomendada para el cambio normativo propuesto; y
- hacer una lista y adjuntar todos los documentos y objetos de prueba que se anticipa que esa persona presentará en la audiencia.

La fecha límite para presentar el aviso de intención es el 11 de septiembre de 2017, hasta las 5:00 de la tarde, en la oficina de la Administradora de la Comisión. Todos los documentos presentados en este asunto, incluidos los avisos de intención, deben presentarse por medio de un original impreso en una sola cara y doce copias, dos de las cuales deben ser en papel y las diez restantes pueden ser copias electrónicas. Cualquier persona podrá ofrecer comentarios públicos que no sean de carácter técnico durante la audiencia o presentar declaraciones escritas que no sean de carácter técnico en lugar de testimonio oral antes o durante la audiencia.

Quienes deseen presentar testimonio técnico que refute el testimonio de alguna de las demás partes durante la audiencia, deberán presentar un aviso de intención de presentar testimonio de refutación antes de las 5:00 de la tarde del 13 de octubre de 2017. El aviso deberá cumplir con los requisitos antes indicados. Asimismo, si una de las partes interesadas tomara una posición con respecto a los cambios propuestos por otras partes, el aviso deberá incluir el fundamento de ese respaldo u oposición.

La WQCC deliberará y tomará una decisión sobre los cambios normativos propuestos posteriormente

a la conclusión del proceso de la audiencia, según lo establecido en la *Orden de Procedimientos Revisada*.

Toda persona que necesite asistencia, intérprete o un dispositivo auxiliar para participar en este proceso deberá comunicarse con Pam Castaneda, Administradora de WQCC, como mínimo 14 días antes de la fecha de la audiencia en P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, por teléfono al (505) 827-2425 o por correo electrónico: [pam.castaneda@state.nm.us](mailto:pam.castaneda@state.nm.us). Los usuarios de TDD o TTY pueden acceder a ese número por medio de New Mexico Relay Network llamando al 1-800-659-1779 (voz) y los usuarios de TTY deberán llamar al 1-800-659-8331.

El Departamento del Medio Ambiente de Nuevo México (NMED, por su sigla en inglés) no discrimina por motivos de raza, color, origen nacional, discapacidad, edad o sexo en la administración de sus programas o actividades, según lo exigido por las leyes y los reglamentos correspondientes. El NMED es responsable de la coordinación de esfuerzos para el cumplimiento de las reglas y la recepción de indagaciones relativas a los requisitos de no discriminación implementados por 40 C.F.R. Parte 7, que incluye el Título VI de la Ley de Derechos Civiles de 1964, como fuera enmendado; la Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975; el Título IX de las Enmiendas de Educación de 1972; y la Sección 13 de las Enmiendas a la Ley Federal de Control de la Contaminación del Agua de 1972.

Si tiene preguntas sobre este aviso o sobre cualquier programa de no discriminación, norma o procedimiento de NMED, puede comunicarse con la Coordinadora de No Discriminación: Kristine Pintado, Non-Discrimination Coordinator  
New Mexico Environment Department  
1190 St. Francis Dr., Suite N4050

P.O. Box 5469  
Santa Fe, NM 87502  
(505) 827-2855  
[nd.coordinator@state.nm.us](mailto:nd.coordinator@state.nm.us)  
Si piensa que ha sido discriminado con respecto a un programa o actividad de NMED, puede comunicarse con la Coordinadora de No Discriminación antes indicada o visitar nuestro sitio web en <https://www.env.nm.gov/NMED/EJ/index.html> para saber cómo y dónde presentar una queja por discriminación.

### **HUMAN SERVICES, DEPARTMENT OF INCOME SUPPORT DIVISION**

#### **NOTICE OF PUBLIC HEARING**

The Human Service Department is required by Federal Law to file a State Plan that describes how the Department will administer the Low Income Home Energy Assistance Program (LIHEAP). The State Plan must be submitted every year to the United States Department of Health and Human Services (DHHS), Administration for Children and Families (ACF). The Department is required to offer a 30-day comment period for the LIHEAP State Plan that includes weatherization prior to submittal.

A public hearing to receive testimony on this proposed regulation will be held on July 27, 2017, at 10:00 a.m. The hearing will be held in the Income Support Division conference room, located on the first floor of Pollon Plaza at 2009 S. Pacheco St., Santa Fe, NM 87505. Parking accessible for persons with physical impairments is available.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at 505-827-6201 or through the New Mexico Relay

system, at 711 or toll free at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

The Department proposes the New Mexico LIHEAP State Plan covering the period of October 1, 2017 to September 30, 2018. All comments received will be considered for the New Mexico LIHEAP State Plan.

A copy of the proposed LIHEAP State Plan is available in written format upon request. Please call the Income Support Division at 1-888-523-0051 or 1-505-827-7258 to request a copy. You may also send a request to:

Human Services Department  
Income Support Division  
Attn: Work and Family Support  
Bureau/ LIHEAP  
P.O. Box 2348  
Santa Fe, New Mexico 87504-2348

The proposed State Plan is available on and can be printed from the Department's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-plans-and-reports.aspx>.

Interested persons may address written or recorded comments to:

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

Interested persons may also address comments via electronic mail to: [HSD-isdrules@state.nm.us](mailto:HSD-isdrules@state.nm.us).

### **PUBLIC EDUCATION DEPARTMENT**

#### **NOTICE OF PROPOSED RULEMAKING**

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300



Don Gaspar, Santa Fe, New Mexico 87501-2786, on August 9, 2017 from 9:00 a.m. to 12:00 p.m. The purpose of the public hearing will be to obtain input on the proposed repeal and replace of 6.32.2 NMAC, Guidelines for Implementing Bilingual Multicultural Education Programs.

The purpose of this proposed rule change is to realign the evaluation and renewal sections of the 6.32.2 NMAC, Guidelines for Implementing Bilingual Multicultural Education Programs to be consistent with the 2004 Bilingual Multicultural Education Act (22-23-1 NSMA) and regulatory goals (6.32.2 NMAC), and include program accountability for academic and language proficiency in English and a second language for all students, not just English Learners. In addition, the proposed rule change aims to further clarify the program approval requirements and align the program element of instruction with the local implementation. The proposed changes would take effect beginning with the 2018-2019 school year.

Interested individuals may provide comments at the public hearing and/or submit written comments to Jamie Gonzales, Policy Division, via email at [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us); fax (505) 827-6681; or directed to Jamie Gonzales, Policy Division, Jerry Apodaca Public Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786. Written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rule may be accessed on the Department's website (<http://ped.state.nm.us/>) under the *Public Notices* link, or obtained from Jamie Gonzales (505) 827-7889.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact

Jamie Gonzales at (505) 827-7889 as soon as possible. The Department requires at least ten (10) days' advance notice to provide requested special accommodations.

## **PUBLIC EDUCATION DEPARTMENT**

### **NOTICE OF PROPOSED RULEMAKING**

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on August 1, 2017 from 9:00 a.m. to 11:00 a.m. The purpose of the public hearing will be to obtain input on the proposed repeal and replace of 6.63.15 NMAC, Licensure for School Health Assistants, grades Pre K-12 and the proposed repeal and replace of 6.63.16 NMAC, Licensure for School Licensed Practical Nurses, Grades Pre K-12.

The proposed rule changes to 6.63.15 NMAC, Licensure for School Health Assistants, grades Pre K-12 and 6.63.16 NMAC, Licensure for School Licensed Practical Nurses, Grades Pre K-12 align language in referenced regulation. Additional changes clarify quality CPR instruction and state the requirement of a background check for all school health assistants.

Interested individuals may provide comments at the public hearing and/or submit written comments to Jamie Gonzales, Policy Division, via email at [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us), fax (505) 827-6681, or directed to Jamie Gonzales, Policy Division, Jerry Apodaca Public Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786. Written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rule may be

accessed on the Department's website (<http://ped.state.nm.us/>) under the *Public Notices* link, or obtained from Jamie Gonzales (505) 827-7889.

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

## **REGULATION AND LICENSING DEPARTMENT**

### **NURSING, BOARD OF**

### **PUBLIC RULE HEARING**

As authorized per Subsection A of Section 61-3-10 NMSA 1978, the New Mexico Board of Nursing (NMBON) will hold a Rules Hearing on Thursday, July 27th 2017. The Rules Hearing will begin at 9:30 a.m. The Rules Hearing will be held at the New Mexico Board of Nursing Conference Room, located at 6301 Indian School RD NE, Suite 710, Albuquerque NM 87110.

The purpose of the rules hearing is to hear public testimony and comments regarding the proposed amendments to the Board's rules and regulations: **(1)** Title 16 Occupational and Professional Licensing, Chapter 12 Nursing and Health Care Related Providers - Part 2 Nurse Licensure, **(2)** Title 16 Occupational and Professional Licensing Chapter 12, Nursing and Health Care Related Providers - Part 3 Nursing Educational Programs and **(3)** Title 16 Occupational and Professional Licensing, Chapter 12 Nursing and Health Care Related Providers - Part 9 Management of Chronic Pain with Controlled Substances.

The purposes of the proposed rule changes are as follows: **1)** Title 16 Occupational and Professional Licensing, Chapter 12 Nursing

and Health Care Related Providers - Part 2 Nurse Licensure is to revise the NMBON fee schedule changing and adding fee's. **(2)** Title 16 Occupational and Professional Licensing Chapter 12, Nursing and Health Care Related Providers - Part 3 Nursing Educational Programs is to amend Program Director requirements as minimum standards for Nursing Educator Programs and **(3)** Title 16 Occupational and Professional Licensing, Chapter 12 Nursing and Health Care Related Providers - Part 9 Management of Chronic Pain with Controlled Substances amending language of the regulations to provide more thorough guidelines to Advanced Practice Nurse prescribing opioids and monitoring their patients use of opioids through the prescription monitoring program.

Persons desiring to view/present their views on the proposed amendments to the rules may download them from [www.bon.state.nm.us](http://www.bon.state.nm.us).

If you do not have Internet access, copies of the proposed rules are available at the NMBON office or may be requested by contacting the NMBON at (505) 235-7466.

Interested parties may submit written comments directly to: The New Mexico Board of Nursing, ATT: NMBON Public Comments, 6301 Indian School Rd. NW, Suite 710, Albuquerque, New Mexico, 87110. Persons wishing to submit written comments regarding the proposed rules should submit them to the board office in writing no later than July 26, 2017. Written comments may also be submitted via email to [ELA.NMBON@state.nm.us](mailto:ELA.NMBON@state.nm.us). If submitting comments via email specify in the subject line the following: NMBON Public Comments. Written comments will be given the same consideration as oral testimony made at the public hearing. All written comments must be received no later than 5:00 p.m. MST, July 26, 2017.

Notice: Any person presenting testimony, who is representing a

client, employer or group, must be registered as a lobbyist through the Secretary of State's Office (505) 827-3600 or do so within 10 days of the Public Hearing.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the NMBON at (505) 841-8344.

The NMBON requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

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### **End Of Notices Of Rulemaking And Proposed Rules**

## Adopted Rules

### Effective Date and Validity of Rule Filings

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

#### FINANCE AND ADMINISTRATION, DEPARTMENT OF

**This is an amendment to 2.61.3  
NMAC, Section 9, effective  
6/27/2017.**

#### 2.61.3.9 APPLICATION SUBMITTAL, PROCESSING, EVALUATION METHODOLOGY, AND EFFECTIVE DATE AND DURATION OF DEDICATION:

**A.** Contents of application. A district requesting a dedication of a portion of the state's increment or the revision of its base year shall submit an application that includes:

(1) a conceptual site plan for the project;  
(2) the tax increment development plan approved by the governing body that includes:

(a) a map depicting the geographical boundaries of the area proposed for inclusion within the district; this map should indicate any existing infrastructure and residential, commercial and industrial structures and development;

(b) the estimated time necessary to complete the project;

(c) a description and the estimated cost of all public improvements proposed for the project;

(d) whether it is proposed to use gross receipts increment bonds or property tax increment bonds or both to finance all or part of the public improvements;

(e) the estimated annual gross receipts tax increment to be generated by the project and the portion of that gross receipts tax increment to be allocated

during the time necessary to complete the payment of the project;

(f) the estimated annual property tax increment to be generated by the project and the portion of that property tax increment to be allocated during the time necessary to complete the payment of the project;

(g) the general proposed land uses for the project;

(h) the number of jobs expected to be created by the project classified at the three digit level of the most recent North American industry classification system (NAICS), and separated into full-time and part time jobs;

(i) the amount and characteristics of workforce housing expected to be created by the project;

(j) the location and characteristics of public school facilities expected to be created, improved, rehabilitated or constructed by the project;

(k) a description of innovative planning techniques, including mixed-use transit-oriented development, traditional neighborhood design or sustainable development techniques, that are deemed by the governing body to be beneficial and that will be incorporated into the project; and

(l) the amount and type of private investment in each project;

(3) information on the availability of other public and private funds for the project, including:

(a) whether it is proposed to finance any portion of the infrastructure using the provisions of Section 5-15-13 NMSA 1978, which permits the

property owners within a district to impose a property tax rate of up to \$5 per \$1,000 of net taxable value for a period of up to four years; and

(b) whether it is proposed to establish an improvement district and finance any portion of the infrastructure using the provisions of Sections 3-33-1 through -43 NMSA 1978, as they may be amended, and whether the bonds sold through this mechanism conform to the limit of twenty-five percent of total property value established in Section 3-33-14 NMSA 1978;

(4) an economic development plan, including an industrial cluster analysis if appropriate, for attracting businesses to the district;

(5) market feasibility study that includes:

(a) the number of residential (single family and multi-family) units and the square footage of commercial, retail and industrial space to be built by calendar year;

(b) the average price per square foot or by unit by type;

(c) the market supply (or availability) and the value of each property type in the area and surrounding areas with reference to any other planned development in the surrounding areas; and

(d) market demand (or absorption rates) for each property type in the area and surrounding areas with reference to any other planned development in the surrounding areas;

(6) economic analysis to include:

(a) employment and salary projections by industry as classified at the three digit level of the most recent North

American industry classification system (NAICS) in the district by calendar year, whether the jobs are temporary (i.e., construction) or permanent employment, and whether the jobs are full-time or part-time;

(b)

population projections by calendar year;

(c)

housing unit projections and type by calendar year;

(d)

economic output from direct and indirect impacts within the district with temporary construction activity listed separately; separate listing of economic base employment within the district, indirect and induced employment within the district and in surrounding areas is optional, but encouraged;

(e)

the anticipated net revenue impact on the state general fund shall be calculated as follows:

(i)

the sum of all general fund revenues generated by economic activity within the district by type of revenue (e.g. gross receipts tax from retail sales, gross receipts tax from services provided to New Mexico businesses, personal income tax, etc.) less: 1) the sum of all general fund costs to the state associated with the provision of services to individuals and businesses (e.g. public schools); 2) the estimated amount of tax incentives provided to promote economic development within the district under current law; 3) the amount of the state's increment requested by the district; and 4) the total amount of capital outlay appropriated for use in the district under current law;

(ii)

the net revenue impact on the state general fund must be expressed in constant dollar terms; and

(iii)

the net present value of general fund revenues less general fund costs over the life of the bonds shall be submitted; a discount rate equal to five percent shall be used in this calculation;

(7) letter from

governing body verifying its ability to pay for operations and maintenance of public infrastructure created by the district and provide basic services such as law enforcement and public health and safety within the district;

(8) a detailed

timeline of project completion, including public infrastructure expenditures;

(9) a financing

plan to include:

(a)

information supporting why tax increment financing is needed;

(b)

debt structure and terms, including maturity and estimated interest rates;

(c)

pro-forma for all bonds to be issued for the project (including property tax increment bonds, if proposed); and

(d)

projected coverage ratios for all bonds;

(10) developer

information to include:

(a)

organizational chart;

(b)

experience in developing similar projects and utilizing tax increment financing;

(c)

audited financial statements for the past three (3) years; and

(d)

identify past and pending administrative actions and litigation in which the developer is involved that could impact the current financial viability of the developer; briefly describe the nature of the proceedings and current status or final result;

(11) any

other information regarding the economic benefits to the project's community and to the state or which the district believes will aid the board in considering the request for the dedication;

(12) enacted

resolution of governing body approving the plan;

(13) enacted

resolution of governing body forming the district;

(14) enacted

resolution of each governing body dedicating a portion of its share of the applicable tax increments;

(15) approved

master development agreement with governing body;

(16) form

of board resolution approving the dedication of a portion of the state's increment; and

(17) in addition

to the submission requirements above, for requests for the approval of a revised base year:

(a)

a detailed project history including a summary of past appearances before the board, legislative efforts related to the project, and activity to date in the district;

(b) a

written summary of the reasons why rebasing is requested and stating the revised base year requested; and

(c)

a certification of the district that the district's base year has never been revised and that no gross receipts tax increment bonds attributable to the district have been issued;

(d)

tabular or verbal comparison of the information provided pursuant to Paragraphs (2) through (6), (8) and (9) of this Subsection at the time a revised base year is requested versus at the time the dedication of a portion of the state's increment was initially approved, with explanations of any substantive changes;

(e) a

copy of the resolution adopted by the district declaring the district's intent to revise its base year;

(f) a

copy of all comments on the intent to revise the base year received from the taxation and revenue department, the developer and the local governments that have dedicated a tax increment to the district; and

(g)

any other related documentation.

**B.** Timeline and submittal requirements. Any application for dedication of a portion of the state's increment or approval of a revised base year shall



be considered by the board at its regular meeting in December or July of each year. Except as provided in this paragraph for applications for the approval of a revised base year, complete applications must be submitted no later than the preceding January 1 for consideration at the board's July meeting, or by July 1 for consideration at the board's December meeting. For applications for a revised base year, the submission requirements of Subsection A, Paragraph 17, Subparagraphs (e), (f), and (g) must be received no more than 45 days after a district's adoption of a resolution declaring the intent to revise its base year. All required materials must be submitted electronically and tables must be submitted as Microsoft Excel files with access to all data, including assumptions and formulae. If a district has not been formed by the submittal deadline, please submit all of the documents listed in Paragraphs (1) through (12) and (16) of Subsection A of 2.61.3.9 NMAC in the initial application, and provide Paragraphs (13), (14) and (15) of Subsection A within five (5) calendar days of adoption or 21 calendar days prior to the meeting at which the board is to consider the application, whichever occurs first. If a governing body has not adopted a resolution pledging a portion of its gross receipts tax increment or its property tax increment or both by this deadline, that resolution shall be provided immediately upon its adoption and, if the adoption does not occur prior to the meeting at which the board is to consider the application, the board may take any action it deems appropriate, such as imposing a condition requiring such dedication or deferring action until a dedication is made. In addition, the board may require informational presentations at a meeting prior to the meeting at which the application is to be considered. Upon request, the board, in its discretion, may waive provision of any information otherwise required by this rule provided that the requesting party can demonstrate that other documents that are provided are

equivalent to or satisfy the rationale for submitting the information and that the state's interest will continue to be sufficiently protected.

(1) In addition to submitting an application to the board, additional copies of an application must be submitted to the department of finance and administration economic analysis unit, the New Mexico finance authority, the taxation and revenue department office of the secretary, and legislative finance committee staff at their respective offices. The board may require the submission of supplemental information during its review process. All information submitted pursuant to this rule will be publicly available.

(2) Prior to initiating the preparation of an application, a developer is encouraged to schedule a "pre-application" conference to discuss the project and proposed methodology with board staff and the economic analysis unit of the department of finance and administration.

(3) The board, in its discretion, may waive certain requirements included in the rule when the application demonstrates why it is in the best interest of the state to do so.

C. Staff methodology. The board will evaluate the project as a whole and evaluate each district on a stand alone basis. The board will utilize the services of the department of finance and administration economic analysis unit and may seek the assistance of an independent economic consultant to evaluate each request. The district is encouraged to submit any additional data that may be helpful for use in this review. The department of finance and administration economic analysis unit or any independent economic consultant will use the following methodology in evaluating each request:

(1) validation of any economic impact models using standard economic impact tools;

(2) determination of the viability of the

project under the following scenarios:

(a) requested tax increment is approved;

(b) requested tax increment is not approved;

(c) some portion of the requested tax increment is approved or increment for less than all districts if multi-district project;

(d) under different assumptions about the relocation of existing businesses within New Mexico, and economic factors such as inflation and economic growth;

(3) evaluation of the project recognizing other economic development efforts by other economic development entities including other districts;

(4) assessment of impact on surrounding communities and non-participating governments;

(5) determination of the ratio of public to private capital contributions and the ratio of state contributions compared to local contributions;

(6) validation of the finance plan; the board will seek input from New Mexico finance authority staff regarding interest rates, coverage ratios and other bond financing features to ensure that they are reasonable and appropriate; and

(7) in the case of applications for approval of a revised base year, review of public comments received from the taxation and revenue department, the department of finance and administration, the developer and the local governments that have dedicated a tax increment to the district following the district's adoption of a resolution indicating the district's intent to revise its base year.

D. Board approval, effective date and duration.

(1) The board's approval of the dedication of a portion of the state's increment or of a revised base year shall be effective January 1 or July 1 following legislative and, if



required, department of finance and administration approval of the bonds, whichever date next succeeds the last approval to be obtained] board action. The board may condition its dedication on the approval by the legislature of the issuance of bonds. In that case, the dedication shall be effective on the January 1 or July 1 following legislative and, if required, department of finance and administration approval of the bonds, whichever date next succeeds the last approval to be obtained.

(2)

[In the event legislative, and if required, department of finance and administration approval of bonds is not obtained within four (4) years from the date of the board's approval of the dedication of a portion of the state's increment the board's approval of the dedication shall expire unless the district requests and receives approval of an extension from the board prior to the expiration of the dedication.] Dedications which require legislative approval of bonds and bonds requiring department of finance and administration approval must be approved within four years of the board's approval of the dedication unless the district requests and receives approval of an extension of time from the board prior to the expiration of the four year period. For dedications approved by the board prior to July 15, 2010, an extension may be requested from the board on or before its December 2014 meeting. Any request for extension of dedication shall specify the requested extension period, include a description of efforts to receive legislative, and, if required, department of finance and administration approval of the bonds, and provide updated economic and financial information about the district and the project that is sufficient to allow the board to make a finding that approval of the extension of dedication is in the best interest of the state.

(3) Any

substantive change to the tax increment development plan after a dedication has been made must be

reported to the board pursuant to Subsection E of 2.61.3.10 NMAC and will require board approval, without which the board's approval of the dedication shall expire.

(4) A

dedication shall expire upon full payment or early defeasance of the bonds in full.

[2.61.3.9 NMAC - N, 10/15/2008; A, 7/31/2014; A, 6/27/2017]

## GAME AND FISH, DEPARTMENT OF

**This is an amendment to Sections 8, 13 and 14 of 18.15.3 NMAC, effective 6/27/2017.**

### 18.15.3.8 EQUIPMENT REQUIREMENTS:

#### A. Safety helmets:

All OHV operators and passengers ~~[operating on paved streets or highways and all off-highway motor vehicle operators and passengers]~~ under the age of 18 shall wear safety helmets that comply with the safety standards of Title 49 Transportation, Chapter V - National Highway Traffic Safety Administration, Department of Transportation, Part 571-Federal Motor Vehicle Safety Standards, Subpart B-Federal Motor Vehicle Safety Standards, Standard No. 218, Motorcycle helmets of the Code of Federal Regulations (49CFR571.218); or with the safety standards of the United Nations Economic Commission for Europe Regulation 22.05, or their superseding standards. A decal exhibiting the symbol DOT in conformance with 49CFR571.218, or the symbol ECE22.05 in conformance with ECE Regulation 22, permanently affixed to a safety helmet shall constitute prima facie evidence of compliance with this standard.

#### B. Eye protection:

All OHV operators and passengers ~~[operating on paved streets or highways in accordance with a resolution adopted by a local authority or state transportation commission and at all times those operators and passengers less than]~~ under the age of 18 [years of age must] shall wear eye

protection that meets or exceeds the Vehicle Equipment Safety Standards Regulations VESC-8 (Minimum Requirements for Motorcycles, Eye Protection Section 11-1306(e) or the American national standards institute (ANSI) Standard Z87.1 and more generally known as safety glasses, safety goggles, or a face shield. Additionally, the protective eyewear must be free of scratches and fastened securely in the manner that the eyewear's manufacturer prescribes.

#### C. Age-appropriate size-fit standards for ATVs:

Standards governing the relationship between the engine size (displacement measured in cubic centimeters, or cc.) of an ATV and the minimum age an operator must attain before operating an ATV of that engine size, combined with objective measurements of how a rider physically fits on an ATV and can operate basic controls, are called "age-appropriate size-fit standards" and include, but are not limited to:

(1) No person

less than six years of age shall operate an ATV on public land.

(2) Operators

less than 10 years of age shall not operate an ATV with an engine size larger than 110 cubic centimeters and shall comply with the physical fit standards set forth below in Subsection D of this section.

(3) Operators

from 10 through 15 years of age shall not operate an ATV with an engine size larger than 250 cubic centimeters and shall comply with the physical fit standards set forth below in Subsection D of this section.

(4)

Notwithstanding Paragraph (3) of this subsection, operators who are 14 or 15 years of age and who possess a valid driver's license may operate an ATV with an engine size not larger than 450 cubic centimeters.

(5) Operators

at least 16 years of age and less than 18 may operate an ATV with an engine size larger than 250 cubic centimeters and shall comply with the physical fit standards set forth below in Subsection D of this section.

#### D. Physically-

**appropriate size-fit standards**

**for ATVs:** Unless the relationship between an operator and the ATV being operated complies with the following standards, it is a violation of the age-appropriate size-fit standards of these rules, regardless of whether the operator is in compliance with the engine size standards set forth above in Subsection C preceding this section.

(1) **Seat clearance when standing:** The minimum clearance between the ATV seat and the operator's inseam while standing on the operator's foot rests should be three inches. The intent for requiring minimum clearance is two-fold: first, to permit the rider to stand up and absorb shocks through the legs while traversing rough terrain; second, to minimize the possibility of the rider being struck by the seat and catapulted over the handle bars.

(2) **Upper leg position when seated:** The upper portion of the operator's leg, roughly from the top of the knee to the hip, should be approximately horizontal when seated. Minor departures a little above or below the horizontal are not violations of this standard, but gross departures (knees visibly significantly below or above the hips) shall warrant further inquiry and may constitute a violation of this standard. Knees that are significantly above the hips and which contact the handlebars in either direction when they are turned constitute a violation of this standard.

(3) **Foot reach:** With the boot or shoe placed in the proper position upon the foot rest or on the running board, the toe should be able to operate the foot brake (on an ATV so equipped) with a simple downward rotation of the foot. The rider should be able to operate the brakes consistently with no impairment of full range of motion. The same standard applies to the operator's boot or shoe and the foot-operated shift lever (on an ATV so equipped).

(4) **Handlebar grip reach:** With the rider in the normal seated position (not leaning forward) and the hands on the

handlebar grips, the elbows should have a distinct angle between the upper arm and the forearm. If the operator's posture is such that the operator's arms present a straight line from wrist to shoulder, then the operator's ability to maintain directional control of the ATV is compromised, particularly in rough terrain.

(5) **Throttle and engine stop switch:** With the hands in the normal operating position and the handlebars turned fully either left or right, the operator must be able to operate the throttle and engine stop switch.

(6) **Hand-brake lever or clutch lever reach:** With the hands in the normal operating position and the handlebars turned fully either left or right the first joint (from the tip) of at least one finger should be able to extend beyond the hand-brake levers (or clutch lever on an ATV so equipped) and fully operate the hand levers. If not, the hands are too small to grasp the levers effectively.

**E. Age-appropriate size-fit standards for ROVs and ROV youth models:** Standards governing the relationship between the engine size (displacement measured in cubic centimeters, or cc.) of an ROV or ROV youth model and the minimum age an operator must attain before operating an ROV or ROV youth model of that engine size, combined with objective measurements of how a rider physically fits in an ROV or ROV youth model and can operate basic controls, are called "age-appropriate size-fit standards" and include, but are not limited to:

(1) **No person** under six years of age shall operate an ROV or ROV youth model on public land.

(2) **Operators** at least six and less than 10 years of age shall not operate an ROV or ROV youth model with an engine size larger than 200 cubic centimeters and shall comply with the physical fit standards set forth below in Subsection F of this section.

(3) **Operators** at least 10 years of age and less than 18 years of age shall comply with the physical fit standards set forth below in Subsection F of this section

**F. Physical-appropriate size-fit standards for ROVs and youth-model ROVs:**

Unless the relationship between an operator and the ROV or ROV youth model being operated complies with the following standards, it is a violation of the age-appropriate size-fit standards of these rules, regardless of whether the operator is in compliance with the engine size standards set forth above in Subsection E of this section.

(1) **The operator** shall be able to reach and fully operate the pedals with the operator's back flat against the driver's seat and with the operator's seatbelt properly fastened.

(2) **The operator** shall be able to reach the steering wheel and turn the wheel fully in both directions with arms slightly bent while keeping the operator's back flat against the driver's seat with the operator's seatbelt properly fastened.

[18.15.3.8 NMAC - Rp, 18.15.3.8 NMAC, 10/14/2016; A, 6/27/17]

**18.15.3.13 DISPLAY OF OHV REGISTRATION PLATES OR DECALS:**

**A. All OHVs:** shall display a registration decal or plate assigned to the vehicle and issued by the division, or a suitable decal as issued by the department, which shall contain the year and month in which it expires, except for OHVs exempted or owned by those persons exempted under Section 66-3-1005 NMSA 1978.

**B. Registration plate or decal:** shall at all times be securely affixed to the vehicle for which it is issued, and shall be mounted or affixed in a position clearly visible, shall be maintained in a condition so as to be clearly legible, and displayed only for the period for which it is valid. Nothing shall be used to block, dim, or cover any portion of the plate

or decal. All registration plates or decals issued on or after January 1, 2012 shall be displayed as follows:

(1) OHMs shall display decal horizontally on the left fork leg of the motorcycle, and shall be visible from the left side of the motorcycle.

(2) ATVs shall display decal horizontally on the left rear quadrant on permanent body or frame and visible from the left side of the all-terrain vehicle.

(3) ROVs and youth-model ROVs shall display decal horizontally on the left front quarter panel of a recreational off-highway vehicle.

(4) Snowmobiles shall display decal horizontally on the left tunnel on the back of snowmobile.

(5) SOHV shall display decal on the left side, on the front quarter of the machine.

(6) Failure to comply with any part of this section constitutes grounds for revocation or suspension.

**C. Exceptions:** No off-highway vehicle shall deviate from this display requirement except:

(1) if displaying a valid license plate, temporary registration, or dealer demonstration permit visible from the rear of the vehicle; or

(2) non-residents who have a valid OHV permit displayed on their OHV that is currently in compliance with another state's OHV registration, user fee or similar law or rule demonstrated by certificate of registration, permit or similar evidence.

**D. Replacement fee:** The division shall charge a transition fee of seven dollars fifty cents to replace a previously issued license plate with a decal when requested by the registered owner of an OHV. The previously issued license plate will be surrendered upon issue of a decal, and the decal will be valid for the remaining term of the registration.

**E. Special off-highway motor vehicle paved road use vehicle plates:** In addition

to an OHV registration decal, an OHV operated on a paved road in compliance with the provisions of 66-3-1011 NMSA 1978 shall display a standardized special off-highway motor vehicle paved road use vehicle plate issued by the division, in accordance with the provisions of the Motor Vehicle Code, and for which the fee has been paid.

[18.15.3.13 NMAC - Rp, 18.15.3.12 NMAC, 10/14/2016; A, 6/27/17]

#### **18.15.3.14 OPERATION ON STREETS AND HIGHWAYS:**

**A.** A person shall not operate an off-highway motor vehicle on any:

(1) limited access highway or freeway at any time;

(2) paved street or highway except as provided in Subsection B of this section, or except in compliance with the provisions of 66-3-1011 NMSA 1978 (the Off-Highway Motor Vehicle Act); or

(3) pedestrian walkways and non-motorized trails.

**B.** Off-highway motor vehicles may cross streets or highways, except limited access highways or freeways, if the crossings are made after coming to a complete stop prior to entering the roadway. Off-highway motor vehicles shall yield the right of way to oncoming traffic and shall begin a crossing only when it can be executed safely and then cross in the most direct manner as close to a perpendicular angle as possible.

**C.** If authorized by ordinance or resolution of a local authority or the state transportation commission, an ROV or an ATV may be operated on a paved street or highway owned and controlled by the authorizing entity if:

(1) the vehicle has one or more functioning headlights and one or more functioning taillights that comply with the Off-Highway Motor Vehicle Act;

(2) the vehicle has brakes, mufflers, and mirrors [attached to the left and right side,]

providing an unobstructed view to the rear;

(3) [the operator has a valid driver's license, instruction permit or provisional license and an off-highway motor vehicle safety;] the operator has a valid driver's licenses or permits as required under the Motor Vehicle Code and off-highway motor vehicle safety permits as required under the Off-Highway Motor Vehicle Act;

(4) the operator is insured in compliance with the provisions of the Mandatory Financial Responsibility Act;

(5) [the operator of the vehicle and all occupants are wearing approved eye protection and an approved safety helmet in compliance with Rule 18.15.3 NMAC; and] the operator of the vehicle is appropriately wearing approved eye protection in compliance with 18.15.3.8 NMAC;

(6) the operator of the vehicle is under 18 years of age and appropriately wearing an approved safety helmet in compliance with Rule 18.15.3.8 NMAC; and

[~~(6)~~] (7) the operator is in compliance with all existing traffic laws, including speed limits and operating restrictions as may be established by local authority or the state transportation commission.

[18.15.3.14 NMAC - N, 10/14/2016; A, 6/27/17]

#### **HUMAN SERVICES, DEPARTMENT OF INCOME SUPPORT DIVISION**

**This is an amendment to 8.139.410 NMAC, Section 9, effective 07-01-2017.**

**8.139.410.9 CITIZENSHIP AND ~~[ALIEN STATUS]~~ IMMIGRATION STATUS FOR ELIGIBILITY:** [Participation in SNAP is limited to individuals who live in the United States, and who are U.S. citizens or aliens with eligible immigration status. Among those



ineligible for participation are alien-visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in another country.] Participation in SNAP is limited to individuals who live in the United States and who are U.S. citizens or are otherwise eligible per the criteria below. The department will determine eligibility for non-citizens in accordance with 7 CFR 273.2 and 7 CFR 273.4.

**A. Eligibility:** No individual is eligible to participate in SNAP unless that individual is otherwise eligible and is:

- (1) a U.S. citizen;
- (2) a U.S. non-citizen national
- (3) an American Indian who is:
  - (a) an American Indian born in Canada who possesses at least fifty percent of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) (8 U.S.C. 1359) apply; or

- (b) a member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians;

(4) **Hmong or Highland Laotian who is:**

- (a) a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975 who is lawfully residing in the U.S.;

- (b) the spouse, or surviving spouse of such Hmong or Highland Laotian, or

- (c) an unmarried or surviving dependent child who is under the age of 18 or if a full-time student under the age of 22; or an unmarried disabled child age

18 or older if the child was disabled and dependent on the person prior to the child's 18th birthday of such Hmong or Highland Laotian:

(5) **Human trafficking victim who is:**

- (a) certified by the DHS, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA;

- (b) under the age of 18, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA;

- (c) the spouse, child, parent or unmarried minor sibling of a victim of a severe form of trafficking in persons under 21 years of age, and who has received a derivative T visa, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA;

- (d) the spouse or child of a victim of a severe form of trafficking in persons 21 years of age or older, and who has received a derivative T visa, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA.

**B. Qualified and eligible alien:** An individual who is in a qualified immigration status for SNAP eligibility as defined in Subsection B below.

(1) **Qualified Eligible Status:** An alien may qualify for participation in SNAP if the alien meets at least one of the criteria from Paragraph (1) below and one definition of "eligible alien" as defined in Paragraph (2) below.

(2) **Qualified alien:** A "qualified alien" means:

- (a) an alien who is lawfully admitted for permanent residence under the INA;

- (b) an alien who is granted asylum under section 208 of the INA;

- (c) a refugee who is admitted to the United States under section 207 of the INA;

- (d) an alien who is paroled into the U.S.

under section 212(d)(5) of the INA for a period of at least one year;

- (e) an alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) of the INA;

- (f) an alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;

- (g) an alien, an alien child's parents or an alien child who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse;

- (h) an alien who is a Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

(3) **Eligible aliens not subject to the five year-bar:**

A qualified alien, as defined in Paragraph (1) of this Subsection, is eligible to receive SNAP and is not subject to the requirement to be in a qualified status for five years as set forth in Subparagraph (b) of Paragraph (2) of this section, if the individual meets at least one of the criteria of Paragraph (2):

- (a) an alien age 18 or older lawfully admitted for permanent residence under INA who has 40 qualifying quarters as determined under Title II of the SSA, including qualifying quarters of work not covered by Title II of the SSA, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased.

- (b) an alien admitted as a refugee under section 207 of the INA;

- (c) an alien granted asylum under section

208 of the INA;

~~(d) an alien whose deportation is withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) of the INA;~~

~~(e) an alien granted status as a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980);~~

~~(f) an Amerasian admitted pursuant to section 584 of Public Law 100-202, as amended by Public Law 100-461;~~

~~(g) an alien with one of the following military connections:~~

~~(i) a veteran who was honorably discharged for reasons other than alien status, who fulfills the minimum active-duty service requirements of 38 U.S.C 5303A(d), including an individual who died in active military, naval or air service;~~

~~(ii) an individual on active duty in the armed forces of the U.S. (other than for training);~~

~~(iii) the spouse or surviving spouse of a veteran or active duty military alien described above provided the spouse has not remarried;~~

~~(iv) a child or surviving child of a deceased veteran (provided such child was dependent upon the veteran at the time of the veteran's death) who is under the age of 18 (if a full-time student, under the age of 22); or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18<sup>th</sup> birthday;~~

~~(h) a qualified alien who is lawfully residing in the U.S. and is receiving benefits or assistance for blindness or disability as defined in Paragraph (23) of Subsection A of 8.139.100.7 NMAC;~~

~~(i) an individual who on August 22, 1996, was lawfully residing in the U.S., and was born on or before August 22,~~

1931; or

~~(j) an individual who is lawfully residing in the U.S. and is under 18 years of age.~~

~~(4) Eligible aliens subject to the five year bar:~~  
The following qualified aliens, as defined in Paragraph (1) above, must be in a qualified status for five years before being eligible to receive SNAP. The five years in qualified status may be either consecutive or non-consecutive. Temporary absences of less than six months from the United States with no intention of abandoning U.S. residency do not terminate or interrupt the individual's period of U.S. residency. If the resident is absent for more than six months, ISD shall presume that U.S. residency was interrupted unless the alien presents evidence of their intent to resume U.S. residency. In determining whether an alien with an interrupted period of U.S. residency has resided in the U.S. for five years, the agency shall consider all months of residency in the U.S., including any months of residency before interruption:

~~(a) an alien 18 or older lawfully admitted for permanent residence under the INA;~~

~~(b) an alien who is paroled into the U.S. under section 212(d)(5) of the INA for a period of at least one year;~~

~~(c) an alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of abuse, an alien whose child has been battered or subjected to cruelty, or an alien child whose parent has been battered;~~

~~(d) an alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980.~~

~~(5) Quarters of coverage:~~

~~(a) SSA reports quarters of coverage through the quarters of coverage history system (QCHS);~~

~~(b)~~

An alien lawfully admitted for permanent residence under the INA who has 40 qualifying quarters as determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased.

~~(i) A spouse may not get credit for quarters of a spouse when the couple divorces prior to a determination of SNAP eligibility.~~

~~(ii) If eligibility of an alien is based on the quarters of coverage of the spouse, and then the couple divorces, the alien's eligibility continues until the next recertification. At that time, ISD shall determine the alien's eligibility without crediting the alien with the former spouse's quarters of coverage.~~

~~(c) Disputing quarters:~~ If an applicant disputes the SSA determination of quarters of coverage reported by QCHS, the individual may participate for up to six (6) months pending the results of an SSA investigation. The individual or HSD must have requested an investigation from SSA in order to participate. The household is responsible for repayment of any SNAP benefits issued for such individual during the investigation if SSA determines that the individual cannot be credited with 40 quarters of coverage under Title II of the Social Security Act.

~~(6) Federal means-tested benefit:~~ After December 31, 1996, a quarter in which an alien received any federal means-tested public benefit, as defined by the agency providing the benefit, or actually received SNAP benefits is not creditable toward the 40-quarter total. A parent's or spouse's quarter is not creditable if the parent or spouse actually received



any federal means-tested public benefit or actually received SNAP in that quarter. If the alien earns the 40th quarter of coverage prior to applying for SNAP benefits or any other federal means-tested public benefit in that same quarter, ISD shall allow that quarter toward the 40 qualifying quarters total.

(a)

Federal means-tested benefits include, but may not be limited to, benefits from:

(i)

SNAP;

(ii)

the food assistance block grant programs in Puerto Rico, American Samoa, and the Commonwealth of the Northern Mariana Islands;

(iii)

supplemental security income (SSI);

(iv)

TANF block grant under Title IV of the Social Security Act.

(b)

For purposes of determining whether an alien has or has not received a federal means-tested benefit during a quarter, the definition of federal means-tested benefit shall not include:

(i)

medical assistance under Title XIX of the Social Security Act (medicaid) for emergency treatment of an alien, not related to an organ transplant procedure, if the alien otherwise meets eligibility for medical assistance under the state plan;

(ii)

short-term, non-cash, in-kind emergency disaster relief;

(iii)

assistance or benefits under the National School Lunch Act;

(iv)

assistance or benefits under the Child Nutrition Act of 1966;

(v)

public health assistance (not including any assistance under Title XIX-medicare) for immunizations, and testing and treatment of symptoms of communicable diseases, whether or not such symptoms are caused by communicable diseases;

(vi)

payments for foster care and adoption

assistance under Part B and E of Title IV of the Social Security Act for a parent or child who would, in the absence of the restriction of eligibility for aliens contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, be eligible for such payments made on the child's behalf, but only if the foster or adoptive parent (or parents) of such child is a qualified alien;

(vii)

programs, services, or assistance, delivering in-kind services at the community level and necessary for the protection of life or safety, that do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided, on the individual recipient's income or resources;

(viii)

programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965, and titles III, VII, and VIII of the Public Health Service Act;

(ix)

means-tested programs under the Elementary and Secondary Education Act of 1965;

(x)

benefits under the Head Start Act;

(xi)

benefits under the Workforce Investment Act.

(7)

**Adjustments in status:** Each category of eligible alien status stands alone for purposes of determining eligibility.

(a)

When a qualified alien determined to be an eligible alien not required to meet the five year bar adjusts to an eligible alien status that must meet the five year bar they will not lose SNAP eligibility.

(b)

Upon expiration of one eligibility status, ISD must determine if eligibility exists under another status.

**C. Verification of citizenship/eligible alien status:**

U.S. citizenship verification is required only when client statement of citizenship is inconsistent with statements made by the applicant

or with other information on the application, previous applications, or other documented information known to HSD:

(1) U.S.

**citizenship:** Any member whose U.S. citizenship is questionable is ineligible to participate until proof of U.S. citizenship is obtained. The member whose citizenship is questionable shall have all of his resources and a pro rata share of income considered available to any remaining household members.

(2) Eligible

**alien status:** Verification of eligible alien status is mandatory at initial certification. Only those household members identified as aliens with qualified and eligible alien status are eligible to participate in SNAP.

(3) Ineligible

**or questionable alien status:** Any household member identified as an ineligible alien, or whose alien status is in question cannot participate in SNAP. ISD is responsible for offering to contact the immigration and naturalization service if the alien has a document that does not clearly indicate eligible or ineligible alien status.

**D. Need for documentation:**

(1) Household

members identified as aliens must present information or documentation, such as but not limited to, an A-number, an I-94 number, a letter, notice of eligibility, or identification card which allows ISD to establish that the alien is in an eligible immigration status.

(2) ISD shall

allow aliens a reasonable opportunity to submit acceptable information or documentation of eligible alien status. Any individual missing necessary verification of citizenship, national status or eligible immigration status is allowed a reasonable opportunity period in accordance with 8.200.410.10 NMAC

(3)

If verification of an applying individual's eligible status is not provided by the deadline, the eligibility of the remaining household

members shall be determined.

Verification of eligible immigration status provided at a later date shall be treated as a reported change in household membership.

(4) During the application process, if an individual has been determined to be a qualified alien and either the individual or HSD submits a request to a federal agency for documentation to verify eligible alien status, HSD must certify the individual for up to six months pending the results of the inquiry. The six-month time limit begins in the month the original request for verification is made.

(5) **Inability to obtain verification:** If a household indicates an inability to provide attestation of an eligible immigration status for any applying member of the household, that member shall be considered an ineligible alien.

**E. Failure to cooperate:** If a household, or household member, indicates an unwillingness to provide attestation, information or documentation of an eligible immigration status for any applying member, that member shall be considered an ineligible alien. ISD shall not continue efforts to get the necessary information.

**F. Reporting illegal aliens:**

(1) HSD shall inform the local DHS office only when an official determination is made that any member of a household who is applying for or receives benefits is present in the US in violation of the INA. An official determination that an illegal alien is in the US in violation of the INA is only made when:

(a) the alien's unlawful presence is a finding of fact or conclusion of law that is made by HSD as part of a formal determination about the individual's eligibility; and

(b) HSD's finding is supported by a determination by DHS or the executive office of immigration review (EOIR) that the non-citizen is unlawfully residing in the US, such as

a final order of deportation;

(2) A systematic alien verification for entitlements (SAVE) response showing no service record on an individual or an immigration status making the individual ineligible for a benefit is not a finding of fact or conclusion of law that the individual is not lawfully present.

(3) Illegal alien status is considered reported when ISD enters the information about the non-citizen on the household's computer file.

**G. Income and resources of ineligible aliens:** All the resources and a prorated share of income of an ineligible alien, or of an alien whose alien status is unverified, shall be considered in determining eligibility and SNAP benefit amount for the remaining eligible household members.] No individual is eligible to participate in SNAP unless that individual is otherwise eligible and is:

A. A U.S. citizen;

B. A U.S. non-citizen national;

C. An individual who is:

(1) a member of Hmong or Laotian tribe during the Vietnam era, when the tribe militarily assisted the U.S.; (including a spouse, surviving spouse, or child of tribe member) who are lawfully present in the U.S.;

(2) an American Indian born in Canada who possesses at least fifty percent of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act apply; or a member of an Indian tribe as defined at section 4(e) of 25 U.S.C. 450b(e) which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians; or

(3) a victim of human trafficking and their derivative beneficiaries, in accordance with 7 CFR 273.4(a)(5); or

D. A qualified immigrant meeting the criteria in Subsection D, Paragraph (2) below:

(1) A qualified immigrant is a:

(a)

lawful permanent resident;

(b)

refugee;

(c)

asylee;

(d)

person granted withholding of deportation or removal;

(e)

conditional entrants, (in effect prior to April 1, 1980);

(f)

person paroled into the U.S. for at least one year;

(g)

Cuban/Haitian entrants;

(h)

battered spouses and children with a pending or approved self-petition for an immigrant visa and whose need for benefits has a substantial connection to the battery or cruelty (including qualified parents, spouses, and children of same), or battered spouses and children with an application for cancellation of removal or suspension of deportation, and whose need for benefits has a substantial connection to the battery or cruelty (including qualified parents, spouses, and children of same).

(2) Qualified immigrants are eligible only if they:

(a)

were 65 or older and were lawfully residing in the U.S. on August 22, 1996, or

(b)

are under age 18, or

(c)

have been in "qualified" immigrant status for at least five years, or

(d)

are lawful permanent residents who have worked or can be credited with 40 qualifying quarters of employment, or

(e)

were granted refugee or asylum status or withholding of deportation/removal; or

(f)

are a Cuban/Haitian entrant, or Amerasian immigrant, or

(g)

are receiving blindness or disability-related assistance or

**(h)**

are a veteran, active duty military; or the spouse, or the surviving spouse who has not married, or the child.

**(i)**

are in Iraqi or Afghan special immigrant status.

**E.** Verification of immigrant status is determined in accordance with 7 CFR 273.2(f) and reasonable opportunity is provided pursuant to 7 CFR 273.2(f)(1)(c). [02/01/95, 07/01/98, 02/01/99; 8.139.410.9 NMAC - Rn, 8 NMAC 3.SNAP PROGRAM.412, 05/15/2001; A, 02/14/2002; A, 10/01/2002; A, 04/01/2003; A, 10/01/2003; A, 06/01/2011; A, 03/01/2017; A, 07/01/2017]

## MILITARY AFFAIRS, DEPARTMENT OF

At its June 1, 2017 hearing, the Department of Military Affairs repeals its rule entitled Order Prescribing Regulations Under The Code Of Military Justice, 10.30.2 NMAC, filed 11/14/1975, effective 6/1/2017.

## PUBLIC SAFETY, DEPARTMENT OF

On 06/08/2017, the New Mexico Law Enforcement Academy Board repealed its rule entitled Instructor Certification, 10.29.4 NMAC, filed 07/01/2001, and replaced it with a new rule entitled Instructor Certification and Advanced Certifications, 10.29.4 NMAC, effective 06/27/2017.

On 06/08/2017, the New Mexico Law Enforcement Academy Board repealed its rule entitled Public Safety Telecommunicator Minimum Standards of Training, 10.29.10 NMAC, filed 07/01/2001, and replaced it with a new rule entitled Public Safety Telecommunicator, 10.29.10 NMAC, effective 06/27/2017.

## PUBLIC SAFETY, DEPARTMENT OF

### TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT CHAPTER 24 SEARCH AND RESCUE PART 1 CERTIFICATION FOR SEARCH AND RESCUE PERSONS

#### 10.24.1.1 ISSUING

**AGENCY:** Department of Public Safety.

[10.24.1.1 NMAC - N, 6-27-17]

**10.24.1.2 SCOPE:** This rule applies to all persons who desire to obtain and maintain a certification with the New Mexico department of public safety, search and rescue (SAR).

[10.24.1.2 NMAC - N, 6-27-17]

#### 10.24.1.3 STATUTORY

**AUTHORITY:** Section 24-15A-5 NMSA 1978 and Section 9-19-6(E) NMSA 1978.

[10.24.1.3 NMAC - N, 6-27-17]

#### 10.24.1.4 DURATION:

Permanent.

[10.24.1.4 NMAC - N, 6-27-17]

#### 10.24.1.5 EFFECTIVE

**DATE:** June 27, 2017, unless a later date is cited at the end of a section.

[10.24.1.5 NMAC - N, 6-27-17]

#### 10.24.1.6 OBJECTIVE:

The purpose of this rule is to provide a system of certification and maintenance of certification of search and rescue persons.

[10.24.1.6 NMAC - N, 6-27-17]

#### 10.24.1.7 DEFINITIONS:

In addition to the definitions set forth in the Search and Rescue Act, Section 24-15A-3 NMSA 1978, the following terms are defined:

##### A. Agency

**administrator** means the chief of the New Mexico state police. The chief may appoint an agency administrator designee for search and rescue (SAR) matters.

##### B. Field coordinator

means a SAR person certified by the department of public safety to act as incident commander for a SAR mission.

**C. Incident command system** means a standardized system for the command, control, and coordination of emergency response operations for search and rescue.

**D. Incident commander** means the person within the incident command system officially assigned to manage a SAR incident.

**E. Probation status** means the status of a certification of a SAR field coordinator, incident command system general staff, or SAR person or volunteer, when the certification is not current on maintenance of certification requirements, but is still eligible to meet the requirements at a later time.

**F. SAR incident command system general staff** means a SAR person working SAR management under the incident command system on a SAR mission.

**G. SAR resource officer** means the official located within the department of public safety responsible for coordinating SAR resources and administering the state SAR plan.

**H. SAR review board** means the policy advisory committee whose duty it is to evaluate the operation of the New Mexico search and rescue plan, evaluate problems of specific missions, and make findings of fact and recommendations to the chief and other appropriate authorities.

**I. SAR person** means a person who volunteers or provides time and equipment to aid in SAR missions.

**J. Section chief** means a person who has the responsibility for a major functional area of a SAR mission, such as operations, plans, logistics, or finance and administration. Section chiefs report directly to the incident commander and are part of the incident command system general staff.

**K. Special operations commander** means the commander

of the New Mexico state police special operations bureau.

**L. Type** means a graded management system that is based on experience and training for the selection of a SAR field coordinator or incident command system general staff. The measurement correlates to the level of complexity of the mission in which a SAR field coordinator or incident command system general staff may participate, with type I being the most complex.

[10.24.1.7 NMAC - N, 6-27-17]

#### **10.24.1.8 SYSTEM OF CERTIFICATION:**

##### **A. Certification for field coordinator:**

###### **(1)**

Certification is required for SAR persons or volunteers in order to act as field coordinators. To be certified as a field coordinator an applicant must:

###### **(a)**

submit an application with the New Mexico department of public safety;

###### **(b)**

successfully complete a SAR management course and other criteria for qualifications as required by the New Mexico department of public safety;

###### **(c)**

complete the training standards for field coordinators which will comprise of a minimum of 40 hours of training, and may include, but is not limited to, management of SAR resources, development of goals and objectives, and search theory applications; and

###### **(d)**

receive final approval for certification from the SAR review board and the agency administrator.

###### **(2) Levels of certification:**

###### **(a)**

Field coordinators will be certified as type I, type II, type III or type IV according to experience and performance.

###### **(b)**

A field coordinator will initially be designated as type IV and may advance up to a type I certification.

###### **(c)**

The agency administrator will provide final approval of advancement to higher certification types.

##### **B. Certification for incident command system general staff:**

###### **(1)**

Certification is encouraged and preferred, but is not required, for a person to be recognized and to act as a SAR incident command system general staff. Additionally, training and certification for section chiefs may be required in order to be a listed resource in the SAR resource directory. An applicant wishing to receive certification as a member of the incident command system general staff must:

###### **(a)**

submit an application supplied by the SAR resource officer;

###### **(b)**

successfully complete an incident command system general staff course and other criteria for minimum qualifications as required by the New Mexico department of public safety;

###### **(c)**

complete the training standards for incident command general staff which will comprise of a minimum of 16 hours of training, and which may include, but is not limited to, leadership and supervisory responsibilities, and development of search strategies and communications; and

###### **(d)**

receive final approval for certification from the SAR resource officer and agency administrator.

###### **(2) Levels of certification:**

###### **(a)**

Incident command system general staff will be certified as type I, type II or type III according to experience and performance.

###### **(b)**

Incident command system general staff will initially be designated as type III.

###### **(c)**

Requests to advance to a higher certification type will be reviewed and approved by the SAR resource officer.

##### **C. Certification for SAR person or volunteer:**

###### **(1)**

Certification is encouraged, but not required, for a person to be recognized and to participate as a SAR person or volunteer. To become a certified SAR person or volunteer, an applicant must:

###### **(a)**

submit a questionnaire supplied by the SAR resource officer;

###### **(b)**

meet the criteria for minimum qualifications as established by the agency administrator;

###### **(c)**

successfully complete training as required by the New Mexico department of public safety;

###### **(d)**

complete the field certification training, which will comprise of a minimum of eight hours of training, and which may include communications, navigation and gear requirements, and other training as determined necessary by the SAR resource officer; and

###### **(e)**

receive approval for certification by the SAR resource officer and agency administrator.

###### **(2) Levels of certification:**

There are no specified levels of certification developed for the SAR person or volunteer.

**D. Levels of certification established:** The agency administrator may develop additional levels of certification for volunteers with search and rescue beyond those described above.

##### **E. Training**

**Standards and Lesson Plans:** The search and rescue resource officer will determine training standards, and will prepare and update lesson plans for optimal educational teaching effectiveness. The SAR review board will review the training curriculum and recommend approval to the agency administrator.

[10.24.1.8 NMAC - N, 6-27-17]

#### **10.24.1.9 MAINTENANCE OF CERTIFICATION:**

##### **A. Maintenance of certification for field coordinator:**



(1) Annual maintenance training is required to maintain field coordinator certification.

(2) The maintenance of certification training programs for field coordinators shall provide a minimum total of eight hours of training.

(3) Any field coordinator that is unable to complete the maintenance of certification training within the year will be placed on probation status and must attend the next maintenance of certification training provided in order to be removed from probation status.

(4) If the maintenance of certification training is not completed within the next 12 months, it shall be basis for removal from the field coordinator position and from certification as field coordinator.

(5) A certification that is on probation status is still active and valid unless the certification is suspended or has been revoked.

**B. Maintenance of certification for incident command system general staff:**

(1) Training is required every three years to maintain incident command system general staff certification.

(2) The maintenance of certification training programs for the incident command system general staff shall provide a minimum total of eight hours of training.

(3) Any person certified in an incident command system general staff position that is unable to complete the maintenance of certification training within the year after it becomes due will have his or her certification placed on probation status and must attend the next maintenance of certification training provided in order to be removed from probation status.

(4) If the maintenance of certification training is not completed within the next 12 months after it is due, it shall be basis for removal from incident command

system general staff certification status.

(5) A certification that is on probation status is still active and valid unless the certification is suspended or has been revoked.

**C. Maintenance of certification for SAR persons or volunteers:**

(1) Training is required every three years to maintain SAR person or volunteer certification.

(2) The maintenance of certification training programs for SAR persons or volunteers shall provide a minimum total of two hours of on-line training or in person training.

(3) If the maintenance of certification training is not completed within the three-year period, the certification will be placed on probation status.

(4) If the maintenance of certification training is not completed within the next 12 months after it is due, it shall be basis for removal from SAR person or volunteer certification status.

(5) A certification that is on probation status is still active and valid unless the certification is suspended or has been revoked.

[10.24.1.9 NMAC - N, 6-27-17]

**10.24.1.10 ADDITIONAL CERTIFYING ORGANIZATIONS:**

This rule shall not prevent the New Mexico department of public safety from entering into a written agreement for search and rescue certifications and trainings through an outside certifying body. The SAR review board will review the training curriculum and recommend approval to the agency administrator. That certifying body's program for certification, as agreed upon by the department of public safety, would then take the place of the system of certification or maintenance of certification within this rule and shall be adhered to by the field coordinators, incident command system general staff, and SAR person or volunteers.

[10.24.1.10 NMAC - N, 6-27-17]

**10.24.1.11 DENIAL OF CERTIFICATION, DECERTIFICATION, AND REVIEW:**

**A. Denial, suspension, or revocation of certification:** SAR persons seeking certification as a field coordinator, incident command system general staff, or SAR person or volunteer may have their request for certification denied within the discretion of the agency administrator for not having met the criteria as established in this rule. SAR persons holding any certification issued by the New Mexico department of public safety can be decertified, or have their certification suspended, as determined within the discretion of the agency administrator for lack of compliance with the standard of care, performance considerations, or improper conduct. Upon decertification, the individual will be required to return any identification cards and equipment that he or she possesses that was issued to the individual by the department of public safety related to that certification.

**B. Procedure for denial, suspension, or revocation of certification of field coordinator, incident command general staff, or SAR person or volunteer:**

(1) A decision to deny, suspend, or revoke certification will be recommended by the search and rescue resource officer to the agency administrator through the special operations commander.

(2) After reviewing the facts and circumstances, the special operations commander may accept or reach a different outcome than the recommendation of search and rescue resource officer.

(3) If a decision is made to deny, suspend, or revoke a certification, the special operations commander will issue or have a letter issued to the volunteer whose certification is impacted.

**C. Procedure for requesting informal meeting:**

(1) The



volunteer whose certification is impacted will have 30 calendar days from the date of delivery to make a written request to the special operations commander to reconsider the decision to deny, suspend, or revoke a certification. The request shall include the basis for reconsideration and documents or items to be considered.

(2) After a written request for reconsideration of the decision is received, an informal meeting with the volunteer and special operations commander will be arranged to determine whether to continue with the decision to deny, suspend, or revoke a certification.

(3) The decision by the special operations commander will be made within 10 business days from the date of the informal meeting, unless more time is needed based on the complexity of the facts and circumstances.

(4) The decision of the special operations commander to deny, suspend, or revoke certification will be reported to the SAR review board subsequent to either the informal meeting or the expiration of time to request an informal meeting, in the event an informal meeting was not requested.

**D. SAR review board review of denial, suspension, or revocation of certification:**

(1) After the SAR review board receives the decision of the special operations commander to deny, suspend, or revoke certification, it will make a recommendation to the agency administrator on a course of action to take regarding the volunteer's certification.

(2) A volunteer whose certification is impacted may make a written request to be heard by the SAR review board if the volunteer previously requested an informal meeting and the request is made before a recommendation is reached. The volunteer will be provided an opportunity to be heard for a period of time as permitted by the SAR review board.

(3) The

agency administrator will have notification sent to the volunteer of the final decision concerning the matter after having reviewed the facts and circumstances, along with the recommendation of the SAR review board.

[10.24.1.11 NMAC - N, 6-27-17]

**HISTORY OF 10.24.1 NMAC:**  
[Reserved]

**PUBLIC SAFETY,  
DEPARTMENT OF**

**TITLE 10 PUBLIC SAFETY  
AND LAW ENFORCEMENT  
CHAPTER 29 LAW  
ENFORCEMENT ACADEMY  
PART 4 INSTRUCTOR  
CERTIFICATION AND  
ADVANCED CERTIFICATIONS**

**10.29.4.1 ISSUING**

**AGENCY:** New Mexico Law Enforcement Academy - Department of Public Safety, 4491 Cerrillos Road, Santa Fe, New Mexico 87507  
[10.29.4.1 NMAC - Rp, 10.29.4.1 NMAC, 06/27/17]

**10.29.4.2 SCOPE:** All law enforcement agencies in the state of New Mexico, any law enforcement instructor, professional lecturer, or specialized law enforcement or telecommunicator instructor conducting training programs in New Mexico.

[10.29.4.2 NMAC - Rp, 10.29.4.2 NMAC, 06/27/17]

**10.29.4.3 STATUTORY**

**AUTHORITY:** NMSA 1978, Section 29-7-4 (Repl. Pamp. 1994), NMSA 1978, Section 29-7-5 (Repl. Pamp. 1994), NMSA 1978, Section 29-7-7.1 (Repl. Pamp. 1994), NMSA 1978, Section 29-7-10 (Repl. Pamp. 1994)

[10.29.4.3 NMAC - Rp, 10.29.4.3 NMAC, 06/27/17]

**10.29.4.4 DURATION:**

Permanent  
[10.29.4.4 NMAC - Rp, 10.29.4.4 NMAC, 06/27/17]

**10.29.4.5 EFFECTIVE**

**DATE:** June 27, 2017, unless a later date is cited at the end of a section.  
[10.29.4.5 NMAC - Rp, 10.29.4.5 NMAC, 06/27/17]

**10.29.4.6 OBJECTIVE:**

The purpose of Part 4 is to encourage and regulate the certification of law enforcement and telecommunicator instructors and upgrade and improve in-service law enforcement and telecommunicator training programs.  
[10.29.4.6 NMAC - Rp, 10.29.4.6 NMAC, 06/27/17]

**10.29.4.7 DEFINITIONS:**

**A.** "Advanced police training" is approved police officer training beyond the basic level and does not include mandated in-service training courses.

**B.** "Advanced telecommunicator training" is approved telecommunicator training beyond the basic level and does not include mandated in-service training courses.

**C.** "Agency" means a law enforcement or public safety agency recognized by the New Mexico law enforcement academy.

**D.** "Director" means the director of the New Mexico law enforcement academy.

**E.** "General instructor" means a New Mexico law enforcement academy certified general instructor who is authorized to teach those generalized, lecture-based topics of instruction which would not otherwise require a specialized, technical, high-risk or master instructor certification.

**F.** "Instructor course" is any approved advanced police or telecommunicator training intended to further the individual's knowledge, skills, and abilities, beyond a basic level, for instructor certification in the respective field.

**G.** "Master course" is any approved advanced police or telecommunicator training intended to further the individual's knowledge, skills, and abilities set, beyond an instructor course, for master certification to deliver train-the-trainer

level instruction.

**H.** "Master instructor" is the only designation which authorizes the New Mexico law enforcement academy certified master instructor to train instructor level or train-the-trainer courses.

[10.29.4.7 NMAC - Rp, 10.29.4.7 NMAC, 06/27/17]

#### **10.29.4.8 GENERAL INSTRUCTOR:**

**A.** To qualify for general instructor certification, an applicant shall complete the instructor certification application, and satisfactorily demonstrate to the director a combination of education and experience in criminal justice, as well as proficiency in the instructional process, and meet the following requirements:

(1) certified police officer or public safety telecommunicator, or a duly elected sheriff;

(2) has acquired three years of practical experience as a certified police officer, certified telecommunicator, or police administrator, or specialist in a field relevant to or related to the criminal justice system; this requirement may be waived by the director only upon written request from the agency head with supporting documentation;

(3) completion of a 40 hour instructor training or development course, or equivalent training approved in writing by the director;

**B.** Qualified applicants for a general instructor designation will be issued a certification for a period of two or more years.

**C.** An evaluation will be completed by the students subsequent to the completion of each class taught by the instructor; the agency administrator responsible for conducting the class shall review the evaluations and maintain the course rosters to ensure the quality of the instruction; and

**D.** Instructors attending and completing a national highway traffic safety administration (NHTSA) driving while intoxicated

and standardized field sobriety testing (DWI/SFST), or drug recognition expert (DRE) instructor course with the approval of the contract oversight committee of the department of transportation will not be required to attend and complete a 40 hour instructor training/development course, but may receive a limited instructor certification to teach only national highway traffic safety administration (NHTSA) approved courses in driving while intoxicated (DWI), standardized field sobriety testing (SFST) or drug recognition expert (DRE) courses and shall not permit the instructor to teach any other topics of instruction without completing a 40 hour general instructor training/development course.

**E.** A general instructor certification will require successful completion of an approved eight hour general instructor update training program prior to the instructor applying to renew their general instructor certification.

[10.29.4.8 NMAC - Rp, 10.29.4.8 NMAC, 06/27/17]

#### **10.29.4.9 PROFESSIONAL LECTURER:**

**A.** The director may certify as a professional lecturer a person in their formally recognized profession, e.g., medicine, law, psychology, who by virtue of formal academic graduate degrees or professional experience has developed special expertise in a subject area material to the presentation of criminal justice training or educational programs. To be eligible for certification, an applicant shall:

(1) be properly licensed or certified by a legally recognized state or national licensing body for the designated profession to actively engage in the designated profession, or have retired in good standing. This requirement may be waived by the director upon written request should a professional or specialist not have an available or required licensing agency;

(2) have acquired a minimum of one year of

practical experience in the designated profession and area of expertise; and

(3) obtain an endorsement from the chief or administrator of the agency conducting in-service training; such endorsement must:

(a) recommend the individual as a professional lecturer;

(b) describe the individual's expected participation, topic areas, duties, and responsibilities in criminal justice conducted by the academy, school, or agency; and

(c) specify the professional subject area and training courses in which certification is requested.

**B.** Professional lecturer designation will be issued for a period of two or more years.

**C.** An evaluation will be completed by the students subsequent to the completion of each class taught by the lecturer; the agency administrator responsible for conducting the class shall review the evaluations and maintain the course rosters to ensure the quality of the instruction.

[10.29.4.9 NMAC - Rp, 10.29.4.9 NMAC, 06/27/17]

#### **10.29.4.10 SPECIALIZED LAW ENFORCEMENT INSTRUCTOR:**

**A.** To qualify for a specialized law enforcement instructor certification, an applicant shall be required to demonstrate to the director proof of skills, successful experience, and training in the related field for which they will be providing instruction, and must meet the following requirements:

(1) must be sponsored by a law enforcement agency in the state of New Mexico; this requirement may be waived by the director upon written request based on a showing of previous training/experience in the field for which certification is requested; the following fields will require specialized training:

(a)

high risk, including such areas as firearms, baton, unarmed self-defense, etc.; and

**(b)**

specialized training, two years assignment to the specialty and a showing of a number of cases in the field that the applicant brought to a logical conclusion;

**(c)**

technical, including such areas as fingerprinting, photography, accident investigation, traffic enforcement, vehicle operations, radio-dispatching, etc.;

**(2) completion**

of a 40 hour instructor training or development course, or equivalent training approved in writing by the director; and

**B.** Applicants for certification who have federal training or certifications, or who have training or hold certifications from another state that meets or exceeds the minimum instructor requirements for the state of New Mexico, may be considered by the director upon written request for specialized instructor status upon successful proof of skills and equivalency standards set forth in this section.

**C.** Qualified applicants for a specialized law enforcement instructor designation will be issued a certification for a period of two or more years.

**D.** An evaluation will be completed by the students subsequent to the completion of each class taught by the instructor; the agency administrator responsible for conducting the class shall review the evaluations and maintain the course rosters to ensure the quality of the instruction.

**E.** The director will maintain and provide to all agencies a listing of those courses which require an instructor to provide supporting documentation of training for certification to instruct in either the high risk or technical law enforcement training areas.

**F.** Specialized instructor certification subject areas: The following list is provided to each agency to assist in determining the

area in which specialized training or prior training experience must be achieved by the individual requesting instructor certification in the high risk or technical areas. This list is by no means all-inclusive and the academy will determine whether the request qualifies in either the high risk or technical areas if not included below:

**(1) High risk:**

use of force; baton, bombs, crowd control, officer survival, emergency vehicle operations, motorcycle operations, unarmed self-defense; and firearms.

**(2) Technical:**

accident investigation, accident reconstruction, auto theft, child abuse, civil-vicarious liability, crime prevention, electronic surveillance, executive development, evidence, crisis intervention, field training officer, fingerprinting, hazardous materials, homicide investigation, intoxilyzer, jail administration, legal/criminal laws, photography, police officer as prosecutor, polygraph, national crime information center (NCIC), computer aided dispatch (CAD), search and seizure, and traffic enforcement.

**G.** Renewal of a firearms instructor certification shall require successful completion of an approved 16 hour firearms instructor update prior to renewal application. [10.29.4.10 NMAC - Rp, 10.29.4.10 NMAC, 06/27/17]

**10.29.4.11 MASTER INSTRUCTOR:** To qualify for a master instructor certification, an applicant shall be required to demonstrate to the director proof of skills, successful experience, and training in the related field for which they will be training new instructors, and must meet the following requirements:

**A.** must be sponsored by a law enforcement agency in the state of New Mexico; this requirement may be waived by the director upon written request based on a showing of previous training/experience in the subject area for which certification is requested;

**B.** must have

completed a minimum of two years certification as a general, specialized, or professional lecturer instructor in the same subject area as the request for master instructor certification;

**C.** must produce documentation of successful completion of an instructor-trainer course, train-the-trainer course or master instructor course (or what other term is used to describe a course that qualifies a person to train instructors) in the same subject area for which certification is requested or:

**(1)** must have completed at least one four-year certification as a general, specialized, or professional lecturer instructor in the same subject area; and

**(2)** must show documentation of additional training hours of expertise of at least the same amount of hours as the original instructor-level certification; and

**(3)** must show rosters and student evaluations from at least 10 training classes as the lead instructor in the same subject area;

**D.** qualified applicants for a master instructor designation will be issued a certification for a period of two or more years; an evaluation will be completed by the students subsequent to the completion of each class taught by the master instructor; the agency administrator responsible for conducting the class shall review the evaluations and maintain the course rosters to ensure the quality of the instruction.

[10.29.4.11 NMAC - Rp, 10.29.4.11 NMAC, 06/27/17]

**10.29.4.12 REVOCATION OF INSTRUCTOR CERTIFICATION:**

**A.** The director may revoke or suspend an instructor certification based on a preponderance of evidence that the instructor:

**(1)** failed to meet minimum standards;

**(2)** displayed a lack of good moral character or behavior that adversely affects his credibility as an instructor;

**(3)** lacked the ability to effectively communicate or

instruct in the academy setting; or

(4) had their police officer or telecommunicator certification suspended or revoked.

**B.** The employing agency may request action on an instructor certification by submitting the request to the director in writing and including all supporting documentation.

**C.** The director may take all necessary steps to review the matter, and all steps shall be at the discretion of the director. These steps may include, but are not limited to, issuing written notice to the instructor of the specific allegations no later than 30 days after receiving the request for action, conducting an oral response meeting with the instructor no later than 60 days after receiving all relevant supporting documentation, and issuing a final decision no later than 120 days after receiving all relevant supporting documentation. The director shall inform the instructor in writing whether the instructor certification has been revoked or suspended, and the reasons for the revocation or suspension.

[10.29.4.12 NMAC - Rp, 10.29.4.12 NMAC, 06/27/17]

#### **10.29.4.13 POLICE OFFICER ADVANCED CERTIFICATION:**

The law enforcement academy awards advanced certification credit for approved training beyond the basic level. An applicant must submit a completed application packet containing copies of all training certificates and other supporting documentation. Applications should be submitted only after the required number of hours have been accrued. Individual certificates will not be processed if they are not attached to an application for a specific level of certification. Advanced certifications are ranked from intermediate to executive and are only awarded if criteria for the previous level(s) of certification have been met.

##### **A. Certification**

**fee:** A fee not to exceed one hundred and fifty dollars (\$150.00)

may be assessed for processing an application. Payment can be made in the form of an agency check, purchase order, or money order. Payment must accompany the application. As published in the New Mexico law enforcement academy director's fee schedule, these fees are subject to change. For the current applicable fee schedule, please refer to the New Mexico law enforcement academy or academy website.

##### **B. Advance certification criteria and guidelines:**

**(1) Intermediate** (minimum of 200 cumulative hours required): two years' experience, non-probationary status at time of application, and 200 cumulative hours of advanced police training (beyond basic and maintenance training).

**(2) Advanced** (minimum of 400 cumulative hours required): four years' experience, non-probationary status at time of application, and 400 cumulative hours of advanced police training or formal education (beyond basic and maintenance training) approved by the director.

**(3) First-line supervisor** (minimum of 500 cumulative hours required): must have held rank of corporal or sergeant with one year in rank and completion of a law enforcement academy approved first-line supervisor course (40 hours minimum).

**(4) Command** (minimum of 700 cumulative hours required): must have held rank of lieutenant with one year in rank and 100 hours of management training or formal education approved by the director.

**(5) Executive** (minimum of 800 cumulative hours required): must have held rank of chief, assistant chief, sheriff, under-sheriff, director or deputy director with one year in rank: or

**(a)** majors and captains who report directly to department head and have one year in rank; and

**(b)** 200 cumulative hours of management

or administrative training or formal education approved by the director.

##### **C. Criteria for cumulative credit calculations:**

**(1) Certificate criteria:** The law enforcement academy will accept certificates of completion for credit toward an advanced certificate.

**(2) College course credit:** College courses will receive the credit ratio of 15 advanced certification hours for each credit hour up to a maximum of 400 advanced hours. College course credits apply only to advanced level certification and above. Official copies of college transcripts are required. Credit hours may be given only for college courses that are law enforcement related.

**(3) Military course credit:** Military advanced level courses related to law enforcement and approved by the director can be used for credit towards advanced level certification and above at an hourly ratio of one-to-one. Training hours and dates must be noted on the training certificate for credit or on an official training transcript.

**(4) In-service training:** Law enforcement academy approved in-service training will be accepted based upon the approved course hours. Mandated training required to maintain police officer certification or instructor certification will not be credited towards advanced certifications. In-service training will be accepted only upon providing evidence that a test was administered and passed, or a certificate of completion was issued.

**(5) Rank requirements:** Certificates at the first-line supervisor level and above require that the pre-requisite rank or title was held for a minimum period of at least one year prior to the date of the application. Documentation indicating date(s) of promotion must be included with the application packet. Non-traditional rank designations will be reviewed for equivalency to ranks designated for applicable certificates.

**(6) Out-**



**of-state certificates:** Only course certificates clearly indicating the hours and dates of training received will be accepted.

[10.29.4.13 NMAC - N, 06/27/17]

#### 10.29.4.14

#### TELECOMMUNICATOR

#### ADVANCED CERTIFICATION:

The law enforcement academy awards advanced certification credit for approved training beyond the basic level. An applicant must submit a completed application packet containing copies of all training certificates and other supporting documentation. Applications should be submitted only after the required number of hours have been accrued. Individual certificates will not be processed if they are not attached to an application for a specific level of certification. Advanced certifications are ranked from intermediate to executive and are only awarded if criteria for the previous level(s) of certification have been met.

##### A. Certification

**fee:** A fee not to exceed one hundred and fifty dollars (\$150.00) may be assessed for processing an application. Payment may be made in the form of an agency check, purchase order, or money order. Payment must accompany the application. As published in the New Mexico law enforcement academy director's fee schedule, these fees are subject to change. For the current applicable fee schedule, please refer to the New Mexico law enforcement academy or academy website.

##### B. Advance

#### certification criteria and guidelines:

##### (1)

**Intermediate** (minimum of 200 cumulative hours required): two years' experience, non-probationary status at time of application, and 200 cumulative hours of advanced telecommunicator training (beyond basic and maintenance training).

##### (2) Advanced

(minimum of 400 cumulative hours required): four years' experience, non-probationary status at time of application, and 400 cumulative hours of advanced telecommunicator

training or formal education (beyond basic and maintenance training) approved by the director.

##### (3) First-

**line supervisor** (minimum of 500 cumulative hours required): must have held the title of shift supervisor, terminal agency coordinator (TAC) or training officer with one year in rank and completion of a law enforcement academy approved first-line supervisor course (40 hours minimum).

##### (4) Command

(minimum of 700 cumulative hours required): must have held rank of deputy director, assistant supervisor, terminal agency coordinator (TAC), 9-1-1 coordinator, or training coordinator with one year in rank and 100 hours of management training or formal education approved by the director.

##### (5) Executive

(minimum of 800 cumulative hours required): must have held rank of director or deputy director with one year in rank: or

##### (a)

held the title or rank of regional manager or manager who reports directly to the department or agency head and have one year in rank; and

##### (b)

200 cumulative hours of management or administrative training or formal education approved by the director.

##### C. Criteria for

#### cumulative credit calculations:

##### (1) Certificate

**criteria:** The law enforcement academy will accept certificates of completion for credit toward an advanced certificate.

##### (2) College

**course credit:** College courses will receive the credit ratio of 15 advanced certification hours for each credit hour up to a maximum of 400 advanced hours. College course credits apply only to advanced level certification and above. Official copies of college transcripts are required. Credit hours may be given only for college courses that are law enforcement related and approved by the director.

##### (3)

**Military course credit:** Military

advanced level courses related to law enforcement and approved by the director can be used for credit towards advanced level certification and above at an hourly ratio of one-to-one. Training hours and dates must be noted on the training certificate for credit or on an official training transcript.

##### (4) In-

**service training:** Law enforcement academy approved in-service training will be accepted based upon the approved course hours. Mandated training required to maintain telecommunicator certification or instructor certification will not be credited towards advanced certifications. Other in-service training will be accepted only upon provided evidence that a test was administered and passed, or a certificate of completion was issued.

##### (5) Rank

**requirements:** Certificates at the first-line supervisor level and above require that the pre-requisite rank or title was held for a minimum period of at least one year prior to the date of the application. Documentation indicating date(s) of promotion must be included with the application packet. Non-traditional rank designations will be reviewed for equivalency to ranks designated for applicable certificates.

[10.29.4.14 NMAC - N, 06/27/17]

#### HISTORY OF 10.29.4 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: NMLEA Rule #38, Instructor Certification, filed 8-14-85; NMLEA Rule #38, Instructor Certification, filed 10-22-86; NMLEA Rule #C2, Instructor Certification, filed 3-10-89; NMLEA Rule #C2, Instructor Certification, filed 8-2-93.

#### History of Repealed Material:

10.29.4 NMAC, filed 07/01/2001, repealed effective 06/27/2017.



**PUBLIC SAFETY,  
DEPARTMENT OF**

**TITLE 10 PUBLIC SAFETY  
AND LAW ENFORCEMENT  
CHAPTER 29 LAW  
ENFORCEMENT ACADEMY  
PART 10 PUBLIC SAFETY  
TELECOMMUNICATOR**

**10.29.10.1 ISSUING**

**AGENCY:** New Mexico Law Enforcement Academy - Department of Public Safety, 4491 Cerrillos Road, Santa Fe, New Mexico 87507.  
[10.29.10.1 NMAC - Rp, 10.29.10.1 NMAC, 06/27/17]

**10.29.10.2 SCOPE:**

All applicants and certified telecommunicators under the Public Safety Telecommunicator Training Act.  
[10.29.10.2 NMAC - Rp, 10.29.10.2 NMAC, 06/27/17]

**10.29.10.3 STATUTORY**

**AUTHORITY:** Section 29-7C-1 to 29-7C-9 NMSA 1978.  
[10.29.10.3 NMAC - Rp, 10.29.10.3 NMAC, 06/27/17]

**10.29.10.4 DURATION:**

Permanent.  
[10.29.10.4 NMAC - Rp, 10.29.10.4 NMAC, 06/27/17]

**10.29.10.5 EFFECTIVE**

**DATE:** June 27, 2017  
[10.29.10.5 NMAC - Rp, 10.29.10.5 NMAC, 06/27/17]

**10.29.10.6 OBJECTIVE:**

The purpose of Part 10 is to establish the minimum standards of training for public safety telecommunicators.  
[10.29.10.6 NMAC - Rp, 10.29.10.6 NMAC, 06/27/17]

**10.29.10.7 DEFINITIONS:**

**A.** "Absence" means a break in employment with a public safety agency as a full time certified public safety telecommunicator.

**B.** "Academy" means the New Mexico law enforcement academy.

**C.** "Board" means

the New Mexico law enforcement academy board.

**D.** "Certified" means meeting the training standards established by statute and rules as determined by the New Mexico law enforcement academy board, and fulfilling any in-service training requirements as set forth by the New Mexico law enforcement academy board.

**E.** "Decertified" means the removal of certification from an individual for failure to comply with the public safety telecommunicator training act and the rules set forth by the New Mexico law enforcement academy board.

**F.** "Director" means the director of the New Mexico law enforcement academy.

**G.** "FEMA" means federal emergency management agency.

**H.** "ICS" means incident command system,

**I.** "Public safety agency" means a unit of state or local government, a special purpose district or a private business that provides police, firefighting or emergency medical services.

**J.** "Telecommunicator" means an employee or volunteer of a public safety agency who:

(1) receives calls or dispatches the appropriate personnel or equipment in response to calls for police, fire or medical services; and

(2) makes decisions affecting the life, health or welfare of the public or public safety agency employees.

**K.** "Separation" means a break in employment with a public safety agency as a full time certified public safety telecommunicator after being employed for a minimum period of five years and having left the public safety agency in good standing.

[10.29.10.7 NMAC - Rp, 10.29.10.7 NMAC, 06/27/17]

**10.29.10.8 PUBLIC SAFETY  
TELECOMMUNICATOR**

**MINIMUM STANDARDS OF**

**TRAINING:** The public safety telecommunicator (PST) certification course is a minimum of 130 hours of training in eight blocks of instruction. There will be 12 prerequisite distance learning training hours an applicant must complete prior to attendance at the public safety telecommunicator academy, for a minimum of 118 contact training hours during the course.

**A. Block 1: Academy prerequisites** - 12 total block hours - This block of instruction must be completed prior to the start of the academy and will establish a foundation for the critical incident management (CIM) and interdisciplinary incident command system (ICS) curriculum as outlined below.

(1) FEMA ICS 100.B: Introduction to incident command system - three hours;

(2) FEMA ICS 200.B: Incident command system for single resource and initial action incident - three hours;

(3) FEMA ICS 700.A: National incident management system, an introduction - three hours; and

(4) FEMA ICS 800.B: National response framework, an introduction - three hours.

**B. Block 2: Academy administration** - 30 total block hours

- This block of instruction is for the administration of the basic public safety telecommunicator academy training program. This includes examinations and reviews, practical exercise, discretionary training time and graduation. The subjects include:

(1) orientation  
(2) administrative time

(3) four block examinations;

(a) basic public safety telecommunicator skills;

(b) block legal and crisis intervention/management;

(c) national crime information center

(NCIC); and	13 total block hours - This block of instruction will provide a basic understanding of the criminal justice systems at the municipal, county, state and federal levels and the telecommunicator's role and responsibilities in the criminal justice system. This block will also provide an overview of criminal offenses.	(6) suicide awareness;
(d) fire/medical and critical incident management.		(7) barricaded subjects;
(4) three practical exercises; and		(8) hostage situations;
(a) critical incident management;		(9) kidnapping; and
(b) crisis intervention and management; and	(1) New Mexico administrative code (NMAC) requirements for public safety telecommunicators;	(10) domestic violence.
(c) radio practices and procedures	(2) introduction to the criminal justice system;	<b>F. Block 6: National crime information center (NCIC) operations</b> - eight total block hours - This block of instruction will provide the student with a basic understanding of the national crime information center (NCIC) system.
(5) New Mexico public safety telecommunicator certification examination	(3) criminal and traffic related offenses;	(1) 21 NCIC files
<b>C. Block 3: Basic public safety telecommunicator skills</b> - 40 total block hours - This block of instruction will provide the student with a basic understanding of the public safety telecommunications field, common procedures for call processing, applicable technology, and liability.	(4) laws of arrest;	(a) stolen articles;
	(5) civil law and liability; and	(b) boats;
	(6) courtroom testimony.	(c) guns;
	<b>E. Block 5: Crisis intervention/management</b> - eight total block hours - This block of instruction will provide the telecommunicator with a core understanding of interactions with individuals with mental impairments and crisis management.	(d) license plates;
(1) Introduction to your new career;	(1) People in crisis to include:	(e) parts;
(2) interpersonal communications;	(a) mental illness;	(f) securities;
(3) telephone communications techniques: call processing;	(b) developmental disability;	(g) vehicles;
(4) telephony, traditional technology;	(c) posttraumatic stress disorder;	(h) supervised release;
(5) next generation 9-1-1;	(d) dual diagnosis;	(i) national sex offender registry;
(6) telephony: teletypewriter (TTY);	(e) autism;	(j) foreign fugitive;
(7) telematics and collision notification systems;	(f) youth in crisis;	(k) immigration violator;
(8) computer-aided dispatch (CAD) and related technologies;	(g) traumatic brain injury; and	(l) missing person;
(9) radio communications techniques;	(h) excited delirium.	(m) protection order;
(10) radio technology;	(2) identifying a crisis;	(n) unidentified person;
(11) call classification;	(3) crisis bill of rights;	(o) protective interest;
(12) national incident management system (NIMS) incident command system;	(4) crisis listening;	(p) gang;
(13) liability issues; and	(5) behavior and crisis management;	(q) known or appropriately suspected terrorist;
(14) preparing for your new career.		(r) wanted person;
<b>D. Block 4: Law -</b>		(s) identity theft;

violent person; and	(t)	(2) hazardous materials awareness	suspension of training eligibility to be set by the director.
national instant criminal background check system (NICS) denied transaction	(u)	(3) critical incident stress debriefing [10.29.10.8 NMAC - Rp, 10.29.10.8 NMAC, 06/27/17]	<b>B. Application requirements</b>
regulations	(2) federal	<b>10.29.10.9 STUDENT HANDBOOK, PROCEDURES, AND REGULATIONS:</b> Due to the need to insure that students attending the academy comply with rules and regulations, the director is hereby instructed to prepare a handbook covering student rules and regulations, policies and procedures. Such handbook shall be updated as necessary and when applicable, changes shall be reported to the New Mexico law enforcement academy board at their next regularly scheduled meeting. [10.29.10.9 NMAC - Rp, 10.29.10.9 NMAC, 06/27/17]	(1) An applicant for training or for certification, or their agency, must submit the initial application for admission/certification and all necessary paperwork within 30 days of the initial hire date.
<b>G. Block 7: Fire and medical communications</b> - 10 total block hours - This block of instruction will provide a basic overview of fire and medical communications to include: common terminology, apparatus and equipment, and general protocols.			(2) Non-compliance with the 30 day application requirement will result in assignment to an academy class after completion of all other requirements herein on a space available basis only -- no special consideration will be given to the applicant, and the applicant must complete their application and initial certification requirements within one year from initial hire date.
emergency medical services (EMS) terminology	(1) fire and		(3) No applicant shall be admitted to the academy after one year of initial hire date unless the applicant and the applicant's chief, sheriff, or agency head certify:
jurisdictional limitations and allowances	(2)		(a) that the applicant was removed from duty as a telecommunicator; and
EMS call taking and additional considerations	(3) fire and		(b) that the agency will reinstate the telecommunicator based upon the applicant's successful completion of the basic public safety telecommunicator training course and certification by the board.
health insurance portability and accountability act (HIPAA)	(4)	<b>10.29.10.10 PUBLIC SAFETY TELECOMMUNICATOR REGISTRY REPORTING AND APPLICATIONS FOR ADMISSION/CERTIFICATION</b>	(4) The academy shall be notified of any change in the medical or psychological condition of an applicant prior to the applicant's admission or certification.
communications	(5) radio	<b>A. Reporting requirements</b>	(5) Applicants who falsify any information on their application for admission or certification will not be considered for admission or certification. [10.29.10.10 NMAC - Rp, 10.29.10.10 NMAC, 06/27/17]
dispatch;	(a)	(1) Employment, termination, resignation, or upon receipt of notice of conviction of any felony charge or violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude of all public safety telecommunicators in the state of New Mexico must be reported to the academy within 30 days of such action.	<b>10.29.10.11 FINGERPRINT CLEARANCE FOR ADMISSION/ CERTIFICATION</b> - Due to the fact that the academy is not recognized by federal regulations as a duly
arrival;	(b)	(2) Required reporting forms shall be established by the director.	
structural fire;	(c)	(3) All public safety agencies who do not comply with the requirement of submitting to the academy status reports on their employees will not be eligible for training funds or attendance at basic or in-service/advanced training classes until the registry is made current. Repeated failures to maintain the registry shall result in a period of	
wildland fire; and	(d)		
apparatus	(e)		
safety	(6) personnel		
	(7) liability		
	(8) restrictions		
New Mexico medical board; and	(a)		
separate licensing requirements for emergency medical dispatchers	(b)		
<b>H. Block 8: Critical incident management (CIM) and interdisciplinary incident command system (ICS)</b> - Nine total block hours - This block will cover CIM awareness and the interdisciplinary incident command system.			
awareness	(1) CIM		

authorized law enforcement agency and therefore cannot be issued an originating agency identification "ORI" to send or receive fingerprint clearances through the federal bureau of investigation, the previous procedures established by the law enforcement academy are repealed and are replaced by the following procedures:

**A.** All New Mexico public safety telecommunicator applicants for certification must receive a fingerprint clearance from the department of public safety technical and emergency support division and the federal bureau of investigation. No telecommunicator applying for telecommunicator certification is allowed to receive an original appointment on a permanent basis in New Mexico if the telecommunicator has been convicted of or pled guilty to or entered a plea of nolo contendere to any felony charge or, within the three-year period immediately preceding their application, to any violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude and have not been released or discharged under dishonorable conditions from any of the armed forces of the United States, Section 29-7C-3 NMSA 1978.

**B.** One set (two cards) of telecommunicator applicant fingerprint cards will be thoroughly completed by the hiring public safety agency and forwarded to the department of public safety technical and emergency support division. The department of public safety technical and emergency support division will use one fingerprint card for a records check with their agency and will forward the card back to the hiring agency and will forward the second completed card to the federal bureau of investigation identification section for a records check. The department of public safety technical and emergency support division will not log in the fingerprint cards received from the various law enforcement agencies and

will not accept inquiries on the status of the fingerprint clearance either for department of public safety technical and emergency support division or the federal bureau of investigation. Department of public safety technical and emergency support division will forward applicant fingerprint requests to the federal bureau of investigation within three days upon receipt of the cards. Incomplete fingerprint cards or cards not properly completed will be returned by the department of public safety technical and emergency support division to the requesting agency.

**C.** All fingerprint clearances will be forwarded from department of public safety technical and emergency support division and the federal bureau of investigation back to the initiating agency. If the "ORI" label on the fingerprint card is different than that of the hiring agency, the hiring agency requesting the clearance must print their agency's address below the address located on the fingerprint card.

**D.** Upon receipt of clearance from both the department of public safety technical and emergency support division and the federal bureau of investigation, "no record", the hiring agency will be required to complete NMLEA Form LEA-5, certified by the department head's signature, and forward this form to the academy stating that the telecommunicator is in compliance with Subsection C of Section 29-7-3 NMSA 1978.

**E.** Upon receipt of information from the department of public safety technical and emergency support division and the federal bureau of investigation that the applicant for certification has a criminal conviction for a felony crime or crime involving moral turpitude, it will be the agency's responsibility to terminate the telecommunicator. If there is not adequate information, i.e., no disposition, listed on the "rap sheet" it is the agency's responsibility to determine the disposition of the case prior to requesting certification of the telecommunicator and certifying that

the telecommunicator has no record of arrest under the provisions of the Public Safety Telecommunicator Training Act. In situations in which the agency is unable to determine the disposition of an arrest/conviction, the agency should consult the attorney general's office for assistance. For guidance in determining whether misdemeanor convictions are crimes specifically involving moral turpitude, departments should request the assistance of the attorney general's office.

**F.** No telecommunicator may be certified through the academy who has been convicted of or pled guilty to or entered a plea of nolo contendere to any felony charge or, within the three-year period immediately preceding their application, to any violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude and have not been released or discharged under dishonorable conditions from any of the armed forces of the United States. Any department head certifying that an officer has "no arrest" for the above and information to the contrary is received by the academy or the attorney general's office, decertification procedures will be immediately initiated and the public safety agency's chief/sheriff or department head notified as well as the attorney general's office and the board.

[10.29.10.11 NMAC - Rp,  
10.29.10.11 NMAC, 06/27/17]

#### **10.29.10.12 TEMPORARY AND/OR EMERGENCY CERTIFICATION**

##### **A. Procedure** (1) The

director may, at his discretion, grant a temporary certification in order to avoid hardships or prevent conflicts within a department arising solely from technical non-compliance with academy board rules.

(2) Said temporary certificate shall be granted



only for good cause, proved to the satisfaction of the director, and shall be granted only to persons who have met the minimum standards of training prescribed by the board as well as all other state requirements.

(3) Grounds for granting such temporary certification shall include, but not be limited to the following: a person qualifying for certification by waiver during a period between board meetings.

(4) A temporary certification must be approved and made permanent no later than the next scheduled board meeting.

(5) In the event said certification is not approved and made permanent by the board, the certification shall expire and be of no further force or effect whatsoever.

**B.** [Reserved]

[10.29.10.12 NMAC - Rp,  
10.29.10.12 NMAC, 06/27/17]

#### **10.29.10.13 PUBLIC SAFETY TELECOMMUNICATOR CERTIFICATION EXAMINATION; TIME LIMITATIONS**

**A.** Students who successfully complete a New Mexico law enforcement academy public safety telecommunicator training program will be allowed to take the public safety telecommunicator certification examination. Only those students who have successfully completed all requirements under the minimum standards of training, as determined by the director, will be administered the public safety telecommunicator certification examination.

**B.** Students will be allowed two opportunities in which to pass the public safety telecommunicator certification examination within one year from the date of completion of a New Mexico law enforcement academy public safety telecommunicator training program. Students who fail the test two times will be required to re-enroll and successfully

complete the academy's public safety telecommunicator training program. Students will not be allowed to attend a regional/satellite program.

**C.** Students who achieve a passing score on the public safety telecommunicator certification examination will be allowed one year from the date of the test in which to be eligible for certification. Certification can be granted only when the eligible student is hired by a recognized New Mexico public safety agency in a telecommunicator position.

**D.** If a student secures a public safety telecommunicator position after two years from the completion of the public safety telecommunicator certification examination, they will be required to attend and successfully complete another public safety telecommunicator training program certified by the board.

**E.** Students who have successfully completed a New Mexico law enforcement academy public safety telecommunicator training program and passed the public safety telecommunicator certification examination will be provided a letter from the director attesting to the student's eligibility for certification as a public safety telecommunicator in New Mexico.

**F.** When all paperwork is completed to the satisfaction of the director for any student requesting certification by successful completion of a New Mexico law enforcement academy public safety telecommunicator program, or any other previous comparable training, the request will be submitted to the board for final approval and award of certification under Subsection C of Section 29-7-1 et. al. NMSA 1978.  
[10.29.10.13 NMAC - Rp,  
10.29.10.13 NMAC, 06/27/17]

#### **10.29.10.14 RENEWAL OF CERTIFICATION AFTER ABSENCE**

**A. Break in  
telecommunicator employment**  
(1) In the event a certified telecommunicator

in the state of New Mexico leaves his position for any reason and is not employed as a full-time telecommunicator for a period of more than two years, but less than four years, such telecommunicator will be considered to be decertified, and will be required to meet all current certification requirements of the academy and successfully complete the certification by waiver of previous training program conducted by the academy.

(2) In the event a certified telecommunicator in the state of New Mexico leaves their position for any reason and is not employed as a full-time telecommunicator for a period in excess of four years, such telecommunicator will be considered to be decertified and will be required to meet all current certification requirements and successfully complete the basic public safety telecommunicator training program.

(3) Those persons who hold a valid New Mexico public safety telecommunicator certification and are employed in an administrative capacity as a full-time telecommunicator educator or trainer shall not be deemed to have left their position as a telecommunicator and shall not be required to reapply for certification as specified herein.

(4) The director shall have the authority to determine those positions as administrators or trainers that meet the requirements of 10.29.10 NMAC above.

**B. Minimum  
allowable employment for a break  
in service** - A telecommunicator must show proof of having worked a minimum of six consecutive months during a break in service of two or less years as a full-time telecommunicator for a recognized public safety agency of this or another state to retain their certification.  
[10.29.10.14 NMAC - Rp,  
10.29.10.14 NMAC, 06/27/17]

#### **10.29.10.15 CONTINUATION OF CERTIFICATION AFTER SEPARATION**

**A. Eligibility:** In the event a New Mexico certified telecommunicator, with five years or more of certified telecommunicator employment, leaves their position in good standing, the telecommunicator will be eligible to continue their New Mexico certification status provided the telecommunicator complies with the procedures outlined below.

**B. Procedure:**

(1)

Every eligible telecommunicator separating from public safety service may continue their New Mexico certification by successfully completing each year an approved 10 hour in-service training program approved by the academy and meeting the statutory mandate of at least two hours in academy accredited interaction with persons with mental impairments training pursuant to Subsection C of Section 29-7-7.5 NMSA 1978. This program will comply with the provisions of 10.29.7 NMAC In-Service Training Requirements.

(2) The

telecommunicator must successfully complete the first approved 10 hour in-service training program within two years of separation. Following the initial reporting period, the telecommunicator must report by January 15 of each calendar year the approved 10 hour in-service training program by use of the LEA-85B form.

(3) The

requirements of 10.29.10 NMAC, Renewal of Certification After Absence will apply to those telecommunicators not in compliance with the provisions of this section. [10.29.10.15 NMAC - Rp, 10.29.10.15 NMAC, 06/27/17]

**HISTORY OF 10.29.10 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: NMLEA Rule #29, 1981 Police Radio Dispatcher Minimum Standards Of Training, filed 4-24-81; NMLEA Rule #29, Police Radio Dispatcher Minimum Standards Of Training, filed 1-28-82; NMLEA Rule #29,

Police Radio Dispatcher Minimum Standards Of Training, filed 8-14-85; Rule #29, Police Radio Dispatcher Minimum Standards Of Training, filed 9-30-85; NMLEA Rule #29, Police Radio Dispatcher Minimum Standards Of Training, filed 4-29-86; NMLEA Rule #E1, Police Radio Dispatcher Minimum Standards Of Training, filed 3-10-89; NMLEA Rule #E1, Police Radio Dispatcher Minimum Standards Of Training, filed 6-20-90; NMLEA Rule #E1, Minimum Standards: Police Radio Dispatcher, Emergency Communicators And Dispatcher Training, filed 2-16-95.

**History of Repealed Material:**

10.29.10 NMAC, filed 07/01/2017, repealed effective 06/27/2017.

**PUBLIC SAFETY,  
DEPARTMENT OF**

**Explanatory Paragraph:** This is an amendment to 10.29.1 NMAC, Sections 1, 8, and 10, effective June 27, 2017. In 10.29.1.8 NMAC, Subsections A through C and Paragraphs (1) through (5) of Subsection D, and Subsection E were not published as there were no changes. In 10.29.1.10 NMAC, Subsections A through C were not published as there were no changes.

**10.29.1.1 ISSUING**

**AGENCY:** - Department of Public Safety, New Mexico Law Enforcement Academy, 4491 Cerrillos Road, Santa Fe, New Mexico [87505] 87507

[10.29.1.1 NMAC - Rp, 10.29.1.1 NMAC, 11/15/16; A, 06/27/2017]

**10.29.1.8 REGULATIONS,  
POLICIES AND PROCEDURES  
FOR CONDUCTING THE  
BUSINESS OF THE LAW  
ENFORCEMENT ACADEMY  
BOARD:**

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**D. Meetings:** Regular meetings of the board will be held at least four times a year at a time

and place to be designated by the chairman.

(1) A

majority of the board members present shall constitute a quorum for the transaction of business at any regular or emergency meeting. The transaction of the board's business shall be by the vote of the majority of its members present at the meeting. The chairman may vote on any item of business before the board.

(2) If a

number of board members less than a quorum shall assemble for any meeting, they may postpone or adjourn that meeting until such time as a quorum can be obtained and notice again given in accordance with the rules herein set forth.

(3) If prior to

the commencement of a regular or emergency meeting, the director has received notices that the majority of the members of the board will not be able to attend the meeting, the director may cancel the meeting and is instructed to attempt to give notice of cancellation of the meeting to all board members and the news media.

(4) All

meetings of the board shall be open to the public except that the board may exclude the public for the portion of the meeting in which the subject matter being discussed in an adjudicatory matter, a personnel matter or the issuance, suspension, renewal or revocation of a certification, or as otherwise authorized by the New Mexico Open Meetings Act.

(5) The board

may request that persons having business before the board, in addition to providing written information for the board to review, appear personally before the board to discuss their item of business.

(6) All

meetings of the board that are open to the public shall allow for a portion of the meeting time to be designated for public comment.

~~[(6)]~~ (7) The order

of business of the board at regular meetings shall be as follows:

(a)

roll call;

(b)

approval of agenda;

(c)

approval of minutes;

(d)

old business;

(e)

new business;

(f)

designation of place of next meeting;  
and

(g)

adjournment

~~(7)~~ (8) The

director shall prepare an agenda for each meeting and shall be guided in his preparation of his agenda by consultation with the chairman of the board and the director's staff.

~~(8)~~ (9) The

agenda for an emergency meeting shall specify the items of business to be considered by the board at that meeting. No business other than that specifically stated on the agenda for that emergency meeting shall be considered. The subject matter to be considered at any emergency meeting shall be included in that notice given by the director to the members of the board as required in these regulations and the New Mexico Open Meetings Act.

~~(9)~~ (10)

All meetings shall be called to order and business of the meeting conducted by the chairman of the board, or in his absence, the vice-chairman. Should both the officers of the board be absent from the meeting, if a quorum is present, the board shall designate one of its members to assume the responsibilities of the chairman for that meeting.

~~(10)~~ (11)

The board shall conduct its meetings in a manner consistent with Roberts Rules of Order or other accepted parliamentary procedure as instituted by the chair or otherwise determined by the board. In the event a question arises in any meeting, the chairman is vested with authority to resolve such question and his decision shall be final.

~~(11)~~ (12)

The director shall send to all board members at least one week prior to the regular meeting date, a copy of the agenda for the regularly scheduled meeting, any documents or other items of information that may assist the board members in preparing for the upcoming meeting, and a copy of all petitions received by the director.

~~(12)~~ (13)

The minutes of each board meeting shall comply with requirements of the Open Meetings Act. The director or his staff are directed to compile the minutes of the meeting from stenographic notes of the meeting, a tape recording of the meeting, or both. After the board approves the minutes of the meeting, the stenographic notes or tape recording of the meeting may be destroyed. The approved minutes of a meeting shall constitute the official record of business transacted at the meeting. The approved minutes of the board meeting shall be preserved in a book of minutes and shall be available for public inspection during normal working hours.

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#### F. Regulations:

(1) The

board may alter and amend these regulations from time to time as it deems necessary. Alteration or amendment of these regulations may be accomplished by a majority vote of the board after a public hearing for which notice of not less than 30 days has been posted to the board's website and at least one newspaper of general circulation, and provided to any interested parties who have submitted a written request for such notice. The notice shall also state where interested persons may secure copies of any proposed regulations. Changes to the regulations shall comply with requirements under the State Rules Act [Chapter 14, Article 4 NMSA 1978].

(2) At the

hearing, the board shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing, and

to examine witnesses testifying at the hearing. Any person heard or represented at the hearing shall be given written notice of the actions of the board. The board may designate a hearing officer to take evidence in the hearing. A record shall be made of all proceedings at the hearing.

~~(2)~~ (3) The board

may direct the director to develop proposals for regulations and other guidelines as it feels are necessary for the fair and orderly conduct of the board's responsibilities.

(4) The board

shall consider proposed revisions as well as any public comment received prior to adopting any changes. The board shall provide rationale and justification for its decision either through statements made on the record during a public meeting or in a written order.

#### G. Miscellaneous:

(1) In

computing any period of time prescribed or allowed by these regulations, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday or Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. For purposes of this rule, a legal holiday shall include any day during which state offices are closed for any consecutive period of three hours or more between 8:00 a.m. and 5:00 p.m.

(2) The

law enforcement academy will maintain a database of all certified law enforcement officers and public safety telecommunicators that will reflect a valid mailing address for each individual. It will be incumbent on each certified individual to provide the law enforcement academy a current and valid mailing address for the purpose of board communications, notices of hearing, notices of action, and other official means of notification listed within the scope of this rule. Each certified law enforcement officer and public

safety telecommunicator will provide notice of change of address in writing by use of the law enforcement academy LEA-82A form within 30 days of any change of address. If an address change is due to termination, resignation, or retirement of a certified individual from a New Mexico public safety agency, the agency may provide a valid mailing address for the individual on the law enforcement academy LEA-82 form. Reporting and notification to the law enforcement academy of valid mailing address information is a requirement of certification maintenance and is the sole responsibility of the certified individual.

[10.29.1.8 NMAC - Rp, 10.29.1.8 NMAC, 11/15/16; A, 06/27/2017]

#### 10.29.1.10

#### QUALIFICATIONS FOR ADMISSION TO THE ACADEMY:

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**D. Withdrawal/dismissal enrollment:** During the course of an academy program if an enrolled student is unable to complete the full course of academy instruction, whether due to personal absence, withdrawal, or dismissal by the academy, the student will be required to re-enroll and complete the academy course in its entirety regardless of drop date.

[10.29.1.10 NMAC - Rp, 10.29.1.10 NMAC, 11/15/16; A, 06/27/2017]

### RACING COMMISSION

Explanatory Paragraph: This is an amendment to 15.2.1 NMAC, Sections 7 and 9, effective July 1, 2017. In 15.2.1.7 NMAC, Subsections A through N and Subsections Q through Z were not published as there were no changes. In 15.2.1.9 NMAC, Subsection A and B, Paragraphs (1) through (12) and Paragraphs (14) through (22) of Subsection C were not published as there were no changes.

#### 15.2.1.7

#### DEFINITIONS:

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#### O. Definitions beginning with the letter "o":

##### (1)

**"Objection"** is a written complaint made to the stewards concerning a horse entered in a race and filed in a timely manner prior to the scheduled post time of the first race on the day in which the questioned horse is entered; or a verbal claim of foul in a race lodged by the horse's jockey, trainer, owner or the owner's authorized agent before the race is declared official.

##### (2) "Official

**or racing official"** means assistant racing secretary, chief of security, director of racing or similar position, clerk of scales, clocker, general manager, handicapper, horse identifier, horsemen's bookkeeper, jockey room custodian, official veterinarian, paddock judge, pari-mutuel manager, patrol judge, placing judges, racing secretary, racing veterinarian, stable superintendent, starter, steward, timer, and track superintendent.

##### (3) "Official

**samples"** is a portion of any bodily substance or fluid, including but not limited to, tissue, hair, blood or urine obtained from a horse at the direction of the commission for the purposes of determining the presence of a prohibited substance.

##### (4) "Official

**order of finish"** is the order of finish of the contestants in a contest as declared official by the stewards.

##### [(4)] (5) "Official

**starter"** is the official responsible for dispatching the horses for a race.

##### [(5)] (6) "Official

**time"** is the elapsed time from the moment the first horse crosses the starting point until a horse crosses the finish line.

##### [(6)] (7) "Off time"

is the moment, at which, on the signal of the official starter, the doors of the starting gate are opened, officially dispatching the horses in each contest.

##### [(7)] (8) "Optional

**claiming race"** is a contest restricted to horses entered to be claimed for a stated claiming price and to those

which have started previously for that claiming price or less.

##### [(8)] (9) "Out

**of competition"** is defined as not participating in a race.

##### [(9)] (10)

**"Out of competition testing"** test(s) that may be conducted on any horse that is on the grounds of a racetrack or training center under the jurisdiction of the commission; or under the care or control of a trainer or owner licensed by the commission; or whose papers are filed in the racing office; or has been nominated to a stakes race.

##### [(10)] (11)

**"Outstanding ticket"** is a winning or refundable pari-mutuel ticket, which was not cashed during the performance for which it was issued; also known as "outs".

##### [(11)] (12)

**"Overnight race"** is a race for which entries close at a time set by the racing secretary and for which the owners of the horses do not contribute to the purse.

##### [(12)] (13)

**"Owner"** is defined as a person who holds any title, right or interest, whole or partial in a horse, including the lessee and lessor of a horse.

#### P. Definitions

beginning with the letter "p":

##### (1)

**"Paddock"** is an enclosure in which contestants scheduled to compete in a contest are confined prior to racing.

##### (2) "Pari-

**mutuel system"** is the manual, electromechanical, or computerized system and all software (including the totalisator, account betting system and offsite betting equipment) that is used to record bets and transmit wagering data.

##### (3) "Pari-

**mutuel wagering"** is a form of wagering on the outcome of an event in which all wagers are pooled and held by an association for distribution of the total amount, less the deductions authorized by law, to holders of tickets on the winning horses.

##### (4) "Patron"

is a member of the public present on the grounds of a pari-mutuel



association during a meeting for the purpose of wagering or to observe racing.

(5) **“Payout”**

is the amount of money payable to winning wagers.

(6)

**“Performance”** is a schedule of races run consecutively as one program.

(7) **“Person”**

is one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustee, receiver, syndicate, or any other legal entity.

(8) **“Positive**

**test”** [means the result of a test, conducted as provided in these rules on a urine, blood or other sample, which test indicated the presence of any stimulant, depressant, narcotic, local anesthetic, or of any drug, chemical or chemical agent of any kind which is foreign to the body of the horse.] means the result of a test, conducted as provided in these rules on an official sample, which indicates the presence of any prohibited substance.

(9) **“Post**

**position”** is the pre-assigned position from which a horse will leave the starting gate.

(10) **“Post**

**time”** is the scheduled starting time for a contest.

(11) **“Prima**

**facie evidence”** is evidence that, until its effect is overcome by other evidence, will suffice as proof of fact in issue.

(12) **“Private**

**barn”** is a barn and real property owned or leased by a trainer in which stalls are provided for races at a licensed New Mexico racetrack and who have direct access to a New Mexico racetrack.

(13) **“Profit”**

is the net pool after deduction of the amount bet on the winners.

(14) **“Profit**

**split”** is a division of profit amongst separate winning betting interests or winning betting combinations resulting in two or more payout prices.

(15)

**“Prohibited substance”** [is any chemical which, when administered to a horse can create a change in the normal physiological performance of the horse’s racing ability, such as narcotics, anesthetics, depressants, anti-convulsants, tranquilizers, hallucinogenics and when administered to a horse, and is not a therapeutic medication.] is any drug, chemical, or other substance which, when administered to a horse can create a change in the normal physiological performance of the horse’s racing ability, including:

(a)

stimulants or depressants or other substances as defined by the association of racing commissioners international; or

(b)

that may interfere with testing procedures; or

(c)

that is a therapeutic medication present in excess of established acceptable levels; or

(d)

that is present in the horse in excess of levels that could occur naturally; or

(e)

that is a substance specified by rule that is not allowed to appear in an out of competition or hair sample.

(16)

**“Program”** is the published listing of all contests and contestants for a specific performance.

(17) **“Protest”**

is a written complaint alleging that a horse is or was ineligible to race.

(18) **“Purse”** is

the total cash amount for which a race is contested whether paid at the time of the race or at a future date.

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[15.2.1.7 NMAC - Rp, 15 NMAC 2.1.7, 03/15/2001; A, 02/14/2002; A, 08/30/2007; A, 12/01/2010; A, 01/01/2013; A, 05/01/2013; 08/15/2014; A, 07/01/2017]

**15.2.1.9 DUE PROCESS AND DISCIPLINARY ACTION:**

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**C. Proceedings by the commission:**

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(13) **Reporters**

and transcripts.

(a)

[If necessary, and with concurrence of the parties,] At the request of the respondent, the commission shall engage a court reporter to make a stenographic record of a hearing. The commission may allocate the cost of the reporter and transcript among the parties.

(b)

If a person requests a transcript of the stenographic record, the commission may assess the cost of preparing the transcript to the person.

(c)

A party may challenge an error made in transcribing a hearing by noting the error in writing and suggesting a correction not later than 10 days after the date the transcript is filed with the commission. The party claiming errors shall serve a copy of the suggested corrections on each party of record, the court reporter and the presiding officer. If proposed corrections are not objected to before the 15th day after the date the corrections were filed with the commission, the presiding officer may direct that the [suggest] suggested corrections be made and the manner of making them. If the parties disagree on the suggested corrections, the presiding officer shall determine whether to change the record.

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[15.2.1.9 NMAC - Rp, 15 NMAC 2.1.9, 03/15/2001; A, 03/31/2003; A, 05/30/2003; A, 06/15/2004; A, 06/30/2009; A, 09/15/2009; A, 12/1/2010; A, 05/01/2013; A, 01/01/2014; A, 03/16/2015; A, 05/01/2015; A, 09/16/2015; A, 03/15/2016; A/E, 06/28/2016; A, 09/16/2016; A, 12/16/2016; A, 07/01/2017]

**RACING COMMISSION**

**Explanatory paragraph:** This is an amendment to 15.2.3 NMAC, Section 8, effective July 1, 2017. In 15.2.3.8 NMAC, Subsections A, B, Paragraphs (1) through (3) and Paragraphs (5) through (9) in Subsection C, and Subsections D through P were not published as there were no changes.

**15.2.3.8 FLAT RACING OFFICIALS GENERAL PROVISIONS:**

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**C. Racing secretary.**

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**(4)**

**Conditions.**

**(a)**

The racing secretary shall establish the conditions and eligibility for entering races and cause them to be published to owners, trainers and the commission and be posted in the racing secretary's office.

**(b)**

[For the purpose of establishing conditions, winnings shall be considered to include all monies won up to the time of the start of a race.] Any conditions that are based on a participating horse's use or non-use of a drug substance or medication, or the presence or lack of presence of a drug substance or medication in a biological test sample taken from a participating horse, shall be agreed to in advance in writing by the acknowledged horsemen's organization, and approved by the commission before entries are taken for the race. If such conditions are based on the results of a biological test sample other than an official test sample collected by the commission, a description of the testing methods and procedures the racing association will use to collect and analyze the biological test samples shall be submitted to the commission for approval. For purposes of this section, "biological test sample" refers to any biological sample,

including, but not limited to, blood, urine, hair, tissue, or saliva that is taken from a horse.

**(c)**

[Winnings during the year shall be calculated by the racing secretary from the preceding January 1.] For the purpose of establishing conditions, winnings shall be considered to include all monies won up to the time of the start of a race.

**(d)**

[A minimum of three races restricted to registered New Mexico bred horses shall be offered daily in the condition book excluding trials.] Winnings during the year shall be calculated by the racing secretary from the preceding January 1.

**(e)**

A minimum of three races restricted to registered New Mexico bred horses shall be offered daily in the condition book excluding trials.

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[15.2.3.8 NMAC - Rp, 15 NMAC 2.3.8, 04/13/2001; A, 11/15/2001; A, 08/30/2007; A, 06/15/2009; A, 06/30/2009; A, 12/01/2010; A, 05/01/2015; A/E, 06/28/2016; A, 09/15/16; A, 12/16/2016; A, 07/01/2017]

**RACING COMMISSION**

**15.2.5 NMAC**

**This is an amendment to Section 11 of 15.2.5 NMAC, effective August 26, 2017.**

**15.2.5.11 WORKOUTS:**

**A. Requirements:**

**(1)**

A non-starter must have had within 60 days prior to time of [race] entry one approved official schooling race or at least two workouts recorded at a pari mutuel or commission recognized facility and posted with the racing secretary prior to time of [race] entry, one of the two workouts shall be from the starting gate, and be gate approved. It shall be the trainer's responsibility to establish validity as to workouts and gate approvals.

**(2)**

Any horse which has started, but not within six months, must have one official workout from the starting gate or must have proof of standing the horse at least one time within a 60 day period. Any horse which has started, but not within 60 days, must have at least one workout within 60 days prior to time of [race] entry. Horses that have not started within six months of entry must have at least two approved workouts within the 60 days.

**(3)**

Horses that have never raced around the turn will be required to have within 30 days prior to time of [race] entry, at least one workout at 660 yards or farther. Horses that have previously started in a race around the turn, but not within 60 days, will be required to have at least one workout at 660 yards or farther prior to time of [race] entry.

**(4)**

Gate approvals at a licensed facility must be made by a licensed starter on a commission approved form.

**B. Identification:**

**(1)**

Each horse must be properly identified prior to its participation in an official timed workout.

**(2)**

The trainer or exercise rider shall bring each horse scheduled for an official workout to be identified by the clocker or clocker's assistant immediately prior to the workout.

**(3)**

A horse may be properly identified by its lip tattoo immediately prior to participating in an official timed workout. A horse may also be properly identified by other approved methods of positive identification as described in Subsection F of 15.2.3.8 NMAC.

**(4)**

The owner, trainer or rider shall be required to identify the distance the horse is to be worked and the point on the track where the workout will start.

**C. Information**

**dissemination:** Information regarding a horse's approved timed workout(s) shall be furnished to the public prior to the start of the race for which the

horse has been entered.

**D. Restrictions:** A horse shall not be taken onto the track for training or a workout except during hours designated by the association.

[15.2.5.11 NMAC - Rp, 15 NMAC 2.5.11, 03/15/2001; A, 03/30/2007; A, 06/15/2009; A, 07/05/2010; A, 01/01/2013; A. 03/15/2016; A, 12/16/16; A, 08/26/2017]

## RACING COMMISSION

**Explanatory paragraph:** This is an amendment to 15.2.6 NMAC, Sections 9 and 10, effective July 1, 2017. In 15.2.6.9 NMAC Subsections A, Paragraphs (1), (3) through (7) in Subsection B, Subsections D through F, Paragraphs (2) through (5) in Subsection G, Subsections H and I, and Subsections K through N were not published as there were no changes. In 15.2.6.10 NMAC, Paragraphs (2) through (4) of Subsection A, Subsection B, C, E, and E were not published as there were no changes.

### 15.2.6.9 MEDICATIONS AND PROHIBITED

**SUBSTANCES:** The classification guidelines contained within the “uniform classification guidelines for foreign substances and recommended penalties and model rule”, [~~April 8, 2016, version 12.0~~] December 9, 2016, version 13.01 and “association of racing commissioners international inc. controlled therapeutic medication schedule for horses”, [~~version 3.0, revised March 25, 2016~~] version 3.2, revised December 9, 2016 by the association of racing commissioners international, are incorporated by reference. Any threshold herein incorporated by reference by inclusion in one of the documents above shall not supersede any threshold or restriction adopted by the commission as specified by this section.

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**Continued On The Following  
Page**

**B. Penalty recommendations:**

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<b>(2)</b> Category B penalties will be assessed for violations due to the presence of a drug carrying a category B penalty and for the presence of more than one NSAID in a plasma or serum sample in accordance with Paragraphs (3) and (4) of <del>[Subsection P]</del> <u>Subsection N</u> of 15.2.6.9 NMAC. Recommended penalties for category B violations are as follows:
<b>Licensed trainer:</b>
<b>1<sup>st</sup> offense:</b>
A minimum 15-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum 60-day suspension. A minimum fine of \$500 absent mitigating circumstances or the presence of aggravating factors could be used to impose a \$1,000 fine.
<b>2<sup>nd</sup> Lifetime offense in any jurisdiction:</b>
A minimum 30-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum 180-day suspension. A minimum fine of \$1,000 absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$2,500.
<b>3<sup>rd</sup> Lifetime offense in any jurisdiction:</b>
A 60-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum of a one year suspension. A minimum fine of \$2,500 absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum \$5,000 fine or five percent of the total purse (greater of the two) and may be referred to the commission for any further action deemed necessary by the commission.
<b>Licensed owner:</b>
<b>1<sup>st</sup> offense:</b>
Disqualification, loss of purse (in the absence of mitigating circumstances)* and horse must pass a commission-approved examination before becoming eligible to be entered.
<b>2<sup>nd</sup> Lifetime offense in stable in any jurisdiction:</b>
Disqualification, loss of purse (in the absence of mitigating circumstances)* and horse must pass a commission-approved examination before becoming eligible to be entered.
<b>3<sup>rd</sup> Lifetime offense in stable in any jurisdiction:</b>
Disqualification, loss of purse, and in the absence of mitigating circumstances a \$5,000 fine* and horse must pass a commission-approved examination before becoming eligible to be entered.

\*\*\*

**C. Medication restrictions:**

**(1)** A finding by the commission approved laboratory of a prohibited ~~[drug, chemical or other substance in a test specimen]~~ substance in an official sample of a horse is prima facie evidence that the prohibited ~~[drug, chemical or other]~~ substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. ~~[Prohibited substances include: drugs or medications for which no acceptable levels have been established; therapeutic medications in excess~~

~~of established acceptable levels; substances present in the horse in excess of levels at which such substances could occur naturally; substances foreign to a horse at levels that cause interference with testing procedures.]~~

**(2)** Nothing in this part shall prevent a racing association from setting eligibility conditions, as agreed to with the acknowledged horsemen's organization, for individual races, or for its entire race meet, that prohibit the use or the presence of drug substances or medications in biological test samples collected from participating horses are detection levels lower than what is authorized

by the commission. Such conditions if established in accordance with 1.2.3.5 NMAC shall not be deemed in conflict with the rules and regulations of the commission.

**(3)** Except as otherwise provided by this part, a person may not administer or cause to be administered by any means to a horse a prohibited ~~[drug, medication, chemical or other]~~ substance, including any restricted medication pursuant to this part during the 24-hour period before post time for the race in which the horse is entered.

~~[(3)]~~ **(4)** There is no permissible concentration of clenbuterol that is allowed to appear in any official sample.



~~(4)~~ (5) The restrictions set forth in Paragraph ~~(2)~~ (3) above do not apply to the following substances:

(a) Topical applications, such as antiseptics, ointments, salves, leg rubs and leg paints which may contain antibiotics (excluding procaine, penicillin and chloramphenicol) but which shall not contain ethanol, benzocaine, dimethylsulfoxide, lidocaine, steroids or other medications.

(b) Vitamins and electrolytes, provided the vitamins and electrolytes are administered orally and do not contain any medications.

(c) Mentholated products designed to be used and administered topically to the nostril areas.

~~(5)~~ (6) Commission personnel may at any time confiscate any material or devices used for the administration of any substance identified in Paragraph ~~(4)~~ (5) above and submit it to the official laboratory for testing in order to ensure the contents are accurately identified.

~~(6)~~ (7) The use of a nebulizer or any similar device used to administer a drug or other substance by inhalation is not permitted on the day a horse is entered to race.

~~(7)~~ (8) Any horse that is the subject of a positive test report from the official laboratory for a drug in one of the following categories shall be placed immediately on the steward's list:

(a) any drug categorized by the association of racing commissioner's international "uniform classification guidelines for foreign substance and recommended penalties and model rule" incorporated by reference under 15.2.6.9 NMAC as a penalty class A substance;

(b) any prohibited anabolic androgenic steroid or any anabolic androgenic steroid in excess of the permitted concentrations listed in Subsection G

of 15.2.6.9 NMAC;

(c) clenbuterol or other beta-agonist drugs with significant anabolic effects that are not currently penalty class A drugs;

(d) other drugs designed to promote growth or muscle including, but not limited to, growth hormones, somatotropins, insulin growth factors and gene modifying agents;

(e) cobalt in excess of the allowable concentration specified pursuant to Subsection M of 15.2.6.9 NMAC.

~~(8)~~ (9) Horses placed on the steward's list for a positive test for any of the substances listed in Paragraph ~~(7)~~ (8) of Subsection C above shall remain on the steward's list for 60 days. The first day shall be considered the day following the date of the signed report from the official laboratory.

~~(9)~~ (10) In order to be removed from the steward's list and prior to entry, the following conditions shall be met:

(a) a minimum of 60 days must have elapsed;

(b) the horse must be presented to the test barn on or after day 60 for the official veterinarian to obtain ~~[blood and urine]~~ blood, urine or hair samples;

(c) the collected samples must test negative for any substance identified in Paragraph ~~(7)~~ (8) of Subsection C above;

(d) the cost of the testing, including applicable shipping costs, shall be borne by the licensed owner and must be paid in full at the time of shipment.

~~(10)~~ (11) If a split sample obtained under Subsection D of 15.2.6.10 NMAC does not confirm the original finding of the official laboratory of a positive test, the horse shall be removed from the steward's list.

~~(11)~~ (12) A practicing veterinarian that is licensed by the commission may prescribe a drug identified by Paragraph ~~(7)~~

~~(8)~~ of Subsection C above under the following conditions:

(a) the diagnosis justifying the prescribed drug, the dosage, the expected duration of treatment, the name of the horse and the name of the trainer must be submitted to the official veterinarian on a form prescribed by the commission;

(b) only FDA label-approved drugs for use in the horse may be prescribed;

(c) the horse shall be placed on the veterinarian's list for a period of time not less than 30 days after the last administration of the drug as prescribed;

(d) the horse must be presented to the test barn once eligible to be removed from the list for the official veterinarian to obtain ~~[blood and urine]~~ blood or urine samples;

(e) the collected samples must test negative for the prescribed substance and any other substance identified in Paragraph ~~(7)~~ (8) of Subsection C above;

(f) the cost of testing, including applicable shipping costs shall be borne by the licensed owner and must be paid in full at the time of shipment;

(g) horses placed on the veterinarian's list for the therapeutic use of any substance identified in Paragraph ~~(7)~~ (8) of Subsection C above will be exempt from hair sampling for a six-month period following the last day of the reported treatment. Horses will be subject to out of competition blood and urine sampling during the treatment period pursuant to Subsection J of 15.2.6.9 NMAC to ensure that the concentration of drug found is within the range expected for the recognized therapeutic dose of the drug and will be subject to enhanced out of competition blood and urine sampling during the period exempt from hair sampling.

\*\*\*

**G. Androgenic-anabolic steroids:**

(1) No AAS shall be permitted in [~~test sample~~] official samples collected from racing horses except for residues of the major metabolite of **nandrolone**, and the naturally occurring substances **boldenone** and testosterone at concentrations less than the indicated thresholds.

\*\*\*

**J. Out of competition testing:**

(1) A horse may be subject to out of competition testing without advance notice if the horse is:

(a) on the grounds of a racetrack or training center under the jurisdiction of the commission;

(b) under the care or control of a trainer or owner licensed by the commission; or

(c) any horse whose papers are filed in the racing office; or

(d) has been nominated to a stakes race; or

(e) on the steward's list pursuant to Subsection C of 15.2.6.9 NMAC.

(2) This rule applies to [~~prohibited substances, practices and procedures as follows:~~] the detection of prohibited substances in out of competition official samples as follows:

(a) penalty class A drugs as listed with the association of racing commissioners international "uniform classification guidelines for foreign substances and recommended penalties and model rule" and incorporated by reference under 15.2.6.9 NMAC;

(b) blood doping agents including, but not limited to, erythropoietin (EP), darbepoetin, oxyglobin, [~~hempure,~~] hemopure, aranasep or any substance that abnormally enhances the oxygenation of body tissues;

(c) gene doping agents or the non-therapeutic use of genes, genetic elements, or cells that have the capacity to enhance athletic performance or produce analgesia

(d) clenbuterol present in [~~a sample~~] any official sample in a horse not previously placed on the veterinarian's list pursuant to Paragraph [(9)] (10) of Subsection C of 15.2.6.9 NMAC; and

(e) androgenic-anabolic steroids present in [~~a sample~~] any official sample in a horse not previously placed on the veterinarian's list pursuant to Paragraph [(9)] (10) of Subsection C of 15.2.6.9 NMAC.

(3) The penalty for a positive test resulting from an out of competition blood or urine sample will be determined by the penalty class of the drug listed in the association of racing commissioners international "uniform classification guidelines for foreign substances and recommended penalties and model rule" and incorporated by reference under 15.2.6.9 NMAC. [~~Positive tests for substances identified under Paragraph (5) of Subsection C of 15.2.6.9 NMAC will be placed on the steward's list as per the conditions set forth in that subsection. Horses already on the steward's list for violations of Subsection C of 15.2.6.9 NMAC that have a positive out of competition test for one of the substances identified in the referenced paragraph shall be placed on the steward's list for an additional, consecutive 60-day period.~~]

(4) A horse with a positive test in an out of competition official sample for any substance identified under Paragraph (6) of Subsection C of 15.2.6.9 NMAC will be placed on the steward's list as per the conditions set forth in that subsection. Horses already on the steward's list for violations of Subsection C of 15.2.6.9 NMAC that have a positive out of competition test in a blood or urine sample for one of the substances

identified in the referenced paragraph shall be placed on the steward's list for an additional, consecutive 60-day period.

[(4)] (5) Horses to be tested may be selected at random, with probable cause or as determined by the commission or an agent of the commission.

[(5)] (6) The commission veterinarian, or any licensed veterinarian or licensed veterinary technician authorized by the commission, may at any time take [~~a urine, blood or hair~~] an official sample from a horse for this purpose.

[(6)] (7) Split samples shall be collected in accordance with Subsection B of 15.2.6.10 NMAC and shall be secured and made available for further testing in accordance with Subsection D of 15.2.6.10 NMAC.

[(7)] (8) All horses selected for testing must be presented to the commission veterinarian, or any licensed veterinarian or licensed veterinary technician authorized by the commission, at the time designated, unless the trainer or owner provides verification of an extenuating circumstance that makes it impossible. Penalties for violations of this subsection include:

(a) any horse not presented for testing upon notification absent extenuating circumstances will be placed immediately on the steward's list for a minimum of 60 days and shall be subject to all the requirements set forth in Paragraph [(7)] (8) of Subsection C of 15.2.6.9 NMAC; and

(b) the licensed trainer of a horse not presented for testing upon notification and absent extenuating circumstances is a maximum suspension of 180 days.

[(8)] (9) Any licensee who does not comply with the rule or the commission veterinarian for a sample may be subject to disciplinary action.

[(9)] (10) Cooperation with the commission veterinarian, or any licensed veterinarian or licensed veterinary

technician authorized by the commission, includes:

(a) assisting in the immediate location and identification of the horse selected for out of competition testing; and

(b) assisting the veterinarian in properly procuring the samples.

~~[(10)]~~ (11)

Out of competition samples will be sent to the official laboratory of the commission, or another laboratory as designated by the commission, with reports made in accordance with the provisions of the medication rules and the penalty provisions therefore.

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[15.2.6.9 NMAC - Rp, 15 NMAC 2.6.9, 04/13/2001; A, 08/30/2001; A, 07/15/2002; A, 08/15/2002; A, 09/29/2006; A, 10/31/2006; A, 08/30/2007; A, 01/31/2008; A, 03/01/2009; A, 06/15/2009; A, 06/30/2009; A, 09/15/2009; A, 12/15/2009; A, 03/16/2010; A, 07/05/2010; A, 09/01/2010; A, 12/01/2010; A, 11/01/2011; A, 02/15/2012; A, 04/30/2012; A, 07/31/2012; A, 12/14/2012; A, 05/01/2013; A/E, 05/02/2013; A, 09/30/2013; A, 04/01/2014; A, 05/16/2014; A, 08/15/2014; A, 09/15/2014; A, 03/16/2015; A, 09/16/15; A, 03/15/2016; A, 06/15/2016; A/E, 06/28/2016; A, 09/15/2016; A, 12/16/2016; A, 07/01/2017]

**15.2.6.10 TESTING:**  
**A. Reporting to the test barn:**

(1) The official winning horse, or any other horses ordered by the commission or the stewards shall be taken to the test barn to have a ~~[blood sample or a urine sample or both]~~ an official sample taken at the direction of the official veterinarian.

\*\*\*

**D. Storage and shipment of split samples:**

(1) Split

samples obtained in accordance with Paragraphs (3) and (4) Subsection B, of 15.2.6.10 NMAC above shall be secured and made available for further testing. A split sample shall be secured in the test barn under the same manner as the portion of the specimen acquired for shipment to a primary laboratory until such time as specimens are packed and secured for shipment to the primary laboratory. Split samples shall then be transferred to a freezer at a secure location as provided by state statute or approved by the commission.

(2) A trainer, owner or designee of a horse having been notified that a written report from a primary laboratory states that a prohibited substance has been found in a specimen obtained pursuant to these rules may request that a split sample corresponding to the portion of the specimen tested by the primary laboratory be sent to another testing laboratory that is accredited by ISO 17025 and approved by the commission. The ISO 17025 requirement may only be waived by the commission for the purpose of a split sample test involving a hair sample. The request must be made and confirmed with the commission not later than 48 hours excluding weekends and holidays after the trainer of the horse receives notice of the findings of the primary laboratory. The trainer's first choice, second choice and third choice of laboratories, for the split sample to be sent to, shall be listed within that 48 hours and kept on file with the horsemen's association.

Any request not received within the specified deadline shall be considered a positive test. Any split sample so requested must be shipped within seven working days after the trainer's 48 hour deadline or the New Mexico horsemen's association may be subject to disciplinary action.

(3) The owner, trainer or designee requesting testing of a split sample shall be responsible for the cost of shipping and testing. Failure of the owner, trainer or designee to appear at the time and place designated by the

commission or the commission's designee shall constitute a waiver of all rights to split sample testing. Prior to shipment, ~~[the New Mexico horsemen's association]~~ the owner, trainer or designee shall confirm the split sample laboratory's willingness to provide the testing requested, the laboratory's willingness to send results to both the person requesting the testing and the commission, and arrangements for payment satisfactory to the split sample laboratory. ~~[A split sample testing laboratory must be accredited by ISO 17025 and approved by the commission. If a reference laboratory will accept split samples, that laboratory must be included among the laboratories approved for split sample testing.]~~

(4) ~~[Prior to opening the split sample freezer, the commission shall provide a split sample chain of custody verification form that shall provide a place for recording the following information and such other information as the commission may require. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample.]~~ Prior to opening the split sample freezer or any other secure split sample storage mechanism, the commission shall ensure that the standard operating procedure for the handling and shipping of the split sample are followed and documented. Standard operating procedure for the handling and shipping of a split sample shall include documentation of the following at a minimum:

(a) the date and time the sample is removed from the split sample freezer or other secured mechanism;

(b) the sample number;

(c) the address where the split sample is to be sent;

(d) the name of the carrier and the address where the sample is to be taken for shipment;

(e) verification the owner, trainer or designee received the split sample

from the freezer or other secured mechanism;

~~(f)~~

verification of the condition of the split sample package immediately prior to transfer of custody to the carrier; and,

~~(g)~~

the date and time custody of the sample is transferred to the carrier.

~~[(5)]~~ Split

sample chain of custody form requirements: the date and time the sample is removed from the split sample freezer; the sample number; the address where the split sample is to be sent; the name of the carrier and the address where the sample is to be taken for shipment; verification of retrieval of the split sample from the freezer; verification of each specific step of the split sample packaging in accordance with the recommended procedure verification of the address of the split sample laboratory on the split sample package; verification of the condition of the split sample package immediately prior to transfer of custody to the carrier; the date and time custody of the sample is transferred to the carrier.]

~~[(6)]~~ (5) A split

sample shall be removed from the split sample freezer or other secured mechanism by a commission representative in the presence of [a representative of the horsemen's association.] the owner, trainer or designee.

~~[(7)]~~ (6) The

owner, trainer or designee shall pack the split sample for shipment in the presence of the representative of the commission, in accordance with the packaging procedures recommended by the commission. A form shall be signed by both the horsemen's representative and the commission representative to confirm the packaging of the split sample. The exterior of the package shall be secured and identified with initialed tape, evidence tape or other means to prevent tampering with the package.

~~[(8)]~~ (7) The

package containing the split sample shall be transported in a manner prescribed by the commission to the

location where custody is transferred to the delivery carrier charged with delivery of the package to the commission-approved laboratory selected by the owner or trainer.

~~[(9)]~~ (8) The

owner, trainer or designee and the commission representative shall inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

~~[(10)]~~ (9)

[The split sample chain of custody verification form shall be completed and signed by the representatives of the commission and the owner or trainer. A commission representative shall keep the original and provide a copy for the owner or trainer.] All documents verifying the handling and shipping of the split sample chain of custody shall be completed and signed by the representatives of the commission and the owner, trainer or designee. A commission representative shall keep all original documents and provide copies for the owner, trainer or designee.

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[15.2.6.10 NMAC - Rp, 15 NMAC 2.6.10, 04/13/2001; A, 03/30/2007; A, 09/01/2010; A, 07/31/2012; A, 05/01/2013; A, 05/16/2014; A, 06/15/2016; A, 07/01/2017]

## RACING COMMISSION

**Explanatory paragraph:** This is an amendment to 16.47.1 NMAC, Sections 8, 15, 16, 17, 18, 19, 20 and 21, effective July 1, 2017. In 16.47.1.8 NMAC, Subsection A, Paragraph (1), (4) and (5) in Subsection B, Subsections C through M, and Subsection O through V were not published as there were no changes. 16.47.15 NMAC is a new Section. All subsequent subsections following 16.47.1.15 NMAC were renumbered.

### 16.47.1.8 GENERAL PROVISIONS:

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(2) Persons

required to be licensed shall submit a completed application on forms furnished by the commission and accompanied by the required fee. The following fees are assessed for the issuance of the specified licenses. In addition to license fees listed herein, \$20.00 is assessed for each identification picture and badge.

**Continued On The Following Page**



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Announcer	<del>[\$55.00]</del> <u>\$ 75.00</u>
Assistant general manager	<del>[\$80.00]</del> <u>\$100.00</u>
Assistant racing secretary	<del>[\$15.00]</del> <u>\$ 20.00</u>
Association	<del>[\$80.00]</del> <u>\$100.00</u>
Auditor, official	<del>[\$55.00]</del> <u>\$ 75.00</u>
Authorized agent	<del>[\$ 5.00]</del> <u>\$ 10.00</u>
Clerk of scales	<del>[\$15.00]</del> <u>\$ 20.00</u>
Clocker	<del>[\$15.00]</del> <u>\$ 20.00</u>
Club, racetrack	<del>[\$80.00]</del> <u>\$100.00</u>
Concession employee	<del>[\$ 5.00]</del> <u>\$ 10.00</u>
Concession operator	<del>[\$80.00]</del> <u>\$100.00</u>
Custodian of jockey room	<del>[\$15.00]</del> <u>\$ 20.00</u>
Director or corporate officer	<del>[\$80.00]</del> <u>\$100.00</u>
Director of operations	<del>[\$55.00]</del> <u>\$ 75.00</u>
Director of racing	<del>[\$55.00]</del> <u>\$ 75.00</u>
Exercise person	<del>[\$15.00]</del> <u>\$ 20.00</u>
General manager	<del>[\$80.00]</del> <u>\$100.00</u>
Groom	<del>[\$ 5.00]</del> <u>\$ 10.00</u>
Horseman's bookkeeper	<del>[\$15.00]</del> <u>\$ 20.00</u>
Identifier (horse)	<del>[\$15.00]</del> <u>\$ 20.00</u>
Janitor	<del>[\$ 5.00]</del> <u>\$ 10.00</u>
Jockey (3 year)	<del>[\$100.00]</del> <u>\$200.00</u>
Jockey (1 year)	<del>[\$80.00]</del> <u>\$100.00</u>
Jockey (apprentice) (3 year)	<del>[\$100.00]</del> <u>\$200.00</u>
Jockey (apprentice) (1 year)	<del>[\$80.00]</del> <u>\$100.00</u>
Jockey agent	<del>[\$55.00]</del> <u>\$ 75.00</u>
Jockey valet	<del>[\$ 5.00]</del> <u>\$ 10.00</u>
Laborer	<del>[\$ 5.00]</del> <u>\$ 10.00</u>
<del>[Official]</del> Office personnel (specify position)	<del>[\$ 5.00]</del> <u>\$ 10.00</u>
Official veterinarian (3 year)	<del>[\$100.00]</del> <u>\$200.00</u>
Official veterinarian (1 year)	<del>[\$80.00]</del> <u>\$100.00</u>
Outrider	<del>[\$15.00]</del> <u>\$ 20.00</u>
Owner (3 year)	<del>[\$100.00]</del> <u>\$200.00</u>
Owner (1 year)	<del>[\$80.00]</del> <u>\$100.00</u>
Paddock judge	<del>[\$15.00]</del> <u>\$ 20.00</u>
Pari mutuel employee	<del>[\$ 5.00]</del> <u>\$ 10.00</u>
Pari mutuel manager	<del>[\$55.00]</del> <u>\$ 75.00</u>
Placing judge	<del>[\$15.00]</del> <u>\$ 20.00</u>
Photo employee	<del>[\$ 5.00]</del> <u>\$ 10.00</u>
Plater	<del>[\$80.00]</del> <u>\$100.00</u>
Pony person	<del>[\$ 5.00]</del> <u>\$ 10.00</u>
Private barns	<del>[\$ 80.00]</del> <u>\$100.00</u>
Racing secretary-handicapper	<del>[\$55.00]</del> <u>\$ 75.00</u>

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Security chief	<del>[\$55.00]</del> \$ 75.00
Security staff	<del>[\$ 5.00]</del> \$ 10.00
Simulcast company employee	<del>[\$ 5.00]</del> \$ 10.00
Simulcast coordinator	<del>[\$55.00]</del> \$ 75.00
Simulcast operator	<del>[\$80.00]</del> \$100.00
Special event, 1 or 2 day	<del>[\$100.00]</del> \$200.00
Stable name (3 year)	<del>[\$100.00]</del> \$200.00
Stable name (1 year)	<del>[\$80.00]</del> \$100.00
Stable superintendent	<del>[\$55.00]</del> \$ 75.00
Starter	<del>[\$55.00]</del> \$ 75.00
Starter assistant	<del>[\$15.00]</del> \$ 20.00
Ticket seller (admissions)	<del>[\$ 5.00]</del> \$ 10.00
Timer	<del>[\$15.00]</del> \$ 20.00
Totalisator employee	<del>[\$ 5.00]</del> \$ 10.00
Totalisator operator	<del>[\$80.00]</del> \$100.00
Track maintenance, employee	<del>[\$ 5.00]</del> \$ 10.00
Track physician	<del>[\$80.00]</del> \$100.00
Track superintendent	<del>[\$55.00]</del> \$ 75.00
Trainer (3 year)	<del>[\$100.00]</del> \$200.00
Trainer (1 year)	<del>[\$80.00]</del> \$100.00
Trainer assistant	<del>[\$15.00]</del> \$ 20.00
Veterinarian assistant	<del>[\$15.00]</del> \$ 20.00
Veterinarian, practicing (3 year)	<del>[\$100.00]</del> \$200.00
Veterinarian, practicing (1 year)	<del>[\$80.00]</del> \$100.00
Veterinarian, racing (3 year)	<del>[\$100.00]</del> \$200.00
Veterinarian, racing (1 year)	<del>[\$80.00]</del> \$100.00
Watchman	<del>[\$ 5.00]</del> \$ 10.00

(3) License applicants shall be required to furnish to the commission a set(s) of fingerprints and a recent photograph. Any license applicant that is under the age of 18 years of age is exempt from the requirement to submit fingerprint cards.

(a) All license applicants shall be required to be re-fingerprinted every six years and re-photographed periodically as determined by the commission.

(b) Requirements for fingerprints may be fulfilled by:

- (i) submission of fingerprints; or
- (ii) verification that fingerprints were submitted for processing;
- (iii) submission of a fingerprint reciprocity affidavit; or
- (iv) provide proof of licensure from another jurisdiction to which fingerprints

were submitted within the last six years.

\*\*\*

#### N. Changes in application information:

(1) During the period for which a license has been issued, the licensee shall report to the commission changes in information provided on the license applications as to current legal name, marital status, permanent address, criminal convictions, license suspension of 10 days or more and license revocations in other jurisdictions.

(2) A child or spouse pass, ~~[a change in current legal name, or badge replacement, requires a completed application and payment of a photo badge fee]~~ or a change in current legal name requires a completed application on forms furnished by the commission and payment of a photo badge fee.

(3) A licensee requesting a first time badge replacement shall submit a completed application on forms furnished by the commission and payment of a photo badge fee. Any subsequent badge replacements require the licensee to submit a completed application on forms furnished by the commission and payment of the original license fee.

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[16.47.1.8 NMAC - Rp, 16 NMAC 47.1.8, 03/15/2001; A, 08/30/2001; A, 11/15/2001; A, 12/14/2001; A, 02/14/2002; A, 11/14/2002; A, 03/31/2003; A, 07/15/2003; A, 09/29/2006; A, 03/30/2007; A, 08/14/2008; A, 06/15/2009; A, 09/15/2009; A, 01/01/2014; A, 04/01/2014; A, 06/01/2016; A, 12/16/2016; A, 07/01/2017]

**16.47.1.15 PONY PERSON AND EXERCISE RIDER ELIGIBILITY:**

A. An applicant for a license as a pony person or an exercise rider must be at least 16 years of age and shall submit and pass a drug (controlled substance) and alcohol screening test.

B. Applicants not previously licensed as a pony person or exercise rider shall be required to appear before the board of stewards for an oral interview.

(1) If applicant passes the oral interview, they will be issued a license and placed on probation for 30 days. The probation period will commence on the day the license is issued.

(2) During this 30 day probation period, the applicant's riding ability will be observed by the outrider on duty. It is the responsibility of the applicant to notify the outrider of their presence on the racetrack prior to entering onto the racetrack.

(3) Failure for applicant to receive approval from both outriders on demonstrating their riding ability after the 30 day probation period has lapsed, shall

subject the license to be revoked.  
[16.47.1.15 NMAC - N, 07/01/2017]

**~~16.47.1.15~~ 16.47.1.16 PRACTICING VETERINARIANS**

**A. Eligibility:** An applicant for a license as practicing veterinarian shall be qualified and licensed to practice veterinary medicine in this jurisdiction and be otherwise qualified to be issued a license to participate in racing. An application for a practicing veterinarian license from the commission must be accompanied by a copy of the applicant's current license to practice veterinary medicine.

**B. Responsibility:**  
**(1) All** practicing veterinarians administering drugs, medications or other substances shall be responsible to see that the drugs, medications or other substances, and the veterinary treatment of horses are administered in accordance with 15.2.6 NMAC.

**(2) All** practicing veterinarians shall promptly notify the official veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in his/her charge.

[16.47.1.16 NMAC - Rp, 16 NMAC 47.1.16, 03/15/2001; Rp, 16.47.1.15 NMAC, 07/01/2017]

**~~16.47.1.16~~ 16.47.1.17 HUMAN DRUG TESTING**

**A. General provisions:** The following rules in this chapter establish and describe requirements, criteria, standards and procedures for human substance abuse testing for occupational licensees licensed by the commission.

**B. Prohibited actions:** All licensees shall be deemed to be exercising the privileges of their license, and to be subject to the requirements of these rules, when engaged in activities that could affect the outcome of a race or diminish the conditions of safety or decorum required in restricted areas.

**C. Restricted activities:** It shall be an offense to

exercise the privileges granted by a license from this commission if the licensee:

**(1)** is engaged in illegal sale or distribution of alcohol or a controlled substance;  
**(2)** possesses, without a valid prescription, a controlled substance;  
**(3)** is intoxicated or under the influence of alcohol or a controlled substance;  
**(4)** is addicted, having been determined to be so by a professional evaluation, to alcohol or other drugs and not engaged in an abstinence-based program of recovery acceptable to the commission;  
**(5)** has in his/her possession within the enclosure any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled dangerous substance;

**(6)** refuses to submit to urine or drug testing, when notified that such testing is based on a random drug testing procedure, is based on reasonable suspicion that the person is using drugs or alcohol or is based on the licensee's acting as if in an impaired condition; or

**(7)** presently has drugs (controlled substances) or alcohol in his/her body. With regard to alcohol, the results of a test showing a reading of more than .05 percent of alcohol in the blood, urine, saliva or other bodily fluids of licensees in non-safety sensitive positions shall be the criterion for a finding of alcohol present in the body. With regard to other controlled substances, presence of the drug in any quantity measured by the testing instrument establishes the presence of the drug for purposes of this paragraph. Licensees in safety sensitive positions, jockeys, starters,

assistant starters, exercise riders, pony persons, ambulance personnel, and outriders are in violation of this rule if they have any measurable level of alcohol.

[16.47.1.17 NMAC - Rp, 16 NMAC 47.1.16, 03/15/2001; Rp, 16.47.1.16 NMAC, 07/01/2017]

**~~[16.47.1.17]~~ 16.47.1.18 TESTING PROCEDURES**

**A. General:**

(1) At its discretion, the commission may conduct random or episodic random drug testing, as well as testing based on reasonable suspicion, in order to ensure safety on the racetrack.

(2) When conducted, random drug testing shall apply, equally, to all licensees who are, at the time of the random testing, exercising the privileges of their license in such ways as may affect the outcome of a race or diminish the conditions of safety or decorum required in restricted areas.

(3) No notice need be given as to onset or cessation of random testing.

(4) For licensees who are testing under the provisions in this chapter, and whose urine testing shows the presence of drugs (controlled substances) or alcohol, any field screening test results shall be confirmed by a laboratory acceptable to the commission which shall include Gas Chromatography/Mass Spectrometry (GC/MS) procedures.

(5) An association will provide a drug (controlled substances) and alcohol-screening test for all applicants for groom, exercise and pony persons when making application for license. The cost for the drug-screening test will be borne by the applicant payable to the association at a reasonable cost approved by the commission.

**B. Split sample:**

When the sample quantity permits, each test sample shall be divided into portions so that one portion may be used for the confirmation procedure and another portion may be utilized by the licensee to obtain

an independent analysis of the urine sample.

**C. Chain of custody:**

The commission shall provide for a secure chain of custody for the sample to be made available to the licensee.

**D. Financial**

**responsibility:** All costs for the transportation and testing for the sample portion made available for the licensee shall be the financial responsibility of the requesting person. Payment to the testing laboratory shall be due from the requesting person at the time the request is made to have the split sample tested.

[16.47.1.18 NMAC - Rp, 16 NMAC 47.1.16, 03/15/2001; Rp, 16.47.1.17 NMAC, 07/01/2017]

**~~[16.47.1.18]~~ 16.47.1.19 ASSESSMENT/TREATMENT REQUIREMENTS:**

**A. General:**

A licensee penalized or restricted pursuant to this chapter shall retain rights of due process with respect to any determination of alleged violations which may adversely affect the right to hold a license. If there has been an offense, under 16.47.1.17 NMAC, above, the procedures in Subsections B, C and D of 16.47.1.18 NMAC will be followed.

**B. First-time**

**offenders:**

(1) The board of stewards or the commission may, at its discretion, order the licensee to obtain a professional assessment to determine whether there is a substantial probability that the licensee is dependent on, or abuses, alcohol or other drugs or the board of stewards or the commission may act on the information at hand.

(2) Actions in the case of first offenders may include revocation of the license, suspension of the license for up to six months, placing the offender on probation for up to 90 days or ordering formal assessment and treatment.

(3) Treatment or assessment, if ordered, must meet the conditions given in 16.47.1.18.C NMAC.

**C. Second-time**

**offenders:**

(1) The license of the person may be revoked or suspended for a period of up to one year or a professional assessment of the person may be ordered by the commission.

(2) If a professional assessment indicates presence of a problem or alcohol or other drug abuse that is not treatable within the reasonably foreseeable future (360 days) the license may be suspended for a period of up to one year.

(3) If a professional assessment indicates presence of a treatable problem of alcohol or other drug abuse or dependence, the board of stewards or the commission may order the licensee to undergo treatment as a condition of continuing licensure. Such treatment will be through a program or by a practitioner, acceptable to the licensee and the board of stewards or the commission. Required features of any program or practitioner acceptable to the board of stewards or the commission will be: accreditation or licensure by an appropriate government agency, if required by state statute; a minimum of one year follow-up treatment; and, a formal contract indicating the elements of the treatment and follow-up program that will be completed by the licensee and, upon completion, certified to the board of stewards or the commission as completed. To ~~[effect]~~ affect the contract, the licensee will authorize release of information by the treating agency, hospital or individual.

**D. Third-time**

**offenders:** For third-time offenders, the offender's license may be revoked and the offender may be deemed ineligible for licensure for up to five years.

[16.47.1.19 NMAC - Rp, 16 NMAC 47.1.16, 03/15/2001; Rp, 16.47.1.18 NMAC, 07/01/2017]

**~~[16.47.1.19]~~ 16.47.1.20 RELAPSE OF LICENSEE IN RECOVERY PROGRAM GENERAL:**



Although relapse (failure to maintain abstinence) is not inevitable, it is common for relapse to occur in recovery from alcoholism or other substance dependence. Therefore, a licensee who is engaged in a formal program of recovery, and is compliant with all provisions other than abstinence, will not be regarded automatically as having committed a new offense.

[16.47.1.20 NMAC - Rp, 16 NMAC 47.1.16, 03/15/2001; Rp, 16.47.1.19 NMAC, 07/01/2017]

#### **[16.47.1.20] 16.47.21 POST-RELAPSE PROCEDURES**

**A.** When a licensee is determined to have failed in maintaining abstinence, the licensee shall furnish to the board of stewards or the commission an assessment by the treating agency, hospital or individual practitioner indicating whether the licensee was compliant with the agreed upon program of recovery, and an opinion as to whether a "new offense" occurred.

**B.** The board of stewards or the commission will determine whether a new offense has occurred in each instance. If a new offense has occurred, the board of stewards or the commission will proceed under Subsections B or C of 16.47.1.18 NMAC. Otherwise, the licensee shall continue in the agreed upon program of recovery.

[16.47.1.21 NMAC - Rp, 16 NMAC 47.1.16, 03/15/2001; Rp, 16.47.1.20 NMAC, 07/01/2017]

### **REGULATION AND LICENSING DEPARTMENT PHYSICAL THERAPY BOARD**

**This is an amendment to Sections 8 and 11 of 16.20.3.8 NMAC, effective 7/27/2017.**

#### **16.20.3.8 APPLICATION FOR LICENSURE.**

**A.** The board may issue a license to an applicant, other than one applying for licensure by [endorsement] reciprocity, who fulfills the following requirements:

- (1) completes the application;
- (2) includes a passport-size photograph taken within the preceding 12 months and affixes it to the application;
- (3) pays the non-refundable application fee in full as provided in Part 5;
- (4) passes the jurisprudence exam (as specified in 16.20.2.10 NMAC) and pays the non-refundable exam fee as provided in Part 5;
- (5) submits official college or university transcripts from a program approved by the commission on accreditation in physical therapy education (CAPTE) verifying one of the following:
  - (a) post-baccalaureate degree in physical therapy;
  - (b) associate degree as a physical therapy therapist assistant;
  - (6) if official transcripts are not available because of school closure or destruction of the records, e.g., the applicant must provide satisfactory evidence of meeting the required physical therapy educational program by submitting documentation that will be considered on a case-by-case basis by the board and pursuant to the following:
    - (a) for applicants who graduated after January 1, 2002, documentation of graduation with a post-baccalaureate degree in physical therapy from an educational program accredited by CAPTE;
    - (b) for applicants who graduated prior to January 1, 2002, documentation of graduation with a baccalaureate degree in physical therapy or a certificate in physical therapy from an educational program accredited by CAPTE;
    - (c) for physical therapist assistant applicants, documentation of graduation from an accredited physical therapist assistant program accredited by CAPTE and approved by the board;

(7) passes the national physical therapy licensure examination (NPTE) (as specified in 16.20.2.8 NMAC); if the applicant has previously taken the NPTE, the testing entity shall send the test scores directly to the board; test scores sent by individuals, organizations or other state boards will not be accepted.

**B.** For applicants who have not practiced since graduating from a physical therapy education program, or who have not practiced as a physical therapist or physical therapist assistant for a period of more than three consecutive years, full licensure requires fulfilling the following requirements:

(1) satisfactory completion of all application requirements for licensure as provided in Subsection A of 16.20.3.8 NMAC;

(2) provides proof of having taken 15 continuing education contact hours for each year the applicant was not practicing as a physical therapist or physical therapist assistant (coursework to be pre-approved by the board);

(3) provides evidence of additional competency to practice as required by the board.

**C.** Felony or misdemeanor convictions involving moral turpitude directly related to employment in the profession have to be satisfactorily resolved. The board may require proof that the person has been sufficiently rehabilitated to warrant the public trust if the prior conviction does not relate to employment in the profession. Proof of sufficient rehabilitation may include, but is not limited to: certified proof of completion of probation or parole supervision, payment of fees, community service or any other court ordered sanction.

**D.** A licensee requesting a name change must submit proof of name change, the original license and a replacement license fee.

**E.** Foreign educated applicants must meet all requirements for licensure as provided in Subsection A of 16.20.3.8 NMAC as well as those requirements listed in

16.20.9 NMAC.

F. Initial application is valid for a period of 12 months.

[16.20.3.8 NMAC - Rp, 16.20.3.8 NMAC, 11-01-04; A, 03-02-06; A, 1-12-08; A, 8/1/09; A, 8/16/10; A, 7/27/2017]

**16.20.3.11 [LICENSURE BY ENDORSEMENT:**

A. A license may be issued to a physical therapist or physical therapist assistant who provides verification of all licenses from other U.S. jurisdictions, and meets all the requirements in 16.20.3.8 NMAC. The board will accept verifications via regular mail, electronic mail, or facsimile. Verifications must be signed and dated by an official of the agency licensing the applicant and must include the following:

- (1) name and address of the applicant;
- (2) license number and date of issuance;
- (3) current status of the license;
- (4) expiration date of the license;
- (5) national examination scores received directly from the reporting jurisdiction;
- (6) a statement as to whether the applicant was denied a license by the agency;
- (7) a statement as to whether any disciplinary action is pending or has been taken against the applicant.

B. A license may be issued to a foreign-educated physical therapist who has a valid unrestricted license from another U.S. jurisdiction provided that the applicant meets all of the requirements in 16.20.3.8 NMAC and 16.20.9 NMAC.]

**LICENSURE BY RECIPROCITY:**

A. The board shall issue a license by reciprocity to an applicant who holds a current license in good standing in another U.S. jurisdiction that meets or exceeds the licensing and qualification requirements set out in Section 61-12D-10 NMSA 1978, provided the applicant submits an application on a

form approved by the board with the required fee as forth in Subsection F of Section 61-12D-10 NMSA 1978 and 16.20.3.8 NMAC.

B. A foreign-educated physical therapist or physical therapist assistant who has a current license in good standing from another U.S. jurisdiction may be issued a license provided the applicant meets all of the requirements set forth in Subsection A and B of Section 61-12D-10 NMSA 1978 and Section A of 16.20.3.11 NMAC and 16.20.4.8 NMAC. [16.20.3.11 NMAC - N/E, 11-16-2005; Re-pr, 03-02-06; A, 1-12-08; 16.20.3.11 NMAC - Rn, 16.20.3.10 NMAC, 8/1/09; A, 7/27/2017]

**REGULATION AND LICENSING DEPARTMENT RESPIRATORY CARE ADVISORY BOARD**

The New Mexico Regulation and Licensing Department Respiratory Care Advisory Board approved, at its 2/17/2017 hearing, to repeal its rule 16.23.2 NMAC, Respiratory Care Practitioners - Fees (filed 12/30/2002) and replace it with 16.23.2 NMAC, Respiratory Care Practitioners - Fees, effective 7/15/2017.

The New Mexico Regulation and Licensing Department Respiratory Care Advisory Board approved, at its 2/17/2017 hearing, to repeal its rule 16.23.3 NMAC, Qualifications For Practitioner License (filed 12/30/2002) and replace it with 16.23.3 NMAC, Qualifications For Practitioner License, effective 7/15/2017.

The New Mexico Regulation and Licensing Department Respiratory Care Advisory Board approved, at its 2/17/2017 hearing, to repeal its rule 16.23.4 NMAC, Application Procedures For Practitioner License (filed 12/30/2002) and replace it with 16.23.4 NMAC, Application Procedures For Practitioner License, effective 7/15/2017.

The New Mexico Regulation and

Licensing Department Respiratory Care Advisory Board approved, at its 2/17/2017 hearing, to repeal its rule 16.23.6 NMAC, Respiratory Care Practitioners - "Temporary Permits" (filed 6/6/2000) and replace it with 16.23.6 NMAC, Respiratory Care Practitioners - "Temporary Permits", effective 7/15/2017.

The New Mexico Regulation and Licensing Department Respiratory Care Advisory Board approved, at its 2/17/2017 hearing, to repeal its rule 16.23.7 NMAC, Respiratory Care Practitioners - Temporary Permit Renewals (filed 12/30/2002) and replace it with 16.23.7 NMAC, Respiratory Care Practitioners - Temporary Permit Renewals, effective 7/15/2017.

The New Mexico Regulation and Licensing Department Respiratory Care Advisory Board approved, at its 2/17/2017 hearing, to repeal its rule 16.23.8 NMAC, Renewal and Expiration of Practitioners License (filed 12/30/2002) and replace it with 16.23.8 NMAC, Renewal and Expiration of Practitioners License, effective 7/15/2017.

The New Mexico Regulation and Licensing Department Respiratory Care Advisory Board approved, at its 2/17/2017 hearing, to repeal its rule 16.23.9 NMAC, Inactive Status For Practitioner License (filed 12/30/2002) and replace it with 16.23.9 NMAC, Inactive Status For Practitioner License, effective 7/15/2017.

The New Mexico Regulation and Licensing Department Respiratory Care Advisory Board approved, at its 2/17/2017 hearing, to repeal its rule 16.23.11 NMAC, License Reactivation; License Lapse (filed 12/30/2002) and replace it with 16.23.11 NMAC, License Reactivation; License Lapse, effective 7/15/2017.

The New Mexico Regulation and Licensing Department Respiratory Care Advisory Board approved, at

its 2/17/2017 hearing, to repeal its rule 16.23.12 NMAC, Continuing Education (filed 12/30/2002) and replace it with 16.23.12 NMAC, Continuing Education, effective 7/15/2017.

**REGULATION AND  
LICENSING DEPARTMENT  
RESPIRATORY CARE ADVISORY  
BOARD**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 23 RESPIRATORY  
CARE PRACTITIONERS  
PART 2 FEES**

**16.23.2.1 ISSUING**

**AGENCY:** New Mexico Regulation and Licensing Department  
Respiratory Care Advisory Board P.O.  
Box 25101 Santa Fe, New Mexico  
87504.

[16.23.2.1 NMAC - Rp, 16.23.2.1  
NMAC, 7/15/2017]

**16.23.2.2 SCOPE:** The provisions in Part 2 of Chapter 23 apply to all license applicants; and to active, expired, and lapsed licensees; to anyone wishing to purchase licensee lists or labels; and to anyone who requests written verification of licensure from the board.

[16.23.2.2 NMAC - Rp, 16.23.2.2  
NMAC, 7/15/2017]

**16.23.2.3 STATUTORY  
AUTHORITY:** Part 2 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-11 NMSA 1978.

[16.23.2.3 NMAC - Rp, 16.23.2.3  
NMAC, 7/15/2017]

**16.23.2.4 DURATION:**  
Permanent.

[16.23.2.4 NMAC - Rp, 16.23.2.4  
NMAC, 7/15/2017]

**16.23.2.5 EFFECTIVE  
DATE:** July 15, 2017, unless a later date is cited at the end of a section.  
[16.23.2.5 NMAC - Rp, 16.23.2.5  
NMAC, 7/15/2017]

**16.23.2.6 OBJECTIVE:** The objective of Part 2 of Chapter 23 is to establish fees for licenses; temporary permits; renewal of temporary permits and licenses; and other related administrative processes.

[16.23.2.6 NMAC - Rp, 16.23.2.6  
NMAC, 7/15/2017]

**16.23.2.7 DEFINITIONS:  
[RESERVED]**

[16.23.2.7 NMAC - Rp, 16.23.2.7  
NMAC, 7/15/2017]

**16.23.2.8**

**ADMINISTRATIVE FEES:** In accordance with Subsection A of Section 61-12B-11NMSA 1978, of the New Mexico Respiratory Care Act, the respiratory care advisory board establishes the following nonrefundable fees.

**A. fees:**

**(1)**

initial practitioner license fee one hundred fifty dollars (\$150.00);

**(2)**

initial temporary student extern permit fifty dollars (\$50.00);

**(3)**

initial graduate permit one hundred dollars (\$100.00);

**(4)**

practitioner reactivation from inactive status fifteen dollars (\$15.00);

**(5)**

practitioner reactivation from expired status two hundred fifty dollars (\$250.00);

**(6)**

credential upgrade from certified respiratory therapist (CRT) to registered respiratory therapist (RRT) twenty-five dollars (\$25.00).

**B. annual**

renewal fees:

**(1)**

active respiratory care practitioner license one hundred fifty dollars (\$150.00);

**(2)**

inactive respiratory care practitioner license thirty dollars (\$30.00);

**(3)**

temporary student extern permit fifty dollars (\$50.00).

**C.**

miscellaneous fees listed below will

be approved annually by the board and made available by the board office upon request:

**(1)**

photocopying \$0.25;

**(2)**

written license verifications fifteen dollars (\$15.00);

**(3)**

list of licensees fifty dollars (\$50.00);

**(4)**

duplicate licenses/permit twenty-five dollars (\$25.00);

**(5)**

upgrade from a CRT to an RRT twenty-five dollars (\$25.00);

**(6)**

copies of statutes, rule and regulations are free online at the board website.

[16.23.2.8 NMAC - Rp, 16.23.2.8  
NMAC, 7/15/2017]

**16.23.2.9 - 16.23.2.20**

**[RESERVED]**

**HISTORY OF 16.23.2 NMAC:**

**PRE-NMAC HISTORY:**

The material in PART 2 was derived from regulations previously filed with State Records Center and Archives by former department name Health and Environment Department, rule numbers, HED-85-1 (HSD), "Regulations Governing the Respiratory Care Act, filed 01-22-85; HED-87-3 (HSD), "Regulations Governing the Respiratory Care Act," filed 5/11/1987; by department name Regulation & Licensing Department, former division name, Boards & Commissions Division rule number BCD 87-3, "Regulations Governing the Respiratory Care Act," filed 12/10/1987; and by department name Regulation and Licensing Department, Respiratory Care Advisory Board rule numbers, Rule 91-7, "Fees", filed 8/20/1991 and Rule 7, "Fees," filed 3/22/1995.

**HISTORY OF REPEALED  
MATERIAL:**

16.23.2 NMAC, "Fee", filed 12/30/2002 - Repealed effective 7/15/2017.

**Other History:** Rule 7, "Fees", filed 3/22/1995 was renumbered,



reformatted and replaced into first version of the New Mexico Administrative Code as 16 NMAC 23.2, "Fees", filed 11/10/1997. 16 NMAC 23.2, "Fees", filed 11/10/1997, renumbered and reformatted to 16.23.2 NMAC, "Fees", effective 1/30/2003. 16.23.2 NMAC, "Fees", (filed 12/30/2002) was replaced by 16.23.2 NMAC, "Fees", effective 7/15/2017.

**REGULATION AND  
LICENSING DEPARTMENT  
RESPIRATORY CARE ADVISORY  
BOARD**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 23 RESPIRATORY  
CARE PRACTITIONERS  
PART 3 QUALIFICATIONS  
FOR PRACTITIONER LICENSE**

**16.23.3.1 ISSUING**

**AGENCY:** New Mexico Regulation and Licensing Department  
Respiratory Care Advisory Board P.O.  
Box 25101 Santa Fe, New Mexico  
87504.

[16.23.3.1 NMAC - Rp, 16.23.3.1  
NMAC, 7/15/2017]

**16.23.3.2 SCOPE:** The provisions of Part 3 of Chapter 23 apply to all persons applying to the board for a license to practice respiratory care in New Mexico.  
[16.23.3.2 NMAC - Rp, 16.23.3.2 NMAC, 7/15/2017]

**16.23.3.3 STATUTORY**

**AUTHORITY:** Part 3 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-4, Section 61-12B-6, Section 61-12B-7, and Section 61-12B-9 NMSA 1978.

[16.23.3.3 NMAC - Rp, 16.23.3.3 NMAC, 7/15/2017]

**16.23.3.4 DURATION:**

Permanent.

[16.23.3.4 NMAC - Rp, 16.23.3.4 NMAC, 7/15/2017]

**16.23.3.5 EFFECTIVE**

**DATE:** July 15, 2017, unless a later date is cited at the end of a section.  
[16.23.3.5 NMAC - Rp, 16.23.3.5 NMAC, 7/15/2017]

**16.23.3.6 OBJECTIVE:**

The objective of Part 3 of Chapter 23 is to establish the required qualifications necessary for licensure as a respiratory care practitioner.  
[16.23.3.6 NMAC - Rp, 16.23.3.6 NMAC, 7/15/2017]

**16.23.3.7 DEFINITIONS:**

**A. "Electronic signature"** means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

**B. "Military service member"** means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States including the national guard.

**C. "Recent veteran"** means a person who has received an honorable discharge or separation from military service within two years immediately preceding the date the person applied for an occupational or professional license pursuant Section 61-1-34, NMSA 1978.

[16.23.3.7 NMAC - Rp, 16.23.3.7 NMAC, 7/15/2017]

**16.23.3.8 LICENSE  
REQUIRED TO PRACTICE:**

The applicant may not engage in the practice of respiratory care in New Mexico until approval for licensure has been given, and the department has issued an initial license. The applicant may not represent or hold him or herself out to be a respiratory care practitioner or (RCP) without a valid license.

[16.23.3.8 NMAC - Rp, 16.23.3.8 NMAC, 7/15/2017]

**16.23.3.9 LICENSURE  
REQUIREMENTS:**

The board only recognizes accreditation by the committee on accreditation for respiratory care (CoARC) or

its successor approval body. All references to the national board exams in this part are to the national board for respiratory care (NBRC) exam. In accordance with Section 61-12B-7 and Section 61-12B-8, NMSA 1978, and the qualifications set forth therein, the applicant must provide verification of the following:

**A.** being of good moral character;

**B.** successful completion of an accredited respiratory care education program;

**C.** For application submitted prior to January 1, 2018, proof of successfully passing the national board standard examination resulting in credentialing as either a, certified respiratory therapist (CRT) or registered respiratory therapist (RRT). Beginning January 1, 2018, all applicants must show proof of passing the national board exam resulting in credentialing of a registered respiratory therapist (RRT) and maintaining a current registered respiratory therapist (RRT) credential; or

**D.** current licensure in another state that has educational and examination requirements at least equal to or better than those established for licensure in New Mexico at the time of original licensure.

[16.23.3.9 NMAC - Rp, 16.23.3.9 NMAC, 7/15/2017]

**16.23.3.10 REQUIREMENTS  
FOR PERSONS RETURNING TO  
THE FIELD:**

Respiratory therapists licensed prior to July 1, 2017, whose license expired and who wish to reapply for a license in New Mexico shall provide proof of having passed the national board exam for certified respiratory therapist (CRT) or registered respiratory therapist (RRT) within a year of application and continuing education credits for each year of non-licensure. Respiratory therapists licensed after July 1, 2017 reapplying for a new license shall provide proof of having passed the national board exam in the registered respiratory therapist (RRT) credential within a year of application. The



Board may also accept successful completion of a six month temporary graduate license, with the required 20 hours of continuing education per lapsed renewal cycle as required in 16.23.12.8. NMAC, in lieu of successfully passing the national board exam within the year of application.

[16.23.3.10 NMAC - Rp, 16.23.3.10 NMAC, 7/15/2017]

#### **16.23.3.11 REQUIREMENTS FOR UPGRADING LICENSE**

**TYPE:** Respiratory therapists wanting to upgrade their license type from CRT to RRT must complete an affidavit and submit the required fee as set forth in 16.23.2.8 NMAC.

[16.23.3.11 NMAC - Rp, 16.23.3.11 NMAC, 7/15/2017]

#### **16.23.3.12 ELECTRONIC**

**SIGNATURES:** Electronic signatures will be acceptable for applications submitted pursuant to 14-16-1 through 16-16-19 NMSA 1978.

[16.23.3.12 NMAC - N, 7/15/2017]

#### **HISTORY OF 16.23.3 NMAC:**

**PRE-NMAC HISTORY:** The material in PART 3 was derived from regulations previously filed with the State Records Center and Archives by former department name Health and Environment Department, rule numbers, HED-85-1 (HSD), "Regulations Governing the Respiratory Care Act," filed 1/22/1985; HED-87-3 (HSD), "Regulations Governing the Respiratory Care Act," filed 5/11/1987; by department name Regulation & Licensing Department, former division name, Boards & Commissions Division rule number BCD 87-3, "Regulations Governing the Respiratory Care Act," filed 12/10/1987; and by department name Regulation and Licensing Department, Respiratory Care Advisory Board rule numbers, Rule 91-2, "Qualifications for Practitioner Licenses," filed 8/20/1991 and Rule 2, "Qualification for Practitioner License," filed 03/22/1995.

#### **HISTORY OF THE REPEALED MATERIAL:**

16.23.3 NMAC, "Qualifications for Practitioner License", filed 12/30/2002 - Repealed effective 7/15/2017.

**Other History:** Rule 2, "Qualification for Practitioner License," filed 3/22/1995 was renumbered, reformatted and replaced into first version of the New Mexico Administrative Code as 16 NMAC 23.3, "Qualifications for Practitioner License", filed 11/10/1997. 16 NMAC 23.3, "Qualifications for Practitioner License", filed 11/10/1997, renumbered and reformatted to 16.23.3 NMAC, "Qualifications for Practitioner License", effective 1/30/2003. 16.23.3 NMAC, "Qualifications for Practitioner License", (filed 12/30/2002) was replaced by 16.23.3 NMAC, "Qualifications for Practitioner License", effective 7/15/2017.

### **REGULATION AND LICENSING DEPARTMENT RESPIRATORY CARE ADVISORY BOARD**

#### **TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 23 RESPIRATORY CARE PRACTITIONERS PART 4 APPLICATION PROCEDURES FOR PRACTITIONER LICENSE**

##### **16.23.4.1 ISSUING**

**AGENCY:** New Mexico Regulation and Licensing Department  
Respiratory Care Advisory Board P.O. Box 25101 Santa Fe, New Mexico 87504.

[16.23.4.1 NMAC - Rp, 16.23.4.1 NMAC, 7/15/2017]

**16.23.4.2 SCOPE:** The provisions of Part 4 of Chapter 23 apply to all persons applying to the department for a license to practice respiratory care in New Mexico.

[16.23.4.2 NMAC - Rp, 16.23.4.2 NMAC, 7/15/2017]

##### **16.23.4.3 STATUTORY**

**AUTHORITY:** Part 4 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-4, Section 61-12B-6, Section 61-12B-7, and Section 61-12B-9 NMSA 1978.

[16.23.4.3 NMAC - Rp, 16.23.4.3 NMAC, 7/15/2017]

##### **16.23.4.4 DURATION:**

Permanent.

[16.23.4.4 NMAC - Rp, 16.23.4.4 NMAC, 7/15/2017]

##### **16.23.4.5 EFFECTIVE**

**DATE:** July 15, 2017, unless a later date is cited at the end of a section.

[16.23.4.5 NMAC - Rp, 16.23.4.5 NMAC, 7/15/2017]

**16.23.4.6 OBJECTIVE:** The objective of Part 4 of Chapter 23 is to establish the application procedures for respiratory care practitioner licensure.

[16.23.4.6 NMAC - Rp, 16.23.4.6 NMAC, 7/15/2017]

##### **16.23.4.7 DEFINITIONS: [RESERVED]**

**16.23.4.8 DOCUMENTATION REQUIREMENTS FOR PRACTITIONERS:** Applicants for licensure must provide the following items of documentation to the department;

**A.** A completed and signed application on a form approved by the department.

**B.** A color passport-type photograph of the applicant taken within the last year.

**C.** A copy of an official transcript, certificate or diploma showing completion of an approved respiratory care program or a letter sent directly from the program director prior to matriculation as provided in 16.23.3.9. NMAC.

**D.** A copy of one of the following documents from the national board for respiratory care (NBRC):

**(1)** certificate for certified respiratory therapist (CRT), or registered respiratory

therapist (RRT); or

(2)

identification card from the national board of respiratory care (NBRC) certified respiratory therapist (CRT), or registered respiratory therapist (RRT); or

(3)

the exam results showing successful passing of the national board of respiratory care (NBRC) certified respiratory therapist (CRT), or registered respiratory therapist (RRT) examination if the applicant has not yet received the national board of respiratory care (NBRC) certificate;

(4)

a verification letter from the national board of respiratory care (NBRC) showing certified respiratory therapist (CRT), or registered respiratory therapist (RRT) credential;

(5)

upon being credentialed by the National board of respiratory care (NBRC), an applicant has one year to apply to the board for licensure;

(6)

an initial applicant may also successfully complete a one year graduate respiratory license in lieu of being credentialed by the national board.

**E.**

Payment to the board of the applicable fee as provided in 16.23.2 NMAC.

**F.**

If applicable, verification of licensure status sent directly to the department by all state licensing boards where the applicant is or has ever been licensed.

**G.**

A resume' with employment information encompassing at least five years prior to the application for licensure in New Mexico.

**H.**

If applicable, those returning to the field and are applying for new licensure shall meet the requirements set in 16.23.3.10 NMAC.

[16.23.4.8 NMAC - Rp, 16.23.4.8 NMAC, 7/15/2017]

#### **16.23.4.9 EXPEDITED LICENSURE BY RECIPROCITY:**

The board will issue a license by reciprocity to an applicant who holds a current license in good standing

in another United States jurisdiction that meets or exceeds the licensing requirements set out in Section 61-12B-7 NMSA 1978, provided the applicant submits a completed application on a form approved by the board with the required fee, and meets all the other requirements set forth in 16.23.4.8 NMAC.

[16.23.4.9 NMAC - N, 7/15/2017]

#### **16.23.4.10 INITIAL**

**LICENSE ISSUANCE:** After the above listed documentation has been reviewed and approved by the department, in consultation with the board, the applicant will be issued a respiratory care practitioner's license valid until September 30 of the next odd numbered year, except as provided in 16.23.4.10 NMAC of this rule.

[16.23.4.10 NMAC - Rp, 16.23.4.9 NMAC, 7/15/2017]

#### **16.23.4.11 LICENSES**

##### **ISSUED AFTER JUNE 1 OF THE ODD-NUMBERED YEAR:**

Respiratory care practitioner licenses initially issued after June 1 of the odd-numbered (renewal) year will not expire until September 30 of the NEXT renewal period (see 16.23.8.12 NMAC).

[16.23.4.11 NMAC - Rp, 16.23.4.10 NMAC, 7/15/2017]

#### **16.23.4.12 VERIFICATION OF LICENSURE TO EMPLOYER:**

A copy of the initial license and any subsequent renewal licenses must be kept on file with the licensee's employer.

[16.23.4.12 NMAC - Rp, 16.23.4.11 NMAC, 7/15/2017]

#### **16.23.4.13 ADDRESS OR EMPLOYMENT CHANGES:**

It is the licensee's responsibility to keep the department informed immediately of any changes in residential and employment addresses and phone numbers so that renewal notices and correspondence from the department will be received by the licensee.

[16.23.4.13 NMAC - Rp, 16.23.4.12 NMAC, 7/15/2017]

#### **16.23.4.14 DUPLICATE**

**LICENSE:** In the event a license is lost or destroyed, the department will issue a duplicate license upon receipt of the following.

**A.**

Notice to the department of the loss by the licensee.

**B.**

A request for a duplicate wall license or a duplicate renewal license.

**C.**

Administrative fee(s) in an amount as provided in 16.23.2.8 NMAC.

[16.23.4.14 NMAC - Rp, 16.23.4.13 NMAC, 7/15/2017]

#### **16.23.4.15 LEGAL NAME**

**CHANGE:** If a licensee requests a new license, wall or renewal, to be compatible with a legal name change, the department will issue a new license upon receipt of the following:

**A.**

the old license(s);

**B.**

legal proof of the

name change;

**C.**

a written request for name change to be made on licensing records; and

**D.**

fee(s) in an amount

provided in 16.23.2.8 NMAC.

[16.23.4.15 NMAC - Rp, 16.23.4.14 NMAC, 7/15/2017]

#### **16.23.4.16 INCOMPLETE**

##### **APPLICATIONS PURGED:**

Incomplete applications for licensure will be purged from board files two years from the date the first item of documentation was received.

[16.23.4.16 NMAC - Rp, 16.23.4.15 NMAC, 7/15/2017]

#### **HISTORY OF 16.23.4 NMAC:**

**PRE-NMAC HISTORY:** The material in PART 4 was derived from regulations previously filed with State Records Center and Archives by former department name Health and Environment Department, rule numbers, HED-85-1 (HSD), "Regulations Governing the Respiratory Care Act," filed 1/22/1985; HED-87-3 (HSD), "Regulations Governing the Respiratory Care Act," filed 5/11/1987; by department name Regulation & Licensing Department, former division name, Boards &

Commissions Division rule number BCD 87-3, "Regulations Governing the Respiratory Care Act," filed 12/10/1987; and by department name Regulation and Licensing Department, Respiratory Care Advisory Board, rule number Rule 91-4, "Application Procedure," filed 8/20/1991.

#### **HISTORY OF REPEALED MATERIAL:**

16.23.4 NMAC, "Application Procedures for Practitioner License", filed 12/30/2002 - Repealed effective 7/15/2017.

**Other History:** Rule 91-4, "Application Procedure," filed 8/20/1991 was renumbered, reformatted and replaced into first version of the New Mexico Administrative Code as 16 NMAC 23.4, "Application Procedures for Practitioner License", filed 11/10/1997. 16 NMAC 23.4, "Application Procedures for Practitioner License", filed 11/10/1997, renumbered and reformatted to 16.23.4 NMAC, "Application Procedures for Practitioner License", effective 1/30/2003. 16.23.4 NMAC, "Application Procedures for Practitioner License", (filed 12/30/2002) was replaced by 16.23.4 NMAC, "Application Procedures for Practitioner License", effective 7/15/2017.

### **REGULATION AND LICENSING DEPARTMENT RESPIRATORY CARE ADVISORY BOARD**

#### **TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 23 RESPIRATORY CARE PRACTITIONERS PART 5 LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS**

**16.23.5.1 ISSUING  
AGENCY:** New Mexico Regulation and Licensing Department

Respiratory Care Advisory Board P.O. Box 25101 Santa Fe, New Mexico 87504.

[16.23.5.1 NMAC - N, 7/15/2017]

**16.23.5.2 SCOPE:** This part sets forth application procedures to expedite licensure for military service members, spouses and veterans.  
[16.23.5.2 NMAC - N, 7/15/2017]

**16.23.5.3 STATUTORY  
AUTHORITY:** Part 4 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-4, Section 61-12B-6, Section 61-12B-7, and Section 61-12B-9 NMSA 1978.  
[16.23.5.3 NMAC - N, 7/15/2017]

**16.23.5.4 DURATION:**  
Permanent.  
[16.23.5.4 NMAC - N, 7/15/2017]

**16.23.5.5 EFFECTIVE  
DATE:** July 15, 2017, unless a later date is cited at the end of a section.  
[16.23.5.5 NMAC - N, 7/15/2017]

**16.23.5.6 OBJECTIVE:**  
The objective of this part is to expedite licensure for military service members, their spouses and veterans pursuant to Section 61-1-34, NMSA 1978.  
[16.23.5.6 NMAC - N, 7/15/2017]

**16.23.5.7 DEFINITIONS:**  
**A. "Military service member"** means a person who is serving in the armed forces of the United States or in active reserve component of the armed forces of the United States, including the national guard.

**B. "Recent veteran"** means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for an occupational or professional license pursuant to this section.  
[16.23.5.7 NMAC - N, 7/15/2017]

**16.23.5.8 APPLICATION  
REQUIREMENTS:** The applicant shall submit:

**A.** A completed application on a form approved by the board with the appropriate fee.

**B.** Satisfactory evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction, including a branch of armed forces of the United States, and has met the minimal licensing requirements that are substantially equivalent to the licensing requirements for respiratory care practitioners.

**C.** Electronic signatures will be acceptable for application submitted pursuant to Section 14-16-1 through Sections 14-16-19, NMSA 1978.

**D. Fees:**  
**(1)** The fee for application registration is one hundred fifty dollars (\$150.00) as defined in 16.23.2 NMAC.

**(2)** The fee for renewal registration is one hundred fifty dollars (\$150.00) as defined in 16.23.2 NMAC.  
[16.23.5.8 NMAC - N, 7/15/2017]

#### **16.23.5.9 RENEWAL REQUIREMENTS:**

**A.** A license issued pursuant to this section shall not be renewed unless the licensee meets requirements for licensure set out in 16.23.3.9 NMAC.

**B.** Original and renewal registrations shall be valid until September 30 of every odd-numbered year as set forth in 16.23.8 NMAC.

**C.** Prior to the expiration of the license; licensee shall apply for registration renewal and pay the renewal fee as set forth in 16.23.8 NMAC.

[16.23.5.9 NMAC - N, 7/15/2017]

**HISTORY OF 16.23.5 NMAC:  
[RESERVED]**



**REGULATION AND  
LICENSING DEPARTMENT  
RESPIRATORY CARE ADVISORY  
BOARD**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 23 RESPIRATORY  
CARE PRACTITIONER  
PART 6 TEMPORARY  
PERMITS**

**16.23.6.1 ISSUING**

**AGENCY:** New Mexico Regulation and Licensing Department, Respiratory Care Advisory Board P.O. Box 25101 Santa Fe, New Mexico 87504.

[16.23.6.1 NMAC - Rp, 16.23.6.1 NMAC, 7/15/2017]

**16.23.6.2 SCOPE:** The provisions of Part 6 of Chapter 23 apply to respiratory care program student externs or graduates applying for temporary permits to work for remuneration under the training, direction, and supervision of a New Mexico licensed respiratory care practitioner or New Mexico licensed physician who has agreed to be the applicant's training supervisor in a supervisory facility.

[16.23.6.2 NMAC - Rp, 16.23.6.2 NMAC, 7/15/2017]

**16.23.6.3 STATUTORY**

**AUTHORITY:** Part 6 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Paragraph (3) of Subsection A of Section 61-12B-6 NMSA 1978 and Subsection B of Section 61-12B-9, NMSA 1978.

[16.23.6.3 NMAC - Rp, 16.23.6.3 NMAC, 7/15/2017]

**16.23.6.4 DURATION:**

Permanent.

[16.23.6.4 NMAC - Rp, 16.23.6.4 NMAC, 7/15/2017]

**16.23.6.5 EFFECTIVE**

**DATE:** July 15, 2017, unless a later date is cited at the end of a section.

[16.23.6.5 NMAC - Rp, 16.23.6.5 NMAC, 7/15/2017]

**16.23.6.6 OBJECTIVE:**

The objective of Part 6 of Chapter 23 is to establish the qualification requirements and procedures for a student extern or graduate of a respiratory care program to obtain a temporary permit under the provisions of the Respiratory Care Act in order to become employed in the furnishing of respiratory care under the limitations described herein.

[16.23.6.6 NMAC - Rp, 16.23.6.6 NMAC, 7/15/2017]

**16.23.6.7 DEFINITIONS:**

**A. "Direct supervision"** means direction and control by a training supervisor over a student extern temporary permittee or a graduate temporary permittee while the permittee is providing respiratory care procedures under the authority of the training supervisor's license.

**B. "Graduate"** means a non-licensed person who has completed an approved respiratory care training program and is employed by a supervisory facility to provide respiratory care for remuneration and in accordance with the provisions for a temporary permit issued under these regulations.

**C. "Licensing period for extern permits"** means a one year period from the date of issuance to the last day of the same month, one year later.

**D. "Licensing period for graduate permits"** means six months from the date of application and is not renewable; or until receipt of failing national board of respiratory care (NBRC) registered respiratory therapist (RRT) exam results. Initial applicants who do not become licensed within one year of becoming national board of respiratory care (NBRC) credentialed are issued a one year graduate permit from the date of application.

**E. "Non-traditional training program"** refers to a respiratory care training program in which a person receives on-the-job training in respiratory care from a supervising medical director, a supervising physician, or a licensed respiratory care practitioner, and

in which the trainee may receive compensation while in such a training program.

**F. "Permittee"** means a person who has been granted a temporary permit by the department, in consultation with the board.

**G. "Student"** means a person enrolled in an approved respiratory care training and education program and who receives *no remuneration* for respiratory care services performed in a supervisory facility as part of an approved respiratory care training program.

**H. "Student extern"** means a person who is engaged by a supervisory facility to provide respiratory care *for remuneration* while enrolled in an approved respiratory care training and education program, and in accordance with the provisions for a temporary permit issued under these regulations.

**I. "Supervisory facility"** means the employer of a temporary permit holder.

**J. "Traditional training program"** refers to a respiratory care training program that provides classroom instruction and clinical experience only to students or student externs under direct supervision of a licensed and responsible professional.

**K. "Training supervisor"** means a New Mexico licensed respiratory care practitioner licensed as a certified respiratory therapist (CRT), registered respiratory therapist (RRT) or a New Mexico licensed physician who agrees to be responsible for the respiratory care administered by student externs and graduates while these individuals are employed by a supervisory facility and are being trained there.

[16.23.6.7 NMAC - Rp, 16.23.6.7 NMAC, 7/15/2017]

**16.23.6.8 APPLICATION REQUIREMENTS FOR STUDENTS:**

Persons enrolled in an approved respiratory care training program who are performing respiratory care services in a supervisory facility as part of the training, but receiving no



remuneration for those services, are *not* required to have a temporary permit issued by the department. [16.23.6.8 NMAC - Rp, 16.23.6.8 NMAC, 7/15/2017]

#### **16.23.6.9 APPLICATION REQUIREMENTS FOR STUDENT EXTERNS:**

The department, in consultation with the board, will issue temporary permits to respiratory care student externs enrolled in a traditional or non-traditional respiratory care training program approved as set forth in Subsections E and GG of 16.23.1 NMAC, and who provide satisfactory evidence of the following:

**A.** Verification of current respiratory care program enrollment sent directly by the educational institution to the department.

**B.** A color passport-type photograph taken within the past year.

**C.** A notarized statement or letter sent by the applicant's direct supervisor confirming the location and status of the applicant's employment.

**D.** A notarized agreement signed by the proposed training supervisor which certifies that the supervisor will provide training and direct supervision which meets the requirements of these regulations.

**E.** A temporary permit application form approved by the department, completed by the applicant, and signed by the applicant in the presence of a notary public.

**F.** Payment to the board in the amount set forth in Subsection A of 16.23.2.8 NMAC. [16.23.6.9 NMAC - Rp, 16.23.6.9 NMAC, 7/15/2017]

#### **16.23.6.10 APPLICATION REQUIREMENTS FOR GRADUATES:**

The department, in consultation with the board, will issue non-renewable temporary permits to non-licensed graduates from an approved respiratory care training and education program (see Subsections E and GG of 16.23.6.1 NMAC), and who provide the following:

**A.** the required items listed in of Subsections B, C, D and E of 16.23.6.9 NMAC;

**B.** a copy of the applicant's graduation certificate or diploma from an approved respiratory care training and educational program; or

**C.** the applicant's graduate transcript sent directly to the department by the educational institution; or an official copy of the transcripts sent directly from the program; or a letter sent directly from the program director prior to matriculation; and

**D.** proof of good faith attempts and reasonable progress in pursuing the national board of respiratory care (NBRC) credentialing as a registered respiratory therapist (RRT), by providing a copy of the letter scheduling the applicant for the national board of respiratory care (NBRC) certified respiratory therapist (CRT) or registered respiratory therapist (RRT) credentialing exam if the applicant has not taken the credentialing exam before, but is scheduled to sit for it.

[16.23.6.10 NMAC - Rp, 16.23.6.10 NMAC, 7/15/2017]

#### **16.23.6.11 INITIAL TEMPORARY PERMIT ISSUANCE UPON APPROVAL:**

After the applicant has met all the requirements for a temporary permit, and the application has received approval by the department, in consultation with the board, the applicant will be issued a temporary permit for one year.

**A.** The temporary permit is only valid if the conditions of the permit remain unchanged.

**B.** A temporary permit will be sent by the department to the person on record as the permittee's training supervisor.

[16.23.6.11 NMAC - Rp, 16.23.6.11 NMAC, 7/15/2017]

**16.23.6.12 ADDRESS OR EMPLOYMENT CHANGES:** The permittee must keep the department informed immediately of any changes in residential and employment

addresses and phone numbers so that renewal notices and department correspondence will be received by the permittee.

[16.23.6.12 NMAC - Rp, 16.23.6.12 NMAC, 7/15/2017]

#### **16.23.6.13 LIMITATIONS ON STUDENT EXTERN TEMPORARY PERMITS:**

Student externs and graduates with temporary permits will be limited in the performance of respiratory care to those competence levels that have written verification and in accordance with the safe practice and patient care safety regulations of the facility.

**A.** Temporary permits are only valid for the performance of respiratory care under the direct supervision of the training supervisor who signed the supervisor's agreement portion of the applicant's application for the temporary permit.

**B.** Any change in supervision or in employment by either the permittee or the training supervisor invalidates the permit and must be reported to the department. Since the training supervisor is responsible for the respiratory care administered by the permittee, it is advisable for the training supervisor in this circumstance to document to the department that he or she is no longer professionally responsible for the permittee.

**C.** A temporary permit issued to a respiratory care student extern is immediately invalid upon the student extern's withdrawal from the respiratory care training and education program.

**D.** A student extern temporary permit may not be renewed more than two times.

[16.23.6.13 NMAC - Rp, 16.23.6.13 NMAC, 7/15/2017]

#### **16.23.6.14 [RESERVED]**

#### **16.23.6.15 RE-ENROLLMENT IN NEW PROGRAM:**

If an applicant has failed or withdrawn from a program and at a later date enrolls in a *new* approved respiratory care program, he or she may apply for a *new* permit

under the new program.

**A.** With the application, the applicant must provide a letter to the department explaining the circumstances of withdrawal from the previous program and of enrollment in the new program.

**B.** The applicant must meet all the application requirements set forth in 16.23.6.9 NMAC.

**C.** The previous temporary permit number will be reissued.

**D.** All applicable provisions in Part 6 and Part 7 will apply to the new temporary permit. [16.23.6.15 NMAC - Rp, 16.23.6.15 NMAC, 7/15/2017]

#### **16.23.6.16 LICENSE REQUIRED UPON**

**CERTIFICATION:** Any respiratory care training program graduate who holds a temporary permit and has successfully passed the national board of respiratory care (NBRC) certified respiratory therapist (CRT) or registered respiratory therapist (RRT) credentialing exam must apply for and receive a respiratory care practitioner's license before he or she may be recognized as a respiratory care practitioner (RCP), and may practice as such, independent of training supervision in New Mexico. [16.23.6.16 NMAC - Rp, 16.23.6.16 NMAC, 7/15/2017]

#### **16.23.6.17 DUPLICATE PERMIT OR NEW PERMIT WITH NAME CHANGE:**

In the event a temporary permit is lost or destroyed, or the permittee has had a legal name change, the same procedures provided for issuance of a duplicate or new license for name change in 16.23.4.14 NMAC & 16.23.4.15 NMAC must be followed by the permittee. The fee listed in 16.23.2.8 NMAC shall apply in either case.

[16.23.6.17 NMAC - Rp, 16.23.6.17 NMAC, 7/15/2017]

#### **16.23.6.18 [RESERVED]**

#### **16.23.6.19 DIRECT SUPERVISION IN PRACTICE:**

The training supervisor may be a certified respiratory therapist (CRT) or (registered respiratory therapist (RRT) and shall train the temporary permittee in the performance of respiratory care functions until the training supervisor determines that the permittee is competent to perform those functions independently. The degree of independence extended to the permittee is contingent upon the supervised training received by the permittee from the training supervisor who is ultimately medically and legally liable for the actions of the permittee.

**A.** The training supervisor is the agent of the facility and trains the trainee permittee in accordance with the safe practice and patient care safety standards of the facility.

**B.** Before the permittee is allowed to perform respiratory care functions independently, the provisions of 16.23.6.13 NMAC require that the training supervisor file with the facility a written verification that the permittee is competent to perform respiratory care functions.

**C.** When the facility allows the permittee to perform the approved respiratory care functions on patients, the facility assumes responsibility as well.

[16.23.6.19 NMAC - Rp, 16.23.6.19 NMAC, 7/15/2017]

#### **16.23.6.20 BACK-UP SYSTEM IN TRAINING:**

It makes good medical and legal sense for the training supervisor to have a back-up training system as he or she cannot be available 24 hours a day and may or may not be in the room or on the facility premises when the permittee is performing the approved respiratory care functions.

**A.** The training supervisor shall have a written back-up system to include respiratory, nursing, and medical staff to be available for the permittee if he or she is faced with a problem or determines that a respiratory care procedure that he or she has not yet received

approval to perform independently is immediately necessary for a patient.

**B.** The back-up system shall provide written procedures available for the permittee. For instance, for instruction or assistance by phone, page, intercom, etc., from the training supervisor, or a respiratory care practitioner, a charge nurse, or any physician in the facility.

**C.** The training supervisor is ultimately responsible for the actions of the permittee. [16.23.6.20 NMAC - Rp, 16.23.6.20 NMAC, 7/15/2017]

#### **16.23.6.21 INCOMPLETE APPLICATIONS PURGED:**

Incomplete applications for licensure will be purged from board files two years from the date the first item of documentation was received.

[16.23.6.21 NMAC - Rp, 16.23.6.21 NMAC, 7/15/2017]

#### **History of 16.23.6 NMAC:**

##### **Pre-NMAC History:**

The material in Part 6 was derived from regulations previously filed with the State Records Center and Archives Center by former department name Health and Environment Department, rule numbers, HED-85-1 (HSD), "Regulations Governing the Respiratory Care Act," filed 1/22/1985; HED-87-3 (HSD), "Regulations Governing the Respiratory Care Act," filed 5/11/1978; and by department name Regulation & Licensing Department, former division name, Boards & Commissions Division rule number BCD 87-3, "Regulations Governing the Respiratory Care Act," filed 12/10/1987. Applicable provisions were also filed by department name Regulation and Licensing Department, Respiratory Care Advisory Board in rule numbers, Rule 91-1, "Definitions," filed 8/20/1991 and Rule 1, "Definitions," filed 3/22/1995; Rule 91-4, "Application Procedure," filed on 8/20/1991; Rule 91-3, "Temporary Permits," filed on 8/20/1991; and Rule 3, "Temporary Permits," filed on 10/7/1992.

#### **HISTORY OF REPEALED MATERIAL:**

16.23.6 NMAC, "Temporary Permits", filed 6/6/2002 - Repealed effective 7/15/2017.

**Other History:** 16 NMAC 23.6, "Temporary Permits", was renumbered to 16.23.6 NMAC, filed on 6/6/2000. 16.23.6 NMAC, "Temporary Permits", (filed 6/6/2000) was replaced by 16.23.6 NMAC, "Temporary Permits, effective 7/15/2017.

**REGULATION AND  
LICENSING DEPARTMENT  
RESPIRATORY CARE ADVISORY  
BOARD**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 23 RESPIRATORY  
CARE PRACTITIONERS  
PART 7 TEMPORARY  
STUDENT PERMIT RENEWAL**

**16.23.7.1 ISSUING**  
**AGENCY:** New Mexico Regulation and Licensing Department  
Respiratory Care Advisory Board P.O. Box 25101 Santa Fe, New Mexico 87504.  
[16.23.7.1 NMAC - Rp, 16.23.7.1 NMAC, 7/15/2017]

**16.23.7.2 SCOPE:** The provisions of Part 7 of Chapter 23 apply to persons who hold a current temporary permit under the provisions of the Respiratory Care Act and 16.23.6 NMAC.  
[16.23.7.2 NMAC - Rp, 16.23.7.2 NMAC, 7/15/2017]

**16.23.7.3 STATUTORY AUTHORITY:** Part 7 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Subsection A of Section 61-12B-4, Subsection A of Section 61-12B-6, Section 61-12B-7, and Subsection C and D of Section 61-12B-9 NMSA 1978.  
[16.23.7.3 NMAC - Rp, 16.23.7.3 NMAC, 7/15/2017]

**16.23.7.4 DURATION:**

Permanent.

[16.23.7.4 NMAC - Rp, 16.23.7.4 NMAC, 7/15/2017]

**16.23.7.5 EFFECTIVE DATE:** July 15, 2017, unless a later date is cited at the end of a section or paragraph.  
[16.23.7.5 NMAC - Rp, 16.23.7.5 NMAC, 7/15/2017]

**16.23.7.6 OBJECTIVE:** The objective of Part 7 of Chapter 23 is to make set forth provisions for the renewal of current temporary permits.  
[16.23.7.6 NMAC - Rp, 16.23.7.6 NMAC, 7/15/2017]

**16.23.7.7 DEFINITIONS:**  
[RESERVED]

**16.23.7.8 TEMPORARY STUDENT PERMIT EXPIRATION:**

**A.** Temporary permits are issued for a period of one year, and will expire on the last day of the month in which the initial permit was issued.

**B.** Renewed temporary permits will also expire on the last day of the same month in which the permit was initially issued.

**C.** The number of permits possible will be a total of three maximum regardless of the period of unemployment while the permittee is enrolled in the respiratory care training program.

[16.23.7.8 NMAC - Rp, 16.23.7.8 NMAC, 7/15/2017]

**16.23.7.9 RENEWAL PROCESS FOR STUDENT TEMPORARY PERMITS:**

**A.** At least 45 days before the temporary permit expiration date, the department will mail the permittee a temporary permit renewal notice and an application form to apply for permit renewal.

**B.** Renewal application notices will be mailed to the last residential address on file with the department. It is the permittee's responsibility to request a renewal form if one has not been received 30 days prior to the permit expiration

date.

**C.** The department will send the permittee's training supervisor a copy of the renewal notice, which was sent to the permittee.

[16.23.7.9 NMAC - Rp, 16.23.7.9 NMAC, 7/15/2017]

**16.23.7.10 REQUIREMENTS FOR STUDENT TEMPORARY PERMIT RENEWAL:** All applicants for temporary permit renewal must meet the following requirements:

**A.** Complete and sign a renewal application form approved by the department.

**B.** Submit a check or money order payable to the board for the required fee as provided in 16.23.4.8 NMAC, whichever is applicable.  
[16.23.7.10 NMAC - Rp, 16.23.7.10 NMAC, 7/15/2017]

**16.23.7.11 APPROVAL REQUIRED:** All temporary permit renewal requests are subject to individual review and approval by the department, in consultation with the board. If a temporary permit renewal application is approved, a renewal temporary permit will be mailed to the permittee.  
[16.23.7.11 NMAC - Rp, 16.23.7.11 NMAC, 7/15/2017]

**16.23.7.12 VERIFICATION OF RENEWAL TO EMPLOYER:** A copy of the renewed temporary permit must be kept on file with the temporary permittee's employer. The department will mail a temporary permit to the training supervisor.  
[16.23.7.12 NMAC - Rp, 16.23.7.12 NMAC, 7/15/2017]

**16.23.7.13 FINAL PERMIT - NO RENEWAL:** Forty-five days prior to the expiration date of the third and final permit (initial permit plus two renewals), the permittee and the permittee's training supervisor will be notified that the permittee's permit lapse is imminent, and that the privileges allowed by the permit will no longer be authorized.



**A.** In order to continue practicing in the profession, the permittee must complete the process for practitioner license application as set forth in 16.23.3 NMAC.

**B.** Any licensed practitioner who aids and abets the continued practice of a person whose permit privileges have lapsed shall be subject to disciplinary action by the department for violation of the Respiratory Care Act and Subsection H of 16.23.17.8 NMAC.  
[16.23.7.13 NMAC - Rp, 16.23.7.13 NMAC, 7/15/2017]

#### **HISTORY OF 16.23.7 NMAC:**

**PRE-NMAC HISTORY:** The material in Part 7 was derived from regulations previously filed with the State Records Center and Archives Center by former department name Health and Environment Department, rule numbers, HED-85-1 (HSD), "Regulations Governing the Respiratory Care Act," filed 1/22/1985; HED-87-3 (HSD), "Regulations Governing the Respiratory Care Act," filed 5/11/1987; by department name Regulation & Licensing Department, former division name, Boards & Commissions Division rule number BCD 87-3, "Regulations Governing the Respiratory Care Act," filed 12/10/1987; and by department name Regulation and Licensing Department, Respiratory Care Advisory Board in rule numbers, Rule 91-3, "Temporary Permits," filed 8/20/1991, Rule 3, "Temporary Permits," filed 8/4/1992; and Rule 3, "Temporary Permits," filed 10/7/1992.

#### **HISTORY OF REPEALED MATERIAL:**

16.23.7 NMAC, "Temporary Permit Renewal, filed 12/30/2002 - Repealed effective 7/15/2017.

**Other History:** Rule 3, "Temporary Permits," filed 10/7/1992 was renumbered, reformatted and replaced into first version of the New Mexico Administrative Code as 16 NMAC 23.7, "Temporary Permit Renewal", filed 11/10/1997.  
16 NMAC 23.7, "Temporary Permit

Renewal", filed on 11/10/1997, renumbered and reformatted to 16.23.7 NMAC, "Temporary Permit Renewal, effective 1/30/2003.  
16.23.7 NMAC, "Temporary Permit Renewal, (filed 12/30/2002) was replaced by 16.23.7 NMAC, "Temporary Permit Renewal", effective 7/15/2017.

### **REGULATION AND LICENSING DEPARTMENT RESPIRATORY CARE ADVISORY BOARD**

#### **TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 23 RESPIRATORY CARE PRACTITIONERS PART 8 RENEWAL AND EXPIRATION OF PRACTITIONER LICENSE**

##### **16.23.8.1 ISSUING**

**AGENCY:** New Mexico Regulation and Licensing Department  
Respiratory Care Advisory Board P.O. Box 25101 Santa Fe, New Mexico 87504.

[16.23.8.1 NMAC - Rp, 16.23.8.1 NMAC, 7/15/2017]

**16.23.8.2 SCOPE:** The provisions of Part 8 of Chapter 23 apply to all respiratory care practitioners currently licensed in New Mexico.

[16.23.8.2 NMAC - Rp, 16.23.8.2 NMAC, 7/15/2017]

##### **16.23.8.3 STATUTORY**

**AUTHORITY:** Part 8 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Subsection A of Section 61-12B-9, NMSA 1978.

[16.23.8.3 NMAC - Rp, 16.23.8.3 NMAC, 7/15/2017]

##### **16.23.8.4 DURATION:**

Permanent.  
[16.23.8.4 NMAC - Rp, 16.23.8.4 NMAC, 7/15/2017]

##### **16.23.8.5 EFFECTIVE**

**DATE:** July 15, 2017, unless a later date is cited at the end of the section.

[16.23.8.5 NMAC - Rp, 16.23.8.5 NMAC, 7/15/2017]

**16.23.8.6 OBJECTIVE:** The objective of Part 8 of Chapter 23 is to set forth requirements and procedures for renewal of New Mexico respiratory care practitioner licenses.  
[16.23.8.6 NMAC - Rp, 16.23.8.6 NMAC, 7/15/2017]

**16.23.8.7 DEFINITIONS:**  
[RESERVED]

##### **16.23.8.8 PRACTITIONER LICENSE EXPIRATION DATE:**

Respiratory care practitioner licenses expire on September 30 of each odd-numbered year except as provided in 16.23.8.12 NMAC.

[16.23.8.9 NMAC - Rp, 16.23.8.9 NMAC, 7/15/2017]

##### **16.23.8.9 NOTIFICATION:**

No less than 45 days prior to the license expiration date, notices and renewal applications will be mailed to the licensee at the last official address on file with the department.

**A.** Failure to receive the renewal application notice will not relieve the licensee of the responsibility of renewing the license by the expiration date.

**B.** It is the licensee's responsibility to request a renewal application if one has not been received at least thirty days prior to the license expiration date.

[16.23.8.9 NMAC - Rp, 16.23.8.9 NMAC, 7/15/2017]

**16.23.8.10 APPLICATION  
REQUIRED:** Practitioner licenses shall be renewed by the department, in consultation with the board, only upon receipt of the following:

**A.** a completed renewal application;

**B.** certification that the continuing education requirements were met as set forth in 16.23.12 NMAC; and

**C.** proof of current national board of respiratory care (NBRC) credential;

**D.** payment in the amount of the required fee as



provided in 16.23.2.8 NMAC.  
[16.23.8.10 NMAC - Rp, 16.23.8.10 NMAC, 7/15/2017]

#### **16.23.8.11 RENEWAL**

**DEADLINE:** The deadline for renewal of current respiratory care practitioner licenses is September 30th of the odd-numbered year, except as provided in 16.23.8.12 NMAC.

**A. September 30 postmark requirement.** Completed renewal applications must be postmarked or completed on-line on or before September 30 of the renewal year.

**B. Application rejected.** Incomplete renewal applications will be rejected by the board.

**C. Late renewal.** Any renewal application, corrected or otherwise returned to the department postmarked after September 30, of the odd-numbered year, is expired and must be accompanied by the penalty fee required for reactivation (see 16.23.2.8 NMAC).  
[16.23.8.11 NMAC - Rp, 16.23.8.11 NMAC, 7/15/2017]

**16.23.8.12 RENEWAL DEADLINE FOR PRACTITIONER LICENSES ISSUED AFTER JUNE 1 OF THE RENEWAL YEAR:** Practitioners' licenses issued after June 1 of the renewal (odd-numbered) year will not expire until September 30 of the renewal cycle following the current renewal cycle.  
[16.23.8.12 NMAC - Rp, 16.23.8.12 NMAC, 7/15/2017]

#### **16.23.8.13 LICENSE EXPIRATION:**

**A.** Respiratory care licenses not renewed by the end of the renewal cycle will be expired and invalid.

**B.** Official notification of license expiration will be mailed to the last residential address on file with the department.  
[16.23.8.13 NMAC - Rp, 16.23.8.13 NMAC, 7/15/2017]

#### **16.23.8.14 PRACTICE**

**PROHIBITED:** A person continuing to practice without a valid license is in violation of Section 61-12B-4 of the Respiratory Care Act, and is guilty of a misdemeanor. The department will seek civil action against the violator in accordance with Section 61-12B-15.

[16.23.8.14 NMAC - Rp, 16.23.8.14 NMAC, 7/15/2017]

#### **HISTORY OF 16.23.8 NMAC:**

**PRE-NMAC HISTORY:** The material in PART 8 was derived from regulations previously filed with the State Records Center and Archives Center by former department name Health and Environment Department, rule numbers, HED-85-1 (HSD), "Regulations Governing the Respiratory Care Act," filed 01/22/1985; HED-87-3 (HSD), "Regulations Governing the Respiratory Care Act," filed 05/11/1987; by department name Regulation & Licensing Department, former division name, Boards & Commissions Division rule number BCD 87-3, "Regulations Governing the Respiratory Care Act," filed 12/10/1987; and by department name Regulation and Licensing Department, Respiratory Care Advisory Board in rule numbers, Rule 91-5, "Renewal of Licenses," filed 08/20/1991, Rule 91-8, "Expiration/ License Renewal," filed 08/20/1991, and Rule 5, "Renewal and Expiration of Practitioner Licenses," filed 03/22/1995.

#### **HISTORY OF REPEALED MATERIAL:**

16.23.8 NMAC, "Renewal and Expiration of Practitioner License", filed 12/30/2002 - Repealed effective 7/15/2017.

**Other History:** Rule 5, "Renewal and Expiration of Practitioner Licenses," filed 03-22-95 was renumbered, reformatted and replaced into first version of the New Mexico Administrative Code as 16 NMAC 23.8, "Renewal and Expiration of Practitioner License", filed 11/10/1997.

16 NMAC 23.8, "Renewal and Expiration of Practitioner License", filed on 11/10/1997, was renumbered and reformatted to 16.23.8 NMAC, "Renewal and Expiration of Practitioner License", effective 01/30/2003.

16.23.8 NMAC, "Renewal and Expiration of Practitioner License", (filed 12/30/2002) was replaced by 16.23.8 NMAC, "Renewal and Expiration of Practitioner License", effective 7/15/2017.

### **REGULATION AND LICENSING DEPARTMENT RESPIRATORY CARE ADVISORY BOARD**

#### **TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 23 RESPIRATORY CARE PRACTITIONERS PART 9 INACTIVE STATUS FOR PRACTITIONER LICENSE**

#### **16.23.9.1 ISSUING**

**AGENCY:** New Mexico Regulation and Licensing Department  
Respiratory Care Advisory Board P.O. Box 25101 Santa Fe, New Mexico 87504.

[16.23.9.1 NMAC - Rp, 16.23.9.1 NMAC, 7/15/2017]

#### **16.23.9.2 SCOPE:**

The provisions of Part 9 of Chapter 23 apply to all respiratory care practitioners who are currently licensed in New Mexico.

[16.23.9.2 NMAC - Rp, 16.23.9.2 NMAC, 7/15/2017]

#### **16.23.9.3 STATUTORY**

**AUTHORITY:** Part 9 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Subsection A of Section 61-12B-9 NMSA 1978.  
[16.23.9.3 NMAC - Rp, 16.23.9.3 NMAC, 7/15/2017]

#### **16.23.9.4 DURATION:**

Permanent.

[16.23.9.4 NMAC - Rp, 16.23.9.4 NMAC, 7/15/2017]

**16.23.9.5 EFFECTIVE**

**DATE:** July 15, 2017 unless a later date is cited at the end of the section.  
[16.23.9.5 NMAC - Rp, 16.23.9.5 NMAC, 7/15/2017]

**16.23.9.6 OBJECTIVE:** The objective of Part 9 of Chapter 23 is to set forth requirements and procedures for placing a current practitioners license on inactive status.  
[16.23.9.6 NMAC - Rp, 16.23.9.6 NMAC, 7/15/2017]

**16.23.9.7 DEFINITIONS:**  
**[RESERVED]**

**16.23.9.8 INACTIVE STATUS:** Currently licensed practitioners who are not currently practicing in New Mexico under the terms and provisions authorized by the Respiratory Care Act, or who are working for the federal government, may place their licenses on inactive status at the time of renewal rather than let their licenses expire.  
[16.23.9.8 NMAC - Rp, 16.23.9.8 NMAC, 7/15/2017]

**16.23.9.9 INACTIVE STATUS REQUIREMENTS:** A practitioners license will be placed on inactive status by the department after the licensee has provided the following:  
**A.** a completed, signed, and notarized renewal application on which the "inactive status requested" box has been checked;

**B.** documentation verifying that the continuing education requirements were met as set forth 16.23.12 NMAC; and

**C.** the applicable fee for inactive status set forth in 16.23.2.8 NMAC.  
[16.23.9.9 NMAC - Rp, 16.23.9.9 NMAC, 7/15/2017]

**16.23.9.10 SEPTEMBER 30 POSTMARK REQUIREMENT:** The practitioner must submit the completed renewal application form marked for inactive status with a postmark dated on or before September 30 in order to be processed for inactive status.

[16.23.9.10 NMAC - Rp, 16.23.9.10 NMAC, 7/15/2017]

**16.23.9.11 INCOMPLETE APPLICATION:** Unsigned, incorrect, or otherwise incomplete applications will be rejected and returned to the licensee for correction or completion.  
[16.23.9.11 NMAC - Rp, 16.23.9.11 NMAC, 7/15/2017]

**16.23.9.12 APPLICATION REJECTED:** Any inactive status application, corrected or otherwise returned to the department, postmarked *after* September 30, of the odd-numbered (renewal) year, will *not* be processed for inactive status. The rejected application will be returned to the applicant, and the status of the license will be expired and invalid and the late penalty fee will apply if reactivation is sought within the time limitations set forth in 16.23.11 NMAC.  
[16.23.9.12 NMAC - Rp, 16.23.9.12 NMAC, 7/15/2017]

**16.23.9.13 WRITTEN APPROVAL NOTIFICATION OF INACTIVE STATUS:** Upon approval of the inactive status application request, the department will send the licensee notice that the license has been placed on inactive status.  
[16.23.9.13 NMAC - Rp, 16.23.9.13 NMAC, 7/15/2017]

**16.23.9.14 TIME LIMITATION ON INACTIVE STATUS LICENSE:** A license on inactive status must be reactivated before September 30 of the *next* odd-numbered year, or the license shall lapse and become null and void (see 16.23.11.11 NMAC).  
[16.23.9.14 NMAC - Rp, 16.23.9.14 NMAC, 7/15/2017]

**16.23.9.15 PRACTICE PROHIBITED:** Until the inactive status license has been reactivated, the respiratory care practitioner may not practice respiratory care in New Mexico unless employed by the federal government.

[16.23.9.15 NMAC - Rp, 16.23.9.15 NMAC, 7/15/2017]

**16.23.9.16 INACTIVE STATUS REACTIVATION:** The individual who has placed his or her license on inactive status may reactivate the license before September 30 of the next odd-numbered year by completing the following procedure.

**A.** Request a reactivation application form from the department or download it from the board's website.

**B.** Complete, sign, and return the reactivation application form with a postmark dated on or before September 30 of the odd-numbered year and within the time limitation set forth in 16.23.9.14 NMAC.

**C.** Remit the applicable fee for reactivation from inactive status set forth in 16.23.2.8 NMAC.  
[16.23.9.16 NMAC - Rp, 16.23.9.16 NMAC, 7/15/2017]

**16.23.9.17 REACTIVATION APPROVED:** Upon review and approval of the reactivation application, the department will issue a reactivated license to the licensee. The license number will remain the same.  
[16.23.9.17 NMAC - Rp, 16.23.9.17 NMAC, 7/15/2017]

**16.23.9.18 RESUMPTION OF PRACTICE ALLOWED:** Upon receipt of the reactivated license, the licensee may resume the practice of respiratory care in New Mexico.  
[16.23.9.18 NMAC - Rp, 16.23.9.18 NMAC, 7/15/2017]

**16.23.9.19 CONTINUING EDUCATION REQUIREMENTS FOR REACTIVATION:** For the next renewal cycle, the number of continuing education hours that will be required will depend upon the reactivation date as follows:

**A. Twenty hours.** If the completed reactivation application is received by the department postmarked *on or before* September

30 of the *even*-numbered year, the number of continuing education hours due at the next renewal (September 30 of the next odd-numbered year) will be 20.

**B. Ten hours.** If the completed reactivation application is received by the department postmarked *on or after* October 1 of the *even*-numbered year through May 31 of the odd-numbered year, the number of continuing education hours due at the next renewal (September 30 of the same year) will be 10.

**C. Zero hours.** If the completed reactivation application is approved by the department postmarked *on or after* June 1 of the *odd*-numbered (renewal) year through July 31 of the same year, the number of continuing education hours due at the next renewal (September 30 of the same year) will be zero.  
[16.23.9.19 NMAC - Rp, 16.23.9.19 NMAC, 7/15/2017]

**HISTORY OF 16.23.9 NMAC:**  
**Pre-NMAC History:** None

**History of Repealed Material:**  
16.23.9 NMAC, "Inactive Status for Practitioner License", filed 12/30/2002 - Repealed effective 7/15/2017.

**Other History:** 16 NMAC 23.9, "Inactive Status for Practitioner License", filed 11/10/1997, renumbered and reformatted to 16.23.9 NMAC, "Inactive Status for Practitioner License", effective 01/30/2003.  
16.23.9 NMAC, "Inactive Status for Practitioner License", (filed 12/30/2002) was replaced by 16.23.9 NMAC, "Inactive Status for Practitioner License", effective 7/15/2017.

## REGULATION AND LICENSING DEPARTMENT RESPIRATORY CARE ADVISORY BOARD

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 23 RESPIRATORY CARE PRACTITIONERS PART 11 LICENSE REACTIVATION; LICENSE LAPSE

**16.23.11.1 ISSUING AGENCY:** New Mexico Regulation and Licensing Department  
Respiratory Care Advisory Board P.O. Box 25101 Santa Fe, New Mexico 87504.  
[16.23.11.1 NMAC - Rp, 16.23.11.1 NMAC, 7/15/2017]

**16.23.11.2 SCOPE:** The provisions of Part 11 of Chapter 23 apply to all respiratory care practitioners who have ever been licensed in New Mexico.  
[16.23.11.2 NMAC - Rp, 16.23.11.2 NMAC, 7/15/2017]

**16.23.11.3 STATUTORY AUTHORITY:** Part 11 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-9.A NMSA 1978.  
[16.23.11.3 NMAC - Rp, 16.23.11.3 NMAC, 7/15/2017]

**16.23.11.4 DURATION:** Permanent.  
[16.23.11.4 NMAC - Rp, 16.23.11.4 NMAC, 7/15/2017]

**16.23.11.5 EFFECTIVE DATE:** July 15, 2017, unless a later date is cited at the end of the section.  
[16.23.11.5 NMAC - Rp, 16.23.11.5 NMAC, 7/15/2017]

**16.23.11.6 OBJECTIVE:** The objective of Part 11 of Chapter 23 is to set forth requirements and procedures for reactivation of a New Mexico respiratory care practitioner license from expired status. Part 11 also states the requirements the person with a lapsed license must meet to

be able to practice respiratory care in New Mexico again.  
[16.23.11.6 NMAC - Rp, 16.23.11.6 NMAC, 7/15/2017]

**16.23.11.7 DEFINITIONS:**  
[RESERVED]

**16.23.11.8 LICENSE EXPIRATION DUE TO NON-RENEWAL:** Respiratory care practitioner licenses not renewed or which have not been placed on inactive status by the end of the renewal cycle will be expired and invalid.  
[16.23.11.8 NMAC - Rp, 16.23.11.8 NMAC, 7/15/2017]

**16.23.11.9 PRACTICE PROHIBITED:** A person continuing to practice without a valid license is in violation of Section 61-12B-4 of the Respiratory Care Act, and is guilty of a misdemeanor. The department will seek civil action against the violator in accordance with Section 61-12B-15 NMSA 1978.  
[16.23.11.9 NMAC - Rp, 16.23.11.9 NMAC, 7/15/2017]

**16.23.11.10 LICENSE REACTIVATION FROM EXPIRED STATUS:** The individual who has allowed his or her license to expire, must reactivate the expired license before the next scheduled renewal expiration date for licensed respiratory care practitioners September 30 of the next odd-numbered year. The applicant must complete the following process in order to reactivate his or her license.

**A.** Contact the department to request a reactivation application form or download it from the board's website.

**B.** Complete and return to the department, the reactivation application form with the necessary continuing education documentation required in 16.23.12 NMAC.

**C.** Submit to the department a check or money order payable to the board in the amount of the renewal and penalty fee (See 16.23.2.8 NMAC).  
[16.23.11.10 NMAC - Rp,



16.23.11.10 NMAC, 7/15/2017]

#### **16.23.11.11 LICENSE LAPSE:**

An expired license which has not been reactivated before the next scheduled license expiration date September 30 of the next odd-numbered year, will lapse and become null and void.

**A. Re-licensure required.** Before resuming the practice of respiratory care in New Mexico, the individual whose license has lapsed must be approved for licensure by the department.

**B. Application required.** The applicant with a lapsed license must repeat the entire initial licensure application process as set forth in 16.23.3 and 16.23.4 NMAC. [16.23.11.11 NMAC - Rp, 16.23.11.11 NMAC, 7/15/2017]

#### **HISTORY OF 16.23.11 NMAC:**

**PRE-NMAC HISTORY:** The material in PART 11 was derived from regulations previously filed with the State Records Center and Archives Center by former department name Health and Environment Department, rule numbers, HED-85-1 (HSD), "Regulations Governing the Respiratory Care Act," filed 01/22/1985; HED-87-3 (HSD), "Regulations Governing the Respiratory Care Act," filed 05/11/1987; by department name Regulation & Licensing Department, former division name, Boards & Commissions Division rule number BCD 87-3, "Regulations Governing the Respiratory Care Act," filed 12/10/1987; and by department name Regulation and Licensing Department, Respiratory Care Advisory Board in rule numbers, Rule 91-8, "Expiration/License Renewal," filed 08/20/1991, Rule 5, "Renewal and Expiration of Practitioner Licenses," filed 03/22/1995.

#### **HISTORY OF REPEALED MATERIAL:**

16.23.11 NMAC, "License Reactivation; License Lapse" filed 12/30/2002 - Repealed effective 7/15/2017.

**Other History:** Rule 5, "Renewal

and Expiration of Practitioner Licenses," filed 03/22/1995 was renumbered, reformatted and replaced into first version of the New Mexico Administrative Code as 16 NMAC 23.11, "License Reactivation; License Lapse", filed 11/10/1997. 16 NMAC 23.11, "License Reactivation; License Lapse", filed on 11/10/1997, renumbered and reformatted to 16.23.11 NMAC, "License Reactivation; License Lapse", effective 01/30/2003. 16.23.11 NMAC, "License Reactivation; License Lapse", filed 12/30/2002 was replaced by 16.23.11 NMAC, "License Reactivation; License Lapse", effective 7/15/2017.

### **REGULATION AND LICENSING DEPARTMENT RESPIRATORY CARE ADVISORY BOARD**

#### **TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 23 RESPIRATORY CARE PRACTITIONERS PART 12 CONTINUING EDUCATION**

#### **16.23.12.1 ISSUING**

**AGENCY:** New Mexico Regulation and Licensing Department  
Respiratory Care Advisory Board P.O. Box 25101 Santa Fe, New Mexico 87504.

[16.23.12.1 NMAC - Rp, 16.23.12.1 NMAC, 7/15/2017]

**16.23.12.2 SCOPE:** The provisions of Part 12 of Chapter 23 applies to all respiratory care practitioners intending to renew or reactivate their New Mexico license. [16.23.12.2 NMAC - Rp, 16.23.12.2 NMAC, 7/15/2017]

#### **16.23.12.3 STATUTORY**

**AUTHORITY:** Part 12 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Subsection A of Section 61-12B-9 NMSA 1978. [16.23.12.3 NMAC - Rp, 16.23.12.3 NMAC, 7/15/2017]

#### **16.23.12.4 DURATION:**

Permanent.

[16.23.12.4 NMAC - Rp, 16.23.12.4 NMAC, 7/15/2017]

#### **16.23.12.5 EFFECTIVE**

**DATE:** July 15, 2017, unless a later date is cited at the end of a section.

[16.23.12.5 NMAC - Rp, 16.23.12.5 NMAC, 7/15/2017]

#### **16.23.12.6 OBJECTIVE:**

The objective of Part 12 of Chapter 23 is to set forth the requirements and procedures for the New Mexico licensed respiratory care practitioner to meet the continuing education requirements for license renewal or reactivation.

[16.23.12.6 NMAC - Rp, 16.23.12.6 NMAC, 7/15/2017]

#### **16.23.12.7 DEFINITIONS:**

[RESERVED]

#### **16.23.12.8 CONTINUING EDUCATION REQUIREMENTS:**

Continuing education is a requirement for biennial license renewal or license reactivation.

**A.** Continuing education hours must be directly related to respiratory therapy, pulmonary function technology, or related inter-disciplinary areas of health care.

**B.** The department may consult with the board to resolve questions as to appropriate continuing education hours.

**(1)** The department shall be the final authority on acceptance of any educational activity submitted by a licensee or a sponsor for approval.

**(2)** Each respiratory care practitioner must participate in at least 20 clock hours of continuing education activities every renewal cycle, or as provided by 16.23.12.12 NMAC and 16.23.12.13 NMAC.

**C.** A minimum of 12 of the 20 hours of continuing education must be category I that include any of the following types of educational offerings:

**(1) lecture**



- a discourse given for instruction before an audience or through teleconference;

(2) **panel** - a presentation of a number of views by several professionals on a given subject with none of the views considered a final solution;

(3) **workshop** - a series of meetings for intensive, hands on, study or discussion, in a specific area of interest;

(4) **seminar** - a directed advanced study or discussion in a specific field of interest;

(5) **symposium** - conference of more than a single session organized for the purpose of discussion of a specific subject from various viewpoints and by various presenters;

(6) **distance education** - includes such enduring materials as text, internet or CD, provided the proponent has included an independently scored test as part of the learning package; and

(7) **NBRC** awarded continuing education credit for successful completion of re-credentialing exams for certified respiratory therapist (CRT) and registered respiratory therapist (RRT) level credentials.

[16.23.12.8 NMAC - Rp, 16.23.12.8 NMAC, 7/15/2017]

#### **16.23.12.9 APPROVED CONTINUING EDUCATION PROGRAMS:**

**A.** The department will approve, on a clock hour basis, continuing education activities which meet the criteria in Subsection A of 16.23.12.8 NMAC, and which are sponsored or approved for respiratory care practitioners by the following:

(1) the American association for respiratory care, inc. (AARC);

(2) any (AARC) state chartered affiliate;

(3) other state boards that license respiratory care practitioners;

(4) the American lung association.

**B.** The department will approve, on a clock hour basis, a maximum of eight hours per renewal cycle of the following type of education activities listed within 16.23.12.9.B NMAC for licensees:

(1) any hospital or healthcare organization respiratory care-related continuing education in-service;

(2) respiratory care-related science courses taken in an academic setting and received toward RRT credentialing;

(3) infection control certification or re-certification courses;

(4) hazardous materials certification or re-certification courses; and

(5) advanced life support courses. This includes American heart association, American academy of pediatrics, sugar and safe care temperature airway blood pressure lab work emotional support program (STABLE), neonatal resuscitation program (NRP), advanced cardiovascular life support (ACLS), pediatric advanced life support (PALS), or as deemed acceptable by the board.

**C.** The department will approve respiratory care-related education taken in an academic setting. One semester hour or its equivalent converts to 15 clock hours.

**D.** The department will automatically approve for licensed respiratory care practitioners a maximum of six clock hours of continuing education credit for each renewal period for teaching approved respiratory care-related continuing education offerings as provided in 16.23.12 NMAC. Credits will be granted one time only for each course taught no matter how many times or how many years the course is repeated.

**E.** A maximum of 20 clock hours of CE credit will be approved by the department during each renewal period for additional examination passing scores in the highest credential registered respiratory therapist (RRT).

[16.23.12.9 NMAC - Rp, 16.23.12.9

NMAC, 7/15/2017]

#### **16.23.12.10**

**DOCUMENTATION:** Licensees shall be responsible for maintaining documentation of their continuing education activities and shall be required to submit copies of proofs of attendance at the time of license renewal.

**A. Proofs of attendance.** Proofs of attendance, including those for in-services, must clearly state the following:

(1) name, address, and phone number of the sponsor or in-service provider;

(2) date the educational offering or in-service was completed;

(3) location where the educational offering was presented;

(4) complete name of the seminar, course, or in-service (acronyms are not sufficient);

(5) number of clock hours credited;

(6) name of the attendee receiving credit for the continuing education offering or in-service;

(7) signature of the person authorized by the sponsoring agency to verify licensee attendance; and

(8) Name of the instructor.

**B. Academic credit courses.** A copy of the transcript of completed, approved academic credit hour courses as provided in Subsection C of 16.23.12.9 NMAC, must be submitted with the renewal documentation.

**C. Teaching activities.** A licensed respiratory care practitioner seeking credit for teaching respiratory care related courses must submit documentation of the teaching activity which clearly states the following:

(1) name, address, and phone number of the sponsor or in-service provider;

(2) complete name of the seminar, course, or in-service (acronyms are not sufficient);

(3) date the educational offering or in-service was presented;

(4) location where the educational offering was presented;

(5) name of the licensee instructor;

(6) number of clock hours credited; and

(7) signature of the person authorized by the sponsoring agency to verify the licensee's teaching activity.

[16.23.12.10 NMAC - Rp, 16.23.12.10 NMAC, 7/15/2017]

#### **16.23.12.11 OTHER EDUCATIONAL OFFERINGS:**

The department, in consultation with the board, has an informal arrangement with the New Mexico society for respiratory care (NMSRC) in which the NMSRC will review for approval other continuing education offerings, for individual licensees or continuing education sponsors.

**A.** Any continuing education (CE) activity that is not covered by 16.23.12.8 NMAC through 16.23.12.10 NMAC must be submitted to the NMSRC for review and approval.

(1) Approval must be granted by the NMSRC before the CE may be considered applicable toward meeting the continuing education renewal requirement for respiratory care practitioners licensed in New Mexico. Any deadlines for submission of these requests to the NMSRC will be established by the NMSRC as needed.

(2) Approval must be granted by the NMSRC before the continuing education can be submitted to the department and the board to meet the licensee's continuing education renewal requirement.

**B.** The request for approval of an educational seminar or course must include the following, at a minimum. The NMSRC may require additional information to process the request.

(1) Name of the seminar or course.

(2) Sponsoring party.

(3) Objective of the seminar.

(4) Format and subjects of seminar or course.

(5) Number of clock hours credited for the offering.

(6) Sample "proof of attendance" certificate.

(7) Name and qualifications of the instructor.

(8) Evaluation mechanism to be used.

**C.** Any processing fee established by the NMSRC for the continuing education review service must be payable to the NMSRC and must accompany the request to the NMSRC for approval of an educational offering.

**D.** The NMSRC will give written notification to the sponsor or licensee of the approval or denial of the educational program or seminar.

[16.23.12.11 NMAC - Rp, 16.23.12.11 NMAC, 7/15/2017]

#### **16.23.12.12 CONTINUING EDUCATION REQUIREMENT PRORATED:**

Any applicant whose initial licensure application is postmarked on or after October 1 of the even numbered year, through May 31 of the odd-numbered renewal year, shall be required to meet one half (10 clock hours) of the continuing education requirements for renewal at the time of renewal.

[16.23.12.12 NMAC - Rp, 16.23.12.12 NMAC, 7/15/2017]

#### **16.23.12.13 CONTINUING EDUCATION REQUIREMENT WAIVED:**

Any applicant whose initial licensure application is postmarked on or after June 1 of the odd-numbered (renewal) year through July 31 of the same year shall have the continuing education requirement waived for that renewal cycle.

[16.23.12.13 NMAC - Rp, 16.23.12.13 NMAC, 7/15/2017]

**16.23.12.14 CONTINUING EDUCATION AUDIT:** The department, in consultation with

the board, may elect to use an audit system for verifying continuing educational activities at the time of renewal.

**A.** In this case, the department will randomly select a minimum of ten percent of the currently licensed respiratory care practitioners to provide, with their renewal applications, hard-copy proof of having met the continuing education requirement.

**B.** Audit requests will be included in the renewal notice.

**C.** Licensees not selected for audit will be required only to list the continuing education activities completed on their renewal applications. The department shall still have the option to audit these individuals' continuing education records at any time before the next scheduled license renewal.

[16.23.12.14 NMAC - Rp, 16.23.12.14 NMAC, 7/15/2017]

**16.23.12.15 [RESERVED]**

**16.23.12.16 [RESERVED]**

#### **16.23.12.17 EXTENUATING CIRCUMSTANCES - DEFERRAL OR WAIVER OF CONTINUING EDUCATION REQUIREMENT:**

**A.** Licensees generally have 24 months to complete the continuing education requirement for renewal, which is sufficient time to meet the continuing education requirement.

**B.** In the event a licensee experiences an extenuating circumstance such as a prolonged debilitating personal illness; or a prolonged debilitating illness of an immediate family member; or being mobilized to active duty by the national guard or other branch of service in the United States armed forces, which makes it impossible to meet the continuing education requirement for license renewal, the individual may request an emergency deferral or a waiver of the continuing education requirement by submitting one of the following items to the board before the license expiration date.

(1) A written request for deferral or waiver explaining the circumstances that made it impossible for the licensee to meet the requirement in the 24 months prior to the expiration date of the license.

(2) Documentation accompanying the request for deferral or waiver that verifies the extenuating circumstances, such as a signed affidavit from a physician or medical provider, or a copy of the mobilization orders from the branch of government calling the person to active duty; etc.

C. A licensee mobilized for active military duty, but who is still in training when the license renewal comes due, is required to renew his/her license and meet the continuing education requirements, but the license renewal fee will not be assessed.

D. A licensee mobilized into active military duty, and who is in military action at the time the license renewal comes due, is not required to renew his/her license or meet the continuing education requirements. However, upon return to civilian status, the licensee shall renew the license without having to pay the renewal or late penalty fee.

E. The license of a respiratory therapist who does not earn the required continuing education for renewal due to his/her call to active military duty will not lapse for failure to earn continuing education hours provided the licensee submits a copy of the mobilization orders to the board office prior to the expiration of the license.

F. The license renewal extension authorized by this regulation shall end one month after deployment is concluded.

G. Upon return to civilian status, the licensee shall resume earning continuing education prorated as follows after the deployment ends.

(1) If the deployment ends in October of the odd-numbered year through March of the even-numbered year, the licensee will accrue 20 hours of continuing

education for the next renewal cycle.

(2) If the deployment ends in April of the even-numbered year through September of the even-numbered year, the licensee will accrue 15 hours of continuing education for the next renewal cycle.

(3) If the deployment ends in October of the even-numbered year through March of the odd-numbered year, the licensee will accrue 10 hours of continuing education for the next renewal cycle.

(4) If the deployment ends in April of the odd-numbered year through July of the odd-numbered year, the licensee will accrue zero hours of continuing education for the year's renewal cycle.

[16.23.12.17 NMAC - Rp, 16.23.12.17 NMAC, 7/15/2017]

#### **HISTORY OF 16.23.12 NMAC:**

**Pre-NMAC History:** The material in Part 12 was derived from regulations previously filed with the state records center and archives by former department name health and environment department, rule numbers, HED-85-1 (HSD), "Regulations Governing the Respiratory Care Act," filed 01/22/1985; HED-87-3 (HSD), "Regulations Governing the Respiratory Care Act," filed 05/11/1987; by department name regulation & licensing department, former division name, boards & commissions division rule number BCD 87-3, "Regulations Governing the Respiratory Care Act," filed 12/10/1987; and by department name regulation and licensing department, respiratory care advisory board in rule numbers, Rule 91-5, "Renewal of Licenses," filed 08/20/1991; Rule 91-8, "Expiration/License Renewal," filed 08/20/1991; Rule 91-6, "Continuing Education," filed on 08/20/1991; and Rule 6, "Continuing Education," filed on 03/22/1995.

#### **History of Repealed Material:**

16.23.12 NMAC, "Continuing Education," filed 12/30/2002 - Repealed effective 7/15/2017.

**Other History:** Rule 6, "Continuing Education," (filed 03/22/1995) was renumbered, reformatted and replaced into first version of New Mexico Administrative Code as 16 NMAC 23.12, "Continuing Education", effective 11/29/1997.

16 NMAC 23.12, "Continuing Education" (filed 11/10/1997), renumbered and reformatted to 16.23.12 NMAC, "Continuing Education" effective 01/30/2003. 16.23.12 NMAC, "Continuing Education", (filed 12/30/2002) was replaced by 16.23.12 NMAC, "Continuing Education", effective 7/15/2017.

## **TRANSPORTATION, DEPARTMENT OF**

The New Mexico Department of Transportation approved, at its 6/12/2017 hearing, to repeal its rule 18.31.6 NMAC, Classification And Design Standards For Highways - State Highway Access Management Requirements (filed 10/1/2001) and replace it with 18.31.6 NMAC, Classification And Design Standards For Highways - State Highway Access Management Requirements, effective 6/27/2017.

## **TRANSPORTATION, DEPARTMENT OF**

### **TITLE 18 TRANSPORTATION AND HIGHWAYS CHAPTER 31 CLASSIFICATION AND DESIGN STANDARDS FOR HIGHWAYS PART 6 STATE HIGHWAY ACCESS MANAGEMENT REQUIREMENTS**

#### **18.31.6.1 ISSUING**

**AGENCY:** New Mexico Department of Transportation (NMDOT), 1120 Cerrillos Road, Post Office Box 1149, Santa Fe, New Mexico 87504-1149. [18.31.6.1 NMAC - Rp, 18.31.6.1 NMAC, 6/27/2017]

**18.31.6.2 SCOPE:** New Mexico department of transportation districts and divisions, all other state agencies, local governments, land owners, developers, and general public.

[18.31.6.2 NMAC - Rp, 18.31.6.2 NMAC, 6/27/2017]

**18.31.6.3 STATUTORY AUTHORITY:**

**A. State highway commission (now state transportation commission):** The basic enabling legislation for the management of access on state highways is Section 67-11-2 NMSA 1978, which states: "The state highway commission (now state transportation commission) is authorized and directed to do those things essential to plan, acquire by reasonable purchase or condemnation and construct a section or a part of a state or federally designated highway as a freeway or controlled-access highway or to make any existing state or federally designated highway a freeway or a controlled-access highway."

**B. New Mexico department of transportation:** Pursuant to Section 67-3-6 NMSA 1978, the New Mexico department of transportation shall exercise the power, authority, and duty granted to the state transportation commission. Therefore, the department may prescribe rules and regulations for providing access to state highways pursuant to Sections 67-11-1 NMSA 1978 through Sections 67-11-10 NMSA 1978. In addition, the following state transportation commission policy and department administrative directive supplement New Mexico state statutes and shall be followed when determining the type and extent of access to be provided along state highways.

**(1) State transportation commission Policy CP 65, Interstate Access.**

**(2) New Mexico department of transportation administrative directive AD 222, Highway Access Control.**  
[18.31.6.3 NMAC - Rp, 18.31.6.3

NMAC, 6/27/2017]

**18.31.6.4 DURATION:**

Permanent.

[18.31.6.4 NMAC - Rp, 18.31.6.4 NMAC, 6/27/2017]

**18.31.6.5 EFFECTIVE**

**DATE:** June 27, 2017 unless a later date is cited in the history note at the end of a section.

[18.31.6.5 NMAC - Rp, 18.31.6.5 NMAC, 6/27/2017]

**18.31.6.6 OBJECTIVE:**

**A.** By 18.31.6 NMAC, the department establishes access management requirements which will protect the functional integrity of the state highway system and the public and private investment in that system. Rule 18.31.6 NMAC, and its associated *state access management manual* which is attached to and filed concurrently with this rule, provides procedures and standards to preserve and protect the public health, safety and welfare, to maintain smooth traffic flow, and to protect the functional level of state highways while considering state, regional, local, and private transportation needs and interests. The access management requirements also consider other department regulations, policies and procedures related to highway rights-of-way such as drainage, archeology, hazardous materials and other environmental aspects.

**B.** Through the administration of 18.31.6 NMAC, it is the intent of the department to work with property owners and local governments to provide reasonable access to the state highway system. However, the access rights of an owner of property abutting a state highway shall be held subordinate to the public's right and interest in a safe and efficient highway.

**C.** All owners of property abutting a public road have a right of reasonable access to the general system of streets and highways in the state, but not to a particular means of access. The right of access is subject to regulation for

the purpose of protecting the health, safety and welfare of the traveling public.

**D.** Rule 18.31.6 NMAC addresses the design and location of driveways, medians, median openings, intersections, traffic signals, interchanges and other points of access to public highways under the jurisdiction of the state transportation commission. It is based upon the authority granted to the New Mexico department of transportation.

**E.** As of June 9, 1989, no person shall construct or modify any permanent or temporary access providing direct vehicular movement to or from any state highway from or to property in close proximity to or adjoining a state highway without an access permit issued by the New Mexico department of transportation. Within those jurisdictions where the local governments and authorities have returned issuing authority to the department, the department has sole authority to issue state highway access permits. However, the department will delegate the authority under 18.31.6 NMAC to other public agencies provided that these agencies minimally adopt the rule and as the department determines in its discretion as delegable.

**F.** Access permits shall be issued only when the permit application is found to be in compliance with 18.31.6 NMAC. The department, or other issuing authority approved by the department, is authorized to impose terms and conditions as necessary and convenient to meet the requirements of 18.31.6 NMAC.

**G.** Direct access from a subdivision to a state highway shall be permitted only if the proposed access meets the purposes and requirements of 18.31.6 NMAC. All new subdivision of property shall provide access consistent with the requirements of 18.31.6 NMAC. The provisions of 18.31.6 NMAC shall not be deemed to deny reasonable access to the general street system. The issuance of any permit, agreement, plat, subdivision, plan or



correspondence shall not abrogate or limit the regulatory powers of the department or issuing authority in the protection of the public's health, safety and welfare.

[18.31.6.6 NMAC - Rp, 18.31.6.6 NMAC, 6/27/2017]

#### **18.31.6.7 DEFINITIONS:**

##### **A. Acceleration lane--**

A speed-change lane, including full-width auxiliary lane and tapered area, for the purpose of enabling a vehicle entering a roadway to increase its speed to a rate at which it can safely merge with through traffic.

##### **B. Access--**

Any driveway or other point of access such as a street, road, or highway that connects to the general street system. Where two public roadways intersect, the secondary roadway shall be considered the access.

##### **C. Access category--**

The definition by which access to a state highway is controlled according to the categories described in 18.31.6.10 NMAC.

##### **D. Access control--**

The regulated limitation of access to and from a highway facility including full control of access, partial control of access, and driveway regulations.

##### **E. Applicant--**

The owner of property or the representative of an owner applying for an access permit.

##### **F. Arterial roadway--**

The primary function of an arterial roadway is to provide mobility for through traffic movements. Arterial roadways provide for land access as a secondary function.

##### **G. At-grade**

**intersection--** A crossing of two or more highway facilities at the same elevation where through traffic movements on one or more of the highways cross and where turning movements between the highway facilities may be allowed.

##### **H. Auxiliary lane--**

An additional lane adjoining the traveled way which may be used for parking, speed change, turning, storage for turning vehicles, weaving, truck climbing, and other purposes supplementary to through traffic

movement.

##### **I. Average daily**

**traffic (ADT)--** The average traffic volume per day, over a seven-day week, for a unique segment of roadway in both directions of travel on a two-way facility and in one direction of travel on a one-way facility.

##### **J. Average weekday**

**traffic (AWDT)--** The average traffic volume for a unique segment of roadway on a typical weekday (Monday through Friday) in both directions of travel on a two-way facility and in one direction of travel on a one-way facility.

##### **K. Average weekend**

**traffic (AWET)--** The average traffic volume for a unique segment of roadway over the weekend period (Saturday and Sunday) in both directions of travel on a two-way facility and in one direction of travel on a one-way facility.

##### **L. Developed area/**

**business district--** A developed area/business district occurs along a highway when within 300 feet along such highway there are buildings in use for business or industrial purposes (including but not limited to hotels, banks or office buildings, railroad stations and public buildings) which occupy at least fifty percent of the frontage on one side or fifty percent of the frontage collectively on both sides of the highway.

##### **M. Capacity--**

The maximum hourly rate at which persons or vehicles can reasonably be expected to traverse a point or uniform section of a lane or roadway under prevailing roadway, traffic, and control conditions.

##### **N. Change of use--**

Occurs when a change in the use of the property including land, structures or facilities, or an expansion of the size of the structures or facilities, is expected to result in an increase in the trip generation of the property greater than twenty-five percent (either peak hour or daily) and greater than 100 vehicles per day more than the existing use.

##### **O. Channelized**

**intersection--** An "at grade"

intersection with painted islands, raised islands, or other devices for directing traffic along definite paths.

##### **P. Collector street--**

Collector streets connect developed areas with the arterial street system, balancing the need to provide traffic movement with the need to provide property access.

##### **Q. Commission--**

The New Mexico state transportation commission or its predecessor.

##### **R. Control of access--**

The condition in which the right of owners or occupants of land abutting or adjacent to a roadway is controlled by public authority.

##### **S. Controlled-access**

**highway--** Includes highways, streets or roadways to which owners or occupants of abutting lands, and other persons, have no legal right of access except as determined by the public authority having jurisdiction over the highway, street or roadway.

##### **T. Corner clearance--**

At an intersecting street or highway, the dimension measured along the edge of the traveled way between the centerline of the intersecting street and the centerlines of the first adjacent access points on the approach and departure sides of the intersection.

##### **U. Cross street--**

The lower function roadway that crosses a higher function facility, also referred to as minor street.

##### **V. Curb cut--**

An opening along a state highway with raised curb or curb-and-gutter to provide for driveway access using driveway construction. Also referred to as driveway cut.

##### **W. Curb return--**

The access radius for an intersection or driveway opening, also referred to as radius return.

##### **X. Curb return**

**construction--** As applied to a driveway opening, means that proper access radii are used in the design and construction of an access facility.

##### **Y. Deceleration**

**lane--** A speed-change lane, including full-width auxiliary lane and tapered areas, for the purpose of enabling a vehicle to slow to a safe turning speed when exiting a roadway.

**Z. Department--** New Mexico department of transportation and all of its components, including but not limited to, the district engineers, and the department divisions.

**AA. Design vehicle--** A selected motor vehicle with the weight, dimensions, and operating characteristics used to establish highway design controls.

**AB. Developer--** A person or persons representing a proposed land development project.

**AC. Divided highway--** A highway with separated roadways for traffic traveling in opposite directions. Separation may be provided by depressed dividing strips, raised medians, traffic islands, other physical separations, standard pavement markings, or other traffic control devices.

**AD. Drivepad construction--** As applied to a driveway or curb cut, means that access radii are not used in the design and construction of an access facility.

**AE. Driveway--** For the purposes of department access management requirements, a driveway is a public or private access along a state highway serving a limited area where traffic signal control is not required. Excludes public streets, roads, highways, and other signalized intersections.

**AF. Driveway angle--** The angle of 90 degrees or less between the driveway centerline and the edge of the traveled way.

**AG. Driveway cut--** An opening along a state highway with raised curb or curb-and-gutter to provide for driveway access using drivepad construction. Also referred to as curb cut.

**AH. Driveway throat width--** The narrowest width of a driveway measured parallel with the edge of the traveled way exclusive of radii, ramps or tapers.

**AI. Edge clearance--** The distance measured along the edge of the traveled way between the frontage property line and the point of tangency of the nearest radius return for an access.

**AJ. Egress--** To exit an abutting property or intersecting roadway to gain access to a state highway.

**AK. Freeway--** A multi-lane divided highway having a minimum of two lanes in each travel direction, with access provided by grade-separated interchanges.

**AL. Frontage--** The distance along the highway right-of-way line of a single property tract or roadside development area between the limits of the property.

**AM. Frontage property line--** A line, perpendicular to the highway centerline, at each end of the frontage, extending from the right-of-way line to the edge of traveled way.

**AN. Full control of access--** That part of access control where preference is given to through traffic by providing access connections only with selected public roads, and by prohibiting at-grade crossings and direct private driveway connections. Access control is accomplished by legally obtaining right-of-way from the abutting property owners or by the use of frontage roads or other means to provide access to abutting properties.

**AO. Functional area of an intersection--** The areas of both upstream and downstream of an intersection where additional access points should not be allowed. The upstream area consists of length. The downstream area consists of stopping sight distance. Right-turn conflict overlap should also be considered when determining the downstream area.

**AP. Functional classification--** The grouping of highways by the character of service they provide to through traffic movements (mobility) versus access to abutting properties (land accessibility).

**AQ. General-purpose lanes--** The continuous through lanes on a highway, excluding auxiliary lanes. Sometimes referred to as mainline lanes.

**AR. General street system--** The interconnecting network of city streets, county roads, and state

highways.

**AS. Grade separation--** A crossing of two transportation facilities, such as two roadways or a roadway and a railroad, at different elevations where access is not provided from either facility at their intersection.

**AT. Grade or gradient--** The rate (or percent) of change in slope. For highway facilities, it is measured along the centerline of the roadway or access facility.

**AU. Highway--** The entire width between the right-of-way lines of publicly maintained traveled way when any part thereof is open to the public for purposes of vehicular travel, or the entire width of any traveled way declared to be a public highway by law. It may include bridges, culverts, sluices, drains, ditches, waterways, embankments, walls, trees, shrubs and fences.

**AV. Highway improvement project--** Includes any project to improve a roadway segment or intersection facility to protect and maintain the general health, safety and welfare of the traveling public, typically conducted by the public entity having jurisdiction over the facility being improved. Highway improvement projects are generally included in the public entity's transportation improvement program, whether the program is local, regional or statewide.

**AW. Horizontal alignment--** The combination of curved and tangent sections of a highway in the horizontal plane.

**AX. Ingress--** To leave the highway and enter into an abutting property or intersecting roadway.

**AY. Intersection--** Public street or other access serving a large area or a major traffic generator(s) where traffic signal control may be provided.

**AZ. Interstate highway--** Represents the highest functional classification of a roadway in a highway network. Interstates are multi-lane divided highways having a minimum of two lanes in each travel direction, with access provided by

grade-separated interchanges.

**BA. km/h--** A rate of speed measured in kilometers traveled per hour.

**BB. Land development project--** Includes any project to develop or redevelop private or public property adjacent or in close proximity to a state highway where direct or indirect access to the property is required from the state highway. Land development projects may be conducted by either private or public entities.

**BC. Lane--** The portion of a roadway for the movement of a single line of vehicles, not including the gutter or the shoulder of the roadway.

**BD. Level of service (LOS)--** A qualitative measure describing traffic operational conditions within a traffic stream based on factors such as speed, travel time, freedom to maneuver, traffic interruptions, comfort and convenience, and safety. Level of service designations range from A (best) to F (worse).

**BE. Local governments and authorities--** Every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of the State of New Mexico.

**BF. Local road--** Local roads primarily provide direct access to abutting land and to roads of higher functional classification. Mobility is discouraged, especially in urban areas.

**BG. May--** A permissive condition where the condition is suggested but not mandatory.

**BH. MUTCD--** Manual on uniform traffic control devices for streets and highways, latest edition.

**BI. Median--** That portion of a divided highway separating traffic traveling in opposite directions.

**BJ. Minor street--** The lower function roadway that crosses a higher function facility, also referred to as cross street.

**BK. mph--** A rate of speed measured in miles traveled per

hour.

**BL. NMDOT--** The New Mexico department of transportation.

**BM. Nominal control of access--** That part of access control that may be applied when full or partial control of access has not been obtained by a highway authority. A means of access control that is consistent with the functional classification of a state highway facility, and that is sufficient to maintain a safe and efficient transportation system.

**BN. Non-access controlled highway--** Includes state highways where roadside access is permitted and access control has not been established by legally obtaining right-of-way from the abutting property owners or by the use of frontage roads or other means to provide access to abutting properties.

**BO. Non-traversable median--** A median which, by its design, physically discourages or prevents vehicles from crossing it except at designated openings which are designed for turning or crossing movements.

**BP. Partial control of access--** That part of access control where preference is given to through traffic to a degree that some at-grade crossings may be permitted. Access control is accomplished by legally obtaining right-of-way from the abutting property owners or by the use of frontage roads or other means to provide access to abutting properties.

**BQ. Permittee--** The individual(s) responsible for fulfilling the terms and conditions of the access permit as imposed by the department.

**BR. Property owner--** The person or persons holding the recorded title to property abutting a state highway, and other persons holding a recorded interest in such property, that includes a right to reasonable access from the state highway system.

**BS. Radius return--** The access radius for an intersection or driveway opening, also referred to as curb return.

**BT. Recovery Area--** An unobstructed area provided beyond the edge of a traveled way for the recovery of errant vehicles.

**BU. Right-in/right-out driveway (RI/RO)--** A driveway located along a roadway prohibiting left-turn access into or out of the driveway.

**BV. Right-turn conflict overlap--** A conflict that occurs when a driver in a through travel lane must monitor more than one access connection at a time.

**BW. Setback--** The lateral distance between the highway right-of-way line and any development structure, obstacle or parking area along the highway roadside.

**BX. Shall--** A mandatory condition where the requirements must be met.

**BY. Should--** An advisory condition where the condition is recommended but not mandatory.

**BZ. Sight distance--** The length of roadway visible to the driver of a vehicle, as further defined in the AASHTO document, *a policy on geometric design of highways and streets*, latest edition.

**CA. Signal progression--** The timing of consecutive signalized intersections to provide for the progressive movement of traffic at a planned rate of speed.

**CB. Speed-change lane--** A separate lane for the purpose of enabling a vehicle entering or leaving a roadway to increase or decrease its speed to a rate at which it can more safely merge into or exit from through traffic.

**CC. State highway--** Any public highway that has been designated as a state highway by either the New Mexico state legislature or the state transportation commission.

**CD. Stopping sight distance--** The distance required by a driver of a vehicle to bring the vehicle to a stop after an object on the roadway becomes visible.

**CE. Storage lane length--** The length provided within

a deceleration lane for the storage of queued vehicles, typically based on the vehicle queue expected during peak travel periods.

**CF. Subdivide--** To divide land into two or more smaller lots, tracts or parcels of land.

**CG. Subdivision--** A tract of land which has been subdivided in accordance with the laws of the state usually with appropriate streets, dedications and other facilities for the development or sale of industrial, commercial or residential land.

**CH. Traveled way--** That portion of a roadway containing the travel lanes and speed-change lanes, exclusive of pavement provided for shoulders.

**CI. Traversable median--** A median which, by its design, does not physically discourage or prevent vehicles from entering upon or crossing it.

**CJ. Trip--** A one way vehicle movement from one location to another.

**CK. Trip assignment--** Refers to the addition of trips generated by a proposed development to a transportation network. Involves the specific routing of traffic on the street system.

**CL. Trip distribution--** Refers to the geographic origin or destination of trips related to a project. Involves the general allocation of trips generated by a development over the transportation network.

**CM. Trip generation--** An estimate of the number of trips expected to be generated by specific type of land use.

**CN. Undivided roadway--** A highway without physical separation between traffic traveling in opposite directions.

**CO. Vertical alignment--** The vertical profile of a highway, intersection approach or driveway approach, typically measured along its centerline. [18.31.6.7 NMAC - Rp, 18.31.6.7 NMAC, 6/27/2017]

#### 18.31.6.8 REFERENCES:

The reference documents listed in 18.31.6.9 NMAC are supplementary and should be used when additional detail is required to address issues that arise during the access permitting and design process. The most recent edition of each technical reference shall be used.

[18.31.6.8 NMAC - Rp, 18.31.6.8 NMAC, 6/27/2017]

#### 18.31.6.9 REFERENCE LIST:

**A.** New Mexico state statutes and traffic laws, as amended.

**B.** The current editions, as amended, of the following NMDOT manuals, standards, and policies:

**(1)** State access management manual.

**(2)** Standard specifications for road and bridge construction.

**(3)** State transportation commission policies.

**(4)** Standard drawing serials and designated drawings.

**(5)** Drainage manual, volume I - hydrology, volume II - sedimentation and erosion, and drainage design criteria (administrative memorandum 221), latest editions.

**(6)** New Mexico state traffic monitoring standards.

**(7)** Railroads and utilities manual.

**(8)** Materials manual.

**(9)** Construction manual.

**(10)** Location study procedures, a guidebook for alignment and corridor studies.

**C.** A policy on geometric design of highways and streets, American association of state highway and transportation officials, latest edition.

**D.** Manual on uniform traffic control devices for streets and highways, U.S. department of transportation, federal highway administration, latest edition.

**E.** Highway capacity

manual, transportation research board, national research council, latest edition.

**F.** Trip generation, institute of transportation engineers, latest edition.

**G.** Roadside design guide, American association of state highway and transportation officials, latest edition.

**H.** Manual of transportation engineering studies, institute of transportation engineers.

**I.** A guide for erecting mailboxes on highways, American association of state highway and transportation officials.

**J.** Americans with Disabilities Act, accessibility guidelines for buildings and facilities (PROWAG), architectural and transportation barriers compliance board, as amended; 36 CFR Part 1191.

**K.** Traffic engineering handbook, current edition, institute of transportation engineers.

**L.** Access management guidelines for activity centers, NCHRP 348.

**M.** Manual of traffic signal design, second edition, institute of transportation engineers.

**N.** Traffic access and impact studies for site development, institute of transportation engineers.

**O.** Guide for the development of bicycle facilities, American association of state highway and transportation officials, 3rd edition.

**P.** Transportation and land development, institute of transportation engineers.

**Q.** An informational guide for roadway lighting, American association of state highway and transportation officials.

**R.** Web sites (note: web addresses may change without notice):

**(1)** New Mexico department of transportation: dot.state.nm.us.

**(2)** Federal highway administration: www.fhwa.dot.gov.

**(3)** Institute of



transportation engineers: [www.ite.org](http://www.ite.org).  
 (4) American association of state highway and transportation officials: [www.transportation.org](http://www.transportation.org).

(5) Transportation research board: [www.nas.edu/trb](http://www.nas.edu/trb).

(6) National cooperative highway research program: [www.trb.org/NCHRP/NCHRP.aspx](http://www.trb.org/NCHRP/NCHRP.aspx).  
 [18.31.6.9 NMAC - Rp, 18.31.6.9 NMAC, 6/27/2017]

#### **18.31.6.10 ACCESS CATEGORIZATION SYSTEM:**

The regulation and management of vehicular access to and from the New Mexico state highway system shall be defined by an access categorization system. The access categorization system for state highways is described in Section 10 of the *state access management manual*. The access categorization system shall be based on the functional classified system for New Mexico roadways, which consists of interstates and freeways (INTS), principal arterials (PRAR), minor arterials (MNAR), major collectors (MJCL), minor collectors (MNCL), collectors (COLL), local roads (LOC), and other special road types. The functional classified system shall be further defined as urban and rural routes based on the location of a highway with respect to population centers. The current classification of a highway shall be obtained from the department and shall be used to determine the access category applicable to the highway under consideration. Access requirements for each access category are described in the *state access management manual*.

[18.31.6.10 NMAC - Rp, 18.31.6.10 NMAC, 6/27/2017]

**18.31.6.11 ACCESS MANAGEMENT PLANS:** The department may develop an access management plan for a designated portion of state highway. An access management plan provides the department, and local authority, with a comprehensive roadway access design

plan for a designated state highway segment or corridor for the purpose of bringing that portion of highway into conformance with its access category and its functional needs to the extent feasible given existing conditions. Access management plans should be developed as described in Section 11 of the *state access management manual*.

**A. Access management** plans for state highways are developed by the department in cooperation with the appropriate local authorities through a memorandum of understanding or a joint powers agreement. Access management plans shall be adopted by the department to become effective. The adoption of a plan shall be in the form of a formal written agreement prepared in accordance with 18.31.6.19 NMAC, access control review procedures. When applicable, concurrence of the local authority should also be obtained in written form.

**B. After an access management plan is adopted,** modifications to the plan shall require department approval. Where an access management plan is in effect, all action taken in regard to access shall be in conformance with the plan and 18.31.6 NMAC unless the department approves exceptions to the plan in writing.

[18.31.6.11 NMAC - Rp, 18.31.6.11 NMAC, 6/27/2017]

#### **18.31.6.12 INTERCHANGE ACCESS MANAGEMENT PLANS:**

An interchange access management plan shall be required for any new interchange or significant modification to an existing interchange. The interchange access management plan shall satisfy the requirements of 18.31.6.19 NMAC, access control review procedures, and applicable state transportation commission policies and department administrative directives. The interchange and the management plan shall receive the approval of the deputy secretary for highway operations. If located on a national or interstate highway facility, approval shall also be obtained from the federal

highway administration. Section 12 of the *state access management manual* should be used to guide the development of interchange access management plans.  
 [18.31.6.12 NMAC - Rp, 18.31.6.12 NMAC, 6/27/2017]

#### **18.31.6.13 ACCESS CATEGORY STANDARDS:**

**A. Purpose:** Whereas the requirements for access requests along state highways are described in multiple Sections of 18.31.6 NMAC, summary information for each access category is provided in Section 13 of the *state access management manual* to assist users in locating and determining the requirements for a proposed access along a state highway. Practitioners shall reference specific sections of 18.31.6 NMAC when determining applicable requirements for their access request. The summary information contained in Section 13 of the manual is provided solely to ease use of the access management manual, with the exception below regarding interstate highways.

**B. Interstate highways:** The design of interstate highway facilities, requests for modifications to existing interstate access points, and new interstate access proposals shall satisfy the requirements of all pertinent sections of the code of federal regulations (CFR) and all interstate highway policies adopted by the federal highway administration. All decisions regarding interstate highway facilities shall require the approval of the federal highway administration and the New Mexico department of transportation.

[18.31.6.13 NMAC - Rp, 18.31.6.13 NMAC, 6/27/2017]

#### **18.31.6.14 PERMITTING PROCESS:**

**A. Purpose:** This section describes the application procedures for submitting an access permit request to the department, and the administrative procedures used by the department to approve or deny access permit requests on state

highways.

**B. Types of access:**

Following is a list of the types of access that may occur along the state highway system. Refer to Section 14 of the *state access management manual* for a description of each access type.

- (1) Existing lawful access, modification or transfer.
- (2) New private access (individual use).
- (3) New subdivision access.
- (4) New public access.
- (5) New commercial access.
- (6) Temporary construction access.
- (7) Temporary access.
- (8) Emergency access.
- (9) Field access.
- (10) Access breaks in established access control lines.
- (11) Illegal access.

**C. Access permit**

**applications:** Applications for access permits shall be made by the property owner; the property owner's authorized representative; or, the local governmental agency requesting access from a state highway. Applications are required for all new access types, for modification or transfer of existing lawful access permits, and for upgrading an existing illegal access to a lawful access.

(1) Changes in property use: Where additional traffic is projected due to expansion or redevelopment of a property, the property owner shall contact the department to determine if a new permit application and modifications to existing access points will be required. If the department determines that the increased traffic generated by the property does not require modifications to the existing permitted access, according to the procedures of 18.31.6.16 NMAC,

a new permit application will not be required. Failure to contact the department to determine the need for access modifications or to apply for such modifications prior to initiation of property improvements, land use changes or traffic flow alterations actions, may result in notification to the property owner of intent to revoke or modify the existing permit and closure of the access to the property. (Also refer to Subsection O of 18.31.6.14 NMAC).

(2) Permit application form: All applications shall be made on the approved department permit application form, "application for permit to construct an access or median opening on public right-of-way."

(3) Department district offices: Persons wishing to submit an access permit application form should contact the appropriate department district office to obtain application forms. District offices are located in Deming, Roswell, Albuquerque, Las Vegas, Santa Fe, and Milan. The application form can also be found in the appendix of the *state access management manual*, and on the department's external web site, [dot.state.nm.us/content/dam/nmdot/Infrastructure/Access\\_management\\_Manual.pdf](http://dot.state.nm.us/content/dam/nmdot/Infrastructure/Access_management_Manual.pdf).

**D. Application submittal requirements:**

(1) Completed access permit forms shall be submitted to the appropriate district office with proof of ownership of the property to which access is requested. A plan or sketch of the property shall be attached to the permit application showing the length of the property frontage, the distance from the edge of the traveled roadway to the property line, edge clearances, corner clearances, the distance from the referenced mile marker to the centerline of the proposed driveway(s), and the location of any access drives along the state highway across from the proposed site. A traffic engineering evaluation shall be conducted for all access permit requests according to the requirements

of 18.31.6.15 NMAC and 18.31.6.16 NMAC, with an exception. The traffic engineering evaluation may be waived for individual use access requests (see Subsection E, Paragraph 1 of 18.31.6.14 NMAC). In such cases, the department may conduct the evaluation required to determine if an individual use access will be permitted or denied. A construction traffic control plan shall also be submitted with the application for review and approval by the district traffic engineer. The department may require additional information relative to the evaluation of a permit application as further described in Section 14 of the *state access management manual*.

(2) A permit application may be deemed incomplete by the department when necessary and relevant information is missing, or when there is no written evidence of the ownership of the property surface rights provided in the application. If the application is deemed incomplete, the department shall notify the applicant within 15 working days of receipt of the application and shall indicate the reason or reasons for refusal. The department review period begins with the acceptance of an application.

**E. Access permit requests from private entities:**

(1) Individual use: Requests for a new private access shall be made on the department access permit application. Application requirements for individual use permits shall include a platted survey of the property, proof of ownership of the property, and details regarding the location of the proposed access and the proposed development. A traffic engineering evaluation typically shall not be required. The department may conduct the evaluation required to determine if an individual use access will be permitted or denied.

(2) Subdivisions and commercial developments: Requests for new subdivision access, new commercial access or for modification to an existing lawful access for other than

individual use shall be made on the access permit application. The applicant shall be required to satisfy all pertinent requirements of 18.31.6 NMAC.

**F. Access permit requests from governmental entities:**

(1) Local governments: Requests by local governmental agencies for new access or for the reconstruction of existing access to the state highway shall be administered by the department. The local governmental agency shall be considered the applicant. The department shall work with local governmental agencies realizing that the access will serve multiple property owners. Access to subdivisions and other developments shall not be considered public access until the access is constructed and accepted as a local public roadway.

(a) Local governmental agencies shall provide notice of all developments that will directly or indirectly impact the state highway, and shall request department participation in the administration of an access permit if it is determined by the department that an access facility will directly or indirectly impact the operation and function of a state highway. The local governmental agencies may also require sub-dividers to provide additional notice of all proposed developments that will directly or indirectly impact the state highway.

(b) Where a private development accessing the roadway of an appropriate local authority necessitates access improvements where the local roadway connects to a state highway, the permittee shall be the local jurisdiction.

(c) Local governmental agencies may be required to submit a traffic engineering evaluation with a permit application. The traffic engineering evaluation requirement shall be determined according to the procedures described in 18.31.6.15 NMAC and 18.31.6.16 NMAC. Local governmental agencies

may require developers to assist in preparing and providing this information for submission to the state.

(2) Federal government: Requests for access from a state highway by the general services administration (GSA), United States postal service (USPS), department of defense (DOD), department of energy (DOE), or other divisions of the federal government shall be administered by the department in cooperation with the pertinent division of the federal government. The access location, spacing and design standards described in 18.31.6.18 NMAC and Section 18 of the *state access management manual* should be followed for such requests.

(3) Sovereign Nations: Access requests on state highway segments that traverse sovereign nation lands shall be administered by the department in cooperation with the pertinent sovereign nation. The access location, spacing and design standards described in 18.31.6.18 NMAC and Section 18 of the *state access management manual* should be followed for such requests.

**G. Administrative review process:**

(1) An administrative review period begins with the acceptance of a permit application by the appropriate district engineer or the district engineer's designee.

(2) Upon acceptance of the application permit and supplemental information, the department shall use 18.31.6 NMAC, the *state access management manual* and any other applicable state statutes for evaluating and acting on the application. Access requests that break existing access control lines or that are requested on a controlled-access facility shall be acted on by the access control review committee according to the procedures in 18.31.6.19 NMAC. The application will normally be processed within 45 days. The review period may be extended by the department when

further action is required by the access control review committee or other government entities, the applicant will be notified. Transmittal of a completed permit, approved by the district engineer, or transmittal of a denied application constitutes action on the permit application.

(3) If the department approves an application permit, the permit shall be prepared and transmitted to the applicant along with any additional terms and conditions established by the department. The owner noted on the permit, normally the surface right owner, will become the permittee. If the permittee does not agree to all terms and conditions of the permit, the permit shall not be issued.

(4) In accepting the permit, the permittee agrees to all terms and conditions of the permit. Should the permittee or applicant choose to appeal a denied application, or the terms and conditions of a permit, the appeal shall be filed within 60 days of the date the denial notice or the approved permit is transmitted.

(5) The issue date of the permit is the date the department representative signs the permit.

(6) The granting of an access permit conveys no rights, title or interest in state highway rights-of-way to the permit holder or property served. A permit for direct access to a state highway does not entitle the permit holder to control or have any rights or interests in any portion of the design, specifications or operation of the highway or roadway, including those portions of the highway built pursuant to the terms and conditions of the permit.

(7) If the department denies an application, the department shall provide the applicant a copy of the application marked "denied" along with any attachments and a written explanation for the decision. The applicant may request a hearing with the department district engineer or designee to discuss reasons for denial.

(8) Denial of an application request for physical modifications to an existing lawful access does not constitute revoking access authorization for the existing access.

(9) Requests for variance from the standards of 18.31.6 NMAC may be submitted to the district engineer and shall be considered an attachment to the permit application. The review of variance requests shall be in accordance with Subsection J of 18.31.6.14 NMAC. Variance procedures may be used when the standards established by 18.31.6 NMAC are not entirely applicable to the proposed request for access.

(10) If, at the sole discretion of the department, it is determined that a permittee is in violation of 18.31.6 NMAC or any conditions of a permit, the department may revoke the permit. The revocations process shall be as described in Subsection O of 18.31.6.14 NMAC.

**H. Permit fees:** The department may establish a reasonable schedule of fees for access permits issued pursuant to 18.31.6 NMAC. It is the responsibility of the applicant to determine if any local governmental fees are applicable.

**I. Appeals procedures:**

(1) If the permittee or applicant objects to the denial of a permit application by the Department or objects to any of the terms or conditions of the permit placed therein by the department, a written appeal shall be filed with the appropriate district engineer within 60 days of the transmittal of notice of denial or transmittal of the approved permit. The request shall include reasons for the appeal and may include recommendations by the permittee or applicant.

(2) The district engineer, or the district engineer's designee, will submit a written request for review to the department traffic technical support engineer along with the permit application, the written appeal, and all supporting

information. The traffic technical support engineer will review the request and the appeal and offer an opinion to the district engineer regarding the merits of the appeal. It is the intent of this process that an agreement is reached between the traffic technical support engineer and the district engineer. If, however, agreement cannot be reached, a formal meeting shall be scheduled with the deputy secretary for highway operations to hear the appeal. This meeting should involve the applicant, the traffic technical support engineer, and the district engineer or designee. The traffic technical support engineer shall provide a summary presentation of the facts and issues of dispute along with a discussion of the consequences, safety assessment, risks and value associated with the permit application. If applicable, the appeal should include a report from the applicant's engineer. The deputy secretary for highway operations shall make the final decision. Final decisions that are exceptions to existing standards and regulations may be sent to the federal highway administration for approval if their involvement is deemed appropriate by the deputy secretary for highway operations. At this final decision point, no other department employee will be authorized to approve the permit.

**J. Variance procedures:** If an applicant wishes to seek a variance from the standards of 18.31.6 NMAC, a written request shall be submitted as an attachment to the permit application form. The request for variance should include specific and documented reasons.

**K. Construction of access by owner:**

(1) An approved access permit shall be deemed expired and null and void if the access is not under construction within six months from the date of issue unless otherwise noted and approved by the department in writing. When the permittee is unable to commence construction within six months after the permit issue date, a six-month extension may be

requested from the district engineer. Any request for an extension shall be in writing and submitted to the district engineer before the permit expires. Denial of an extension may occur when the district engineer ascertains and documents that unforeseen and significant changes in highway traffic operations, proposed access operation, or statutes and regulations that were not considered in the issuance of the permit have occurred. Any person wishing to reestablish an access permit that has expired shall be required to submit a new permit application and comply with all related requirements, as specified by the district traffic engineer.

(2) The permittee shall notify the district traffic engineer of pending access construction in state right-of-way at least 10 working days prior to any construction, unless other arrangements are made. Construction of the access shall not proceed until both the access permit and a construction traffic control plan are approved. The access shall be constructed and completed in an expeditious and safe manner and shall be finished within 45 days of initiation of construction within the highway right-of-way. Failure by the permittee to complete construction in the 45-day period shall be sufficient cause for the department to initiate action to suspend or revoke the permit or to close the access.

(3) The construction of the access and its appurtenances as required by the terms and conditions of the permit shall be completed at the expense of the permittee, unless other arrangements are made with the district engineer. The permittee should arrange for access construction to be completed by qualified contractors. Construction shall meet all department specifications and shall be subject to inspection by the department.

(4) Property required for highway access improvements shall be dedicated, without cost, to the department. All rights, titles and interests of dedicated



property shall be conveyed to the department. All current title policies shall be disclosed and be acceptable to the department. The owner shall certify that the property is clean of contamination or indemnify the department from any remediation responsibilities prior to conveyance. The department may refuse to accept any property containing or suspected of containing hazardous substances, toxic wastes or other contaminants until such substances are either removed or the property is certified clean by the appropriate governmental entity. The access is not considered complete until property is conveyed.

(5) All materials used in the construction of the access within the highway right-of-way or on permanent easements become public property. Any materials removed from the highway right-of-way shall be disposed of as directed by the department. All fencing, guard rail, traffic control devices and other equipment and materials removed in the course of access construction shall be given to the department unless otherwise instructed by the permit or the department inspector.

(6) The department, at its discretion, may complete the installation of permanent traffic control devices. The permittee shall pay for direct costs and labor provided by the department for the installation and relocation of all traffic control devices within public right-of-way directly related to the use or construction of the permitted access. Failure of the permittee to pay within a reasonable period may be considered grounds for permit suspension, which may lead to revocation and access removal.

(7) Where access construction requires the reconstruction of the existing state highway, the department may require the contractor or permittee to post a bond to ensure completion of the work.

(8) The permittee shall provide adequate advance warning at all times during access construction according to

the construction traffic control plan accompanying the approved access permit. The traffic control plan shall conform with the *manual of uniform traffic control devices for streets and highways* (MUTCD). Construction traffic control may include the use of signs, flashers, barricades, and flaggers.

(9) The department may restrict work on or immediately adjacent to the highway, control lane closure periods, and require pre-approval of all aspects of construction phasing where access construction will affect traffic operations, roadway capacity or safety. Every effort shall be made to minimize the closure periods of any travel lanes. Work in the right-of-way may not be allowed on holidays, at night, during peak traffic hours, or during adverse weather conditions without written permission from the district. Work hours shall be approved by the district traffic engineer.

(10) A utility permit shall be obtained for any utility work within highway right-of-way. Where necessary to remove, relocate, or repair a traffic control device or public or private utilities for access construction, the relocation, removal or repair shall be accomplished by the permittee without cost to the department and at the direction of the department or utility company. Any damage to the state highway or other public right-of-way beyond that which is allowed in the permit shall be repaired immediately. The permittee is responsible for the repair of any utility damaged in the course of access construction, reconstruction, or repair.

(11) Prior to use of the access, the permittee is required to complete the construction according to the terms and conditions of the access permit. Failure by the permittee to abide by all permit terms and conditions shall be sufficient cause for the department to initiate action to suspend or revoke the permit or to close the access. If the permittee wishes to use the access prior to completion,

arrangements shall be approved by the department and included in the permit. The department may order a halt to any unauthorized use of the access pursuant to statutory and regulatory powers. Reconstruction or improvement of the access may be required when the permittee has failed to meet required specifications of design or materials.

(12) If any construction element fails within two years due to improper construction or material specifications, the permittee shall be responsible for all repairs. Failure to make such repairs may result in suspension of the permit and closure of the access.

#### **L. Inspection of access:**

(1) The permittee shall employ a qualified construction inspector to ensure that the conditions of the access permit are met unless otherwise determined necessary by the district engineer's designee. The district engineer, or the district engineer's designee, may inspect the access during construction and upon completion of the access to ensure that all terms and conditions of the permit are met. Inspectors are authorized to enforce the conditions of the permit during construction and to halt any activities within state right-of-way that:

(a) do not comply with the provisions of the permit;

(b) conflict with concurrent highway construction or maintenance work;

(c) endanger highway property, natural or cultural resources protected by law; or

(d) endanger the health and safety of workers or the public.

(2) The permittee shall ensure that a copy of the permit is available for review at the construction site at all times. The permit may require the contractor to notify the district representative noted on the permit at any specified phases in construction to allow a field inspector to inspect various aspects of construction such as concrete forms,

subbase, base course compaction, and materials specifications. Minor changes and additions may be ordered by the department field inspector to meet unanticipated site conditions. The department may require the permittee to hire a New Mexico registered professional civil engineer to affirm to the best of the engineer's knowledge that the construction is in compliance with the permit and department specifications. The department may require testing of materials. When required, test results shall be provided to the department.

(3) Each permittee understands and agrees as a condition of issuance of any permit, that if the department determines that any violation has or may result in the creation or existence of any safety or traffic hazard, the department may immediately take such action as the department deems necessary to correct, eliminate or mitigate such hazard, without the need for the completion of any review process.

**M. Maintenance of access:** The permittee, his or her heirs, successors-in-interest, assigns, and occupants of the property serviced by the access shall be responsible for meeting the terms and conditions of the permit. This shall consist of, but not be limited to, the repair and maintenance of the access beyond the edge of the roadway including any cattle guard and gate, and the removal of snow or ice upon the access even though deposited on the access in the course of department snow removal operations. Any significant repairs, such as culvert replacement, resurfacing, or changes in design or specifications, require authorization from the department. The department shall maintain the roadway including auxiliary lanes and shoulders, except in those cases where the access installation has failed due to improper access construction or failure to follow permit requirements and specifications (see Subsection K, Paragraph 12 of 18.31.6.14 NMAC). In this case, the permittee shall be responsible for such repair.

(1) Within unincorporated areas, the department

shall keep access culverts clean as part of maintenance of the highway drainage system. However, the permittee shall be responsible for the repair and replacement of any access-related culverts within the right-of-way.

(2) Within incorporated areas, drainage responsibilities for municipalities shall be determined by statute and local ordinance.

**N. Indemnification:**

The department and its duly appointed agents and employees shall be held harmless against any action for personal injury or property damage sustained by reason of the exercise of the permit.

**O. Revocations:**

(1) Where a change in property use occurs or a property's basic vehicular usage changes, so as to impact the highway, and the existing access points do not comply with 18.31.6 NMAC, the owner shall apply for a new access permit and reconstruct the driveways to comply with the rule.

(2) If, at the sole discretion of the department, it is determined that a permittee is in violation of 18.31.6 NMAC or any conditions of the access permit, the department, acting through the district engineer, or the district engineer's designee, for the district where the driveways are located, shall inform the permittee in writing of the violations and allow the permittee 30 days to correct the violations.

(3) If, after 30 days, the violations are not corrected, the district engineer, or the district engineer's designee, may issue a written notice of revocation of the permit.

(4) The permittee may request a hearing on the revocation of the permit by giving written notice to the district office within 10 days of the written notice of the revocation.

(5) The requested hearing shall be held no later than 30 days after receipt of the written notice of hearing. The department's representatives shall be

the district engineer and the district traffic engineer, or their designees. After the hearing, the district engineer, or the district engineer's designee, shall issue a written decision.

(6) The permittee may appeal that decision to the deputy secretary for highway operations or designee by giving written notice of a request for an appeal to the district office within 10 days of the date of the district's written decision.

(7) The deputy secretary for highway operations, or the deputy's designee, shall hear the appeal within 30 days of receipt of the request for an appeal.

(8) The decision of the deputy secretary, or the deputy's designee, shall be final and this decision completes the administrative review process.

(9) After the review process, or at any stage if the conditions set out in Paragraph (10) of Subsection G of 18.31.6.14 NMAC occurs, the district engineer, or the district engineer's designee, may take whatever action is appropriate including, but not limited to, physically closing the driveway with barriers or signing, and the department may refuse to issue future permits to the permittee until the violations are corrected. The permittee shall be responsible for costs, labor and material provided by the department for such actions.

(10) Each permittee understands and agrees as a condition of issuance of any permit, that if the department determines that any violation has or may result in the creation or existence of any safety or traffic hazard, the department may immediately take such action as the department deems necessary to correct, eliminate or mitigate such hazard, without the need for the completion of any review process. The permittee shall be responsible for costs, labor and material provided by the department for such actions. [18.31.6.14 NMAC - Rp, 18.31.6.14 NMAC, 6/27/2017]

**18.31.6.15 TRAFFIC ENGINEERING EVALUATION:****A. General:**

traffic engineering evaluation shall be required for all proposed access points that are requested along the state highway system, to be submitted with the access permit application (see Paragraph (1) of Subsection D of 18.31.6.14 NMAC). The extent of the traffic engineering evaluation is directly related the scope of the highway improvement under consideration, or to the size and type of land use for which access is requested. In this section, operational performance standards, traffic data requirements and traffic signal considerations are described. Additional information regarding traffic engineering evaluation requisites are provided in Section 15 of the *state access management manual*. The specific traffic study process that shall be followed to address the traffic engineering evaluation requirement for a land development project are described in 18.31.6.16 NMAC. The criteria that shall be used to determine when speed-change lanes are required or should be considered at existing or proposed access points along the state highway system are defined in 18.31.6.17 NMAC. Design standards applicable to the traffic engineering evaluation are provided in 18.31.6.18 NMAC and are further described in section 18 of the *state access management manual*.

**B. Scope of**

**evaluation:** A traffic engineering evaluation shall be required when new or modified access facilities are proposed along a state highway to ensure that the operational characteristics of all state highways are maintained at acceptable levels. The evaluation may include, but is not limited to, roadway and intersection level of service calculations, driveway and intersection location and spacing assessments, traffic signal warrant and systems analyses, roadway and intersection design, and safety analysis. The department shall require a traffic engineering evaluation of access issues for land

development projects that request access to a state highway, directly or indirectly, and for highway improvement projects (see Subsection AV of 18.31.6.7 NMAC). The traffic engineering evaluation shall be performed by a registered engineer, authorized under New Mexico Engineering and Surveying Practice Act (Sections 61-23-12 NMSA 1978 through 61-23-13 NMSA 1978).

**C. Traffic operational performance:** The operational performance of a highway segment, intersection or access facility is described by level of service (LOS). Level of service is a quantitative measure of roadway or intersection operations and vehicle capacity. Level of service standards are defined by access category. level of service (LOS) F shall not be accepted for individual movements.

**D. Establishing existing traffic conditions:** Engineering evaluations of traffic and roadway conditions on state highways should be based on current traffic count information. The traffic data will be considered current if it is or has been collected within one year of the date that a scoping meeting is held between the permittee and the district traffic engineer, or if otherwise approved for use by the district traffic engineer.

**(1) Defining** the data collection period: The permittee should recommend the periods for traffic data collection at the traffic analysis scoping meeting held between the permittee and the department district traffic engineer. The periods for traffic data collection may include typical weekday conditions, special traffic conditions, or both.

**(2) Typical** weekday traffic conditions: Traffic data representing typical weekday conditions should be obtained on Tuesday, Wednesday or Thursday, and may be obtained on Monday or Friday.

**(3) Special** traffic conditions: Special traffic conditions typically occur from 1900 to 2400 hours and from 0000 to 0600

hours on weekdays, and throughout the day on Saturday and Sunday. The duration of special traffic counts should be based on the activity or event and be sufficient to capture the peak travel condition.

**(4) Traffic data** for traffic signal warrant analysis: A minimum of 12 hours of traffic count data for a representative day shall be obtained when conducting a traffic signal warrant analysis. Manual intersection turn movement counts shall be conducted for at least eight of the 12 hours. The remaining four hours of data may be obtained using counting equipment on the intersection approaches, or by conducting a 12-hour intersection turn movement count. It is desirable to conduct an eight-hour manual turn movement count supplemented by 24-hour machine counts on each intersection approach when evaluating the need for traffic signal control on a state highway.

**E. Design hour volume:** Design hour volumes (DHV) should be calculated for the AM peak hour and the PM peak hour of a typical weekday, or for the design hour associated with special traffic conditions. Design hour volume is synonymous with the term peak-hour volume that is used for traffic operations analysis. For land development projects, the DHV should be based on the traffic data collected to establish existing traffic conditions combined with background traffic growth and traffic generated by pertinent site-specific land development. For highway improvement projects, appropriate future year traffic forecasts should be developed to represent the DHV for the facility.

**F. Traffic signals:** Traffic signals may be warranted at either public or private access locations due to new land development or the redevelopment of an existing property. The installation of traffic signal control shall be preceded by a traffic engineering evaluation that includes detailed analysis of the need for and an assessment of its impact upon the

state highway. The engineering evaluation shall be conducted in accordance with the MUTCD, as clarified in sections of the *state access management manual*, and shall include a traffic signal warrant analysis.

**(1)**

Installation: If the warrant analysis and traffic engineering evaluation indicates that a signal is warranted, the permittee shall be required to provide all of or a portion of the funding for the installation (see Subsection K of 18.31.6.14 NMAC). The funding requirements will be determined by the department.

**(2)** Traffic

signal spacing: The number of traffic signals per mile has a significant influence on travel speed and vehicular delay along a roadway. Acceptable travel speeds and minimal delay occur when sufficient distance and relatively uniform spacing is provided between signals. Traffic signal spacing requirements shall be defined according to the highway functional classification where the intersection is located and shall be more restrictive for higher type roads.

**(3)** Operations

and Maintenance: The electric power supply and maintenance for a signal installation shall be the responsibility of the local governmental agency. A signalization and lighting agreement stating the operation and maintenance responsibilities shall be executed between the department and the local agency prior to installation of the signal. For land development projects, the signalization and lighting agreement shall be the responsibility of the permittee. For highway improvement projects, the signalization and lighting agreement shall be the responsibility of the department's project development engineer.

[18.31.6.15 NMAC - Rp, 18.31.6.15 NMAC, 6/27/2017]

**18.31.6.16 TRAFFIC STUDIES FOR LAND DEVELOPMENT:**

**A. Purpose:** As stated in 18.31.6.15 NMAC, a traffic

engineering evaluation shall be required for all land development proposals that may directly or indirectly impact a state highway facility. This section describes the specific traffic study process that shall be followed to address the traffic engineering evaluation requirement for a land development project.

The traffic engineering evaluation requirement may be waived by the department when considering a request for a new individual use access (see Paragraph (1) of Subsection E of 18.31.6.14 NMAC).

**B. Traffic study**

**approach:** A two-tiered approach shall be utilized to satisfy the department's traffic study requirements for a proposed land development project. Traffic impact study requirements of local governments shall also be followed, where applicable. The department's two-tiered approach is as follows: First tier, site threshold analysis (STA); second tier, traffic impact analysis (TIA).

**C. Site threshold**

**analysis:** A STA shall be required of all developing or redeveloping properties that directly or indirectly access a state highway. The STA should examine existing roadway volumes and trip generation estimates to determine if additional traffic analysis is required. The department STA form should be completed and should be reviewed by the district traffic engineer. If the site characteristics and the trip generation estimate for a proposed development do not satisfy the requirements for a traffic impact analysis as determined by the district traffic engineer, the STA should be approved and the traffic study requirement for the proposed development will be complete. A description of the subject matter that should be included in the site traffic analysis is provided in Section 16 of the *state access management manual*.

**D. Traffic impact**

**analysis:** The purpose of a TIA is to conduct a comprehensive analysis of the transportation system that will provide access to a proposed

development site, including proposed access points, to identify potential short-term and long-term impacts on the state highway system. The requirements for a TIA are described in the following subsections. All traffic impact analyses shall be sealed and signed by a registered New Mexico professional engineer prior to the issuance of an access permit by the department.

**(1)** When

is a TIA required? A TIA shall be conducted for each new development or property redevelopment impacting a state highway when:

**(a)**

The results of a STA indicate that the proposed development is expected to generate 100 or more peak-hour total trips; or,

**(b)**

The results of a STA indicate that expected levels of service (LOS) will be below the applicable LOS standards, and a mitigation plan cannot be resolved between the department and the permittee to address identified deficiencies; or,

**(c)**

There are safety concerns along the highway where the development is located that are verifiable by the district traffic engineer.

**(2)** When is a

TIA Complete? A TIA is considered complete when a final traffic study report, signed and sealed by a New Mexico registered professional engineer, is submitted to the district traffic engineer, and

**(a)**

The results of the TIA indicate that the levels of service for the proposed access points and the study area intersections satisfy or are better than the applicable LOS standards and the district traffic engineer concurs with those findings, or

**(b)**

The results of the TIA indicate that improvements are required at the proposed access points and at the study area intersections, and a mitigation plan has been developed and approved by the district engineer.

**(3)**

Requirements for conducting a TIA:



A description of the subject matter that should be included in a traffic impact analyses is provided in Section 16 of the *state access management manual*.

(4)

Documentation: All required traffic impact analyses shall include documentation in the form of a bound report or an electronic submittal, as directed by the district traffic engineer. A sample outline for TIA documentation is provided in the appendix of the *state access management manual*.

#### **E. Fair share cost**

**analysis:** Based on the impact assessment completed for the STA or TIA, contributory costs of identified improvements should be identified. In addition to implementing the necessary improvements within the highway right-of-way at proposed site access points, the permittee shall be required to provide all or a portion of funding for mitigation of identified off-site impacts. The funding requirements shall be determined by the department through negotiations with the developer and the appropriate local government agency. Refer to Subsection J of 18.31.6.14 NMAC for the permittee's responsibilities when constructing the required improvements.

#### **F. Traffic study**

**validity period:** Approved traffic studies should remain valid for a period of one-year following approval of the driveway permit application, or as determined by the district traffic engineer.

[18.31.6.16 NMAC - Rp, 18.31.6.16 NMAC, 6/27/2017]

### **18.31.6.17 SPEED-CHANGE LANE REQUIREMENTS:**

**A. Purpose:** This section defines the criteria for determining where speed-change lanes are required along non-access controlled and controlled-access state highways that provide access via at-grade intersections. Application guidelines for speed-change lanes on controlled-access interstate highways and freeways, which provide access exclusively by grade-

separated interchanges, are also provided; however, specific criteria for speed-change lanes on grade-separated highway facilities are not explicitly defined (see Subsection C of 18.31.6.17 NMAC).

#### **B. State highways**

**with at-grade intersections:** At unsignalized at-grade intersections, four types of speed-change lanes are used including left-turn deceleration lanes, right-turn deceleration lanes, left-turn acceleration lanes, and right-turn acceleration lanes. At signalized at-grade intersections, three types of speed-change lanes are used including exclusive left-turn lanes, exclusive right-turn lanes, and right-turn acceleration lanes.

(1) Schematic illustrations: Illustrations of left-turn and right-turn speed-change lanes can be found in the appendix of the *state access management manual*.

(2) Design period: The need for speed-change lanes should be assessed using the hourly traffic volumes derived for the traffic study implementation year with the proposed development, or based on the future year traffic forecasts developed for a highway improvement project.

(3) General criteria:

(a) Speed-change lanes may be required by the department at unsignalized or signalized access points where specific public safety and traffic operation concerns are identified and documented.

(b) Left-turn acceleration and deceleration lanes should not overlap. Preference should be given to the left-turn deceleration lane. Alternative treatments to providing a left-turn acceleration lane may be considered when this situation arises such as providing traffic signal control or restricting the left-turn movement from the cross street. Alternative treatments require approval by the district traffic engineer.

(c) Where two access points have right-turn speed-change lanes that overlap,

or are in close proximity but do not overlap, a continuous ingress/egress lane may be established between the access points to improve roadway consistency, safety, and to maintain roadway edge continuity.

(d) If the design of an access facility crosses two different speed zones, the speed-change lane design should be based upon the applicable speed limit. The applicable speed for a deceleration lane is the posted speed limit at the beginning of the deceleration lane. The applicable speed for an acceleration lane is the posted speed limit at the end of the acceleration lane.

(e) Acceleration lanes should only be used where sufficient acceleration length can be provided.

(f) On multi-lane highways, the directional hourly traffic volume, or directional split, should be determined based on actual traffic count data. It may be assumed that traffic is equally divided among the mainline travel lanes when traffic count data are not available.

(4) Unsignalized Intersections: In addition to the location of the roadway (urban or rural), the three primary factors used to determine the need for a speed-change lane at an unsignalized at-grade access are highway travel speed, directional traffic volume per lane, and turning traffic volume. Sight distance conditions, level of service, and roadway geometry should also be examined when determining the need for speed-change lanes.

(a) Urban conditions: The need for left-turn and right-turn deceleration lanes on urban state highways should be determined based on the criteria in tables 17.B-1 and 17.B-2. right-turn acceleration lanes may be required on urban state highways with posted speed limits greater than 40 mph where an acceleration lane is necessary for public safety and traffic operations based upon site and roadway specific conditions.

Left-turn acceleration lanes may be required on urban state highways with posted speed limits greater than 45 mph where an acceleration lane is necessary for public safety and traffic operations based upon site and roadway specific conditions.

(b)

Rural conditions: The need for left-turn and right-turn deceleration lanes on rural state highways should be determined based on the criteria in tables 17.B-3 through 17.B-6. right-turn acceleration lanes may be required on rural state highways with posted speed limits greater than 40 mph where an acceleration lane is necessary for public safety and traffic operations based upon site and roadway specific conditions. Left-turn acceleration lanes may be required on rural state highways with posted speed limits greater than 45 mph where an acceleration lane is necessary for public safety and traffic operations based upon site and roadway specific conditions.

(5)

Signalized intersections: The use of speed-change lanes at signalized intersections is generally consistent for all access categories, urban and rural. Guidelines for determining the need for speed-change lanes at signalized intersections can be found in Section 17 of the *state access management manual*.

**C. State and interstate highways with grade-separated interchanges:** Speed-change lanes are used on controlled-access state and interstate highways at or between grade-separated interchanges. The need for speed-change lanes on grade-separated highway facilities should be determined based on design principles contained in the AASHTO publication *a policy on geometric design of highways and streets*, and based on detailed traffic operations analyses of the grade-separated facilities according to highway capacity manual methodologies. The need for and function of speed-change lanes should be documented in an interchange access management plan for the interchange (refer to

18.31.6.12 NMAC). Speed-change lanes on grade-separated highway facilities should enable a driver to make the necessary transition between the speed on a ramp and the speed of operation on the mainline highway in a safe and functional manner. Additional guidance is provided in Section 17 of the *state access management manual*.

**Continued On The Following Page**

**Table 17.B-1**  
**Criteria for Deceleration Lanes On**  
**URBAN TWO-LANE HIGHWAYS**

Turning Volume (vph)	LEFT-TURN DECELERATION LANE			RIGHT-TURN DECELERATION LANE		
	Minimum Directional Volume in the Through Lane (vphpl) <sup>2</sup>			Minimum Directional Volume in the Through Lane (vphpl) <sup>2</sup>		
	□ 30 mph	35 to 40 mph	45 to 55 mph	□ 30 mph	35 to 40 mph	45 to 55 mph
□ 5	Not Required	Not Required	Not Required	Not Required	Not Required	Not Required
5	510	450	330	1,080	610	360
10	390	330	210	700	400	240
15	320	250	150	500	280	170
20	270	200	120	380	210	140
25	230	160	100	300	180	120
30	200	130	Required	250	160	110
35	170	110	Required	220	150	100
40	150	Required	Required	200	140	Required
45	130	Required	Required	190	Required	Required
□ 46	Required	Required	Required	Required	Required	Required
	<b><i>Left-turn Deceleration Lanes are required on Urban Two-lane Highways for the following Left-turn Volumes:</i></b> 1. □ 30 mph : 46 vph or more 2. 35 to 40 mph : 36 vph or more 3. 45 to 55 mph : 26 vph or more			<b><i>Right-turn Deceleration Lanes are required on Urban Two-lane Highways for the following Right-turn Volumes:</i></b> 4. □ 30 mph : 46 vph or more 5. 35 to 40 mph : 41 vph or more 6. 45 to 55 mph : 36 vph or more		
<b><i>Notes:</i></b> 1. Use linear interpolation for turning volumes between 5 and 45 vph. 2. The directional volume in the through lane includes through vehicles and turning vehicles.						

**Table 17.B-2**  
**Criteria for Deceleration Lanes on**  
**URBAN MULTI-LANE HIGHWAYS**

Turning Volume <sup>1</sup> (vph)	LEFT-TURN DECELERATION LANE			RIGHT-TURN DECELERATION LANE		
	Minimum Volume in the Adjacent Through Lane (vphpl) <sup>2</sup>			Minimum Volume in the Adjacent Through Lane (vphpl) <sup>2</sup>		
	□ 30 mph	35 to 40 mph	45 to 55 mph	□ 30 mph	35 to 40 mph	45 to 55 mph
□ 5	Not Required	Not Required	Not Required	Not Required	Not Required	Not Required
5	Not Required	490	420	1,200	730	450
10	420	370	300	820	490	320
15	360	290	220	600	350	240
20	310	230	160	460	260	180
25	270	190	130	360	230	150
30	240	160	110	290	200	130
35	210	130	100	260	180	120
40	180	120	Required	240	170	110

45	160	110	Required	220	160	Required
50	140	Required	Required	200	Required	Required
55	120	Required	Required	190	Required	Required
□ 56	Required	Required	Required	Required	Required	Required
	<b><i>Left-turn Deceleration Lanes are required on Urban Multi-lane Highways for the following Left-turn Volumes:</i></b>  7. □ 30 mph : 56 vph or more 8. 35 to 40 mph : 46 vph or more 9. 45 to 55 mph : 36 vph or more			<b><i>Right-turn Deceleration Lanes are required on Urban Multi-lane Highways for the following Right-turn Volumes:</i></b>  10. □ 30 mph : 56 vph or more 11. 35 to 40 mph : 46 vph or more 12. 45 to 55 mph : 41 vph or more		
<b><i>Notes:</i></b> 1. <i>Use linear interpolation for turning volumes between 5 and 55 vph.</i> 2. <i>The volume in the adjacent through lane includes through vehicles and turning vehicles.</i>						

**Table 17.B-3**  
**Criteria for Left-Turn Deceleration Lanes on**  
**RURAL TWO-LANE HIGHWAYS**

Left-Turn Volume <sup>1</sup> (vph)	LEFT-TURN DECELERATION LANE			
	Minimum Directional Volume in Through Lane (vphpl) <sup>2</sup>			
	□ 30 mph	35 to 40 mph	45 to 55 mph	□ 55 mph
□ 5	Not Required	Not Required	Not Required	Not Required
5	400	220	120	60
10	240	140	80	40
15	160	100	60	Required
20	120	80	Required	Required
25	100	Required	Required	Required
□ 26	Required	Required	Required	Required
<b>Left-turn Deceleration Lanes are required on Rural Two-lane Highways for the following Left-turn Volumes:</b> 1. □ 30 mph : 26 vph or more 2. 35 to 40 mph : 21 vph or more 3. 45 to 55 mph : 16 vph or more 4. □ 55 mph : 11 vph or more				
<b>Notes:</b> Use linear interpolation for left-turn volumes between 5 and 25 vph. The directional volume in the through lane includes through vehicles and turning vehicles.				

**Table 17.B-4**  
**Criteria for Left-turn Deceleration Lanes on**  
**RURAL MULTI-LANE HIGHWAYS**

Left-Turn Volume <sup>1</sup> (vph)	LEFT-TURN DECELERATION LANE			
	Minimum Volume in Adjacent Through Lane (vphpl) <sup>2</sup>			
	□ 30 mph	35 to 40 mph	45 to 55 mph	□ 55 mph
□ 5	Not Required	Not Required	Not Required	Not Required



5	450	310	210	130
10	310	220	130	90
15	240	160	100	70
20	190	130	80	Required
25	150	110	Required	Required
30	130	Required	Required	Required
35	110	Required	Required	Required
□ 36	Required	Required	Required	Required
<b><i>Left-turn Deceleration Lanes are required on Rural Multi-lane Highways for the following Left-turn Volumes:</i></b> 5. □ 30 mph : 36 vph or more 6. 35 to 40 mph : 26 vph or more 7. 45 to 55 mph : 21 vph or more 8. □ 55 mph : 16 vph or more				
<b>Notes:</b> 1. Use linear interpolation for left-turn volumes between 5 and 35 vph. 2. The volume in the adjacent through lane includes through vehicles and turning vehicles.				

**Table 17.B-5**  
**Criteria for Right-Turn Deceleration Lanes on**  
**RURAL TWO-LANE HIGHWAYS**

Right-Turn Volume <sup>1</sup> (vph)	RIGHT-TURN DECELERATION LANE			
	Minimum Directional Volume in Through Lane (vphpl) <sup>2</sup>			
	□ 30 mph	35 to 40 mph	45 to 55 mph	□ 55 mph
□ 5	Not Required	Not Required	Not Required	Not Required
5	800	460	270	160
10	430	280	170	110
15	290	180	110	80
20	200	140	90	70
25	170	120	80	Required
30	160	110	Required	Required
□ 31	Required	Required	Required	Required
<b><i>Right-turn Deceleration Lanes are required on Rural Two-lane Highways for the following Right-turn Volumes:</i></b> 9. □ 30 mph : 31 vph or more 10. 35 to 40 mph : 31 vph or more 11. 45 to 55 mph : 26 vph or more 12. □ 55 mph : 21 vph or more				
<b>Notes:</b> 1. Use linear interpolation for left-turn volumes between 5 and 30 vph. 2. The directional volume in the through lane includes through vehicles and turning vehicles.				

**Table 17.B-6**  
**Criteria for Right-Turn Deceleration Lanes on**  
**RURAL MULTI-LANE HIGHWAYS**

Right-Turn Volume <sup>1</sup> (vph)	RIGHT-TURN DECELERATION LANE			
	Minimum Volume in Adjacent Through Lane (vphpl) <sup>2</sup>			
	□ 30 mph	35 to 40 mph	45 to 55 mph	□ 55 mph
□ 5	Not Required	Not Required	Not Required	Not Required
5	910	520	310	180
10	520	330	200	130
15	370	220	140	100
20	270	170	110	90
25	220	140	100	Required
30	200	130	90	Required
35	180	120	Required	Required
□ 36	Required	Required	Required	Required
<p><b><i>Right-turn Deceleration Lanes are required on Rural Multi-lane Highways for the following Right-turn Volumes:</i></b></p> <p>13. □ 30 mph : 36 vph or more  14. 35 to 40 mph : 36 vph or more  15. 45 to 55 mph : 31 vph or more  16. □ 55 mph : 21 vph or more</p>				
<p><i>Notes:</i></p> <p>1. Use linear interpolation for left-turn volumes between 5 and 35 vph.  2. The volume in the adjacent through lane includes through vehicles and turning vehicles.</p>				

[18.31.6.17 NMAC - Rp, 18.31.6.17 NMAC, 6/27/2017]

**18.31.6.18 ACCESS LOCATION AND DESIGN STANDARDS:** The location and design of access points along state highway facilities shall be in accordance with standards established by the department. These standards are defined below and are expounded on in Section 18 of the *state access management manual*. Where specific design criteria are not provided in 18.31.6.18 NMAC, the design approach should be based on nationally accepted standards and shall be consistent with department specifications.

**A. General:** The department has developed these standards to provide guidance for the location and design of access points along state highways, specifically for those highways in access categories (provided in Section 18.31.6.10 NMAC). These criteria are based upon established design standards meant to protect public safety, to maintain safe and smooth-flowing traffic operations, and to preserve the intended function of all state highway facilities.

(1) Local standards: Where a local jurisdiction has established more stringent design standards than the department, the local standards should be applied with the concurrence of the department.

(2) Material placed within state rights-of-way: Any materials used within state highway right-of-way shall be subject to approval by the department. Refer to 18.31.6.14 NMAC for additional requirements regarding construction within state highway right-of-way.

**B. Access location:** Access points should be located along state highways to minimize turning movement conflicts between adjacent access facilities, and to provide adequate separation of conflicts for oncoming motorists. Stopping sight distance and intersection area of influence should be considered in determining access point locations.

(1) Direct access: The number of access points should be limited to one per site unless frontage is adequate and design hour traffic volumes indicate that the operational level of service for a single access is expected to be below the minimum acceptable LOS standards.

(2) Proximity to speed-change lanes: Any part of an access including radius returns shall not be permitted within a speed-change lane, or within 50 feet of either the leading or trailing limits of a speed-change lane.

(3) Interchange proximity: Access shall not be permitted within the access control limits of an interchange, as established by the department's access control determination, or within 50 feet of the leading or trailing

edge of the access control limits for the interchange.

(4) **Corner clearance:** Driveway access should be controlled on both the approach and departure sides of an intersection to maintain adequate corner clearances.

(5) **Edge clearance:** The location of access points relative to frontage property lines should be based on local requirements. When property frontage is not adequate to comply with local government's edge clearance requirements, shared access should be considered.

**C. Access spacing:**

(1) **Non-developed and developing areas:** The spacing of access points in non-developed and developing areas should be based on the access category, the posted speed limit, and the type of access requested (i.e., intersection or driveway). Desired access spacing standards are provided in Section 18 of the *state access management manual*. An applicant may request a variance to the spacing requirements when physical characteristics of a property preclude the desired spacing.

(2) **Developed areas/business districts:** In developed or redeveloping areas where existing driveway locations preclude access spacing based on desired standards, new access points should be located to minimize conflicts with existing access points. Access points should be consolidated where possible to provide shared property access.

**D. Median openings:**

New median openings on state highways with non-traversable medians should not be allowed unless a traffic engineering evaluation analyzing all related traffic and safety issues is prepared and approved by the department. Median openings at intersections or full-access driveways should be spaced with a minimum frequency based upon the access category and posted speed of the highway.

**E. Selection of design vehicle:** The design vehicle should be used to determine the geometric

characteristics of a roadside access or median opening, and to define the required design components for the adjacent highway. This vehicle should be the largest vehicle that is expected to access the site on a daily basis. Selection of the design vehicle is subject to the approval of the district traffic engineer.

**F. Sight distance:**

Sight distance at all access locations shall be adequate to provide safe operating conditions for the motoring public. An access permit should not be issued unless adequate stopping sight distances are provided for motorists passing the access, and adequate entering and crossing sight distances are provided for motorists using the access. The permittee shall maintain adequate, unobstructed sight distance in both directions from the access. Any potentially obstructing objects such as but not limited to advertising signs, structures, trees and bushes, shall be designed, placed and maintained at a height not to interfere with the sight distances needed by any vehicle using the access. Roadway reconstruction may be required to provide adequate sight distance.

**G. Access horizontal alignment:** The access centerline should be perpendicular to the state highway centerline and extend tangentially for a minimum distance of 40 feet beyond the near-side edge line. An acute angle between 75 degrees and 90 degrees may be permitted if significant physical constraints exist. Acute angles less than 75 degrees shall require special approval of the department.

**H. Access radius:**

The access radius should be designed to accommodate the design vehicle expected to use the access on a daily basis. Access radii apply to driveways that are not urban section driveway cuts.

**I. Driveway width:**

The width of a driveway should be measured exclusive of radii or tapers. Driveway widths should vary by design vehicle. All two-way driveways should accommodate a concurrent entering and exiting design vehicle, including the design vehicle's

off-tracking.

**J. Access connection**

**depth:** The access connection depth should be designed to facilitate the movement of vehicles off the highway to prevent the queuing of vehicles on the traveled way. An access shall not be approved for parking areas that require backing maneuvers within state highway right-of-way. All off-street parking areas must include on-site maneuvering areas and aisles to permit vehicles to enter and exit the site in forward drive without hesitation.

**K. Speed change**

**lanes:** Design specifications for speed change lanes are provided in Section 18 of the *state access management manual*. Schematic illustrations of speed-change lanes are included in the appendix of the *state access management manual*.

(1)

**Deceleration lanes:** Deceleration lanes typically consist of three components: transition taper, deceleration distance, and queue storage. The length of the lane should allow a vehicle to come to a comfortable stop prior to reaching the end of the expected queue in the lane.

(2)

**Acceleration lanes:** Acceleration lanes should consist of a full-width lane and a transition taper. Acceleration lanes should be designed so that a turning vehicle will reach a speed between seventy-five and eighty percent of the highway posted speed at the point where the full-width lane ends and the transition taper begins.

(3) **Shoulders:**

Where shoulders are present along a roadway and speed change lanes are required, the shoulders should be continued along the speed change lanes. A minimum shoulder width of four feet should be provided adjacent to speed change lanes.

(4) **Bicycle**

**lane width:** When a right-turn deceleration lane or acceleration lane is required on a roadway with designated bicycle lanes, a five foot lane width (seven foot desirable) should be provided between the

outside travel lane and the speed-change lane.

(5) **Grade adjustment:** Adjustments should be made to the speed change lane lengths based on the roadway grade.

(6) **Truck design:** If a speed-change lane is designed for a site with five or more large trucks during the design hour, a combination truck design vehicle should be used as the design vehicle.

(7) **Pavement:** The speed change lane pavement section should be full depth and match the pavement section design of the adjacent roadway. All pavement designs require approval by the department.

**L. Median design for turn lane installation:** Medians should be designed to accommodate the largest design vehicle anticipated to use the access, and may provide either partial or full access to a site. Where a single left-turn lane is necessary along a state highway, a minimum median width of 16 feet should be provided. Positive channelization should be provided for all median openings. Median paving should be full depth and match the pavement section design of the existing roadway. The installation of a median opening should not reduce the conveyance or storage capacity of the median, pertinent to its drainage function within the highway section.

**M. Setbacks:** Improvements on public or private property adjacent to the right-of-way should be located so that parking, stopping, and maneuvering of vehicles within the highway right-of-way will not occur.

**N. Access vertical alignment:** The vertical alignment of all access locations should be designed to minimize vehicle bounce and prevent high-centering of vehicles with a maximum clearance of four inches. The maximum grade for a driveway should be ten percent for a low volume residential driveway and eight percent for all other access locations. Steeper access drives require special department approval. A level area (maximum two percent

grade) 20 feet in length should be provided at each access to ensure proper sight distance from the access.

**O. Roadside safety:** Careful consideration shall be given to the roadside clear zone. The permittee shall provide adequate clear zones. The roadside clear zone should be designed per the AASHTO *roadside design guide* and applicable department standards.

**P. Non-motorized considerations:** Access designs should provide for the safe movement of all right-of-way users, including but not limited to pedestrians, bicyclists, equestrian and the handicapped. Where non-motorized facilities cross an access point, such as bicycle trails, appropriate modifications should be made to maintain safe operations for both facilities.

(1) **Sidewalks:** Sidewalks should be constructed along urban arterial and collector state highways. Sidewalks are required where they exist on adjacent properties to maintain consistency along the highway facility. Sidewalk widths should match existing adjacent sidewalk widths, but in any case shall conform to all federal, state, and local regulations and ordinances.

(2) **Bicycle facilities:** Bicycle facilities along urban arterials and collectors should be constructed in accordance with the AASHTO *guide for the development of bicycle facilities*. Bicycle facilities should only be signed where designated by the state or local jurisdiction, with approval of the department.

(3) **ADA:** Non-motorized facilities shall be designed in accordance with the Americans with Disabilities Act and applicable department standards. Curb ramps shall be provided on urban sections where sidewalk and curb returns exist.

**Q. Lighting:** Where lighting is required at an access point, the lighting design shall comply with Department and AASHTO standards and the Night Sky Protection Act (Sections 74-12-1 NMSA 1978

through 74-12-11 NMSA 1978). The lighting design shall use full cut-off fixtures, and be consistent with AD 226, roadway lighting.

(1) **Signalized access:** Illumination shall be provided at all signalized intersections in accordance with AASHTO's *an informational guide to roadway lighting* or as otherwise approved by the department.

(2) **Site illumination:** Light beams from on-site lighting systems shall not be directed toward oncoming traffic along the adjacent roadway(s). All site illumination shall be constructed outside of the state highway right-of-way and outside of the roadside clear zone.

**R. Drainage:** Adequate drainage within state highway right-of-way shall be maintained at all access locations. Drainage of roadside ditches shall not be altered or impeded, and the applicant shall provide suitable and approved drainage structures as required by the department. All site drainage shall be collected prior to entering state highway right-of-way. Site drainage shall not be permitted to drain into state right-of-way without written approval of the department. Drainage mitigation design shall be in accordance with administrative memorandum 221, drainage design criteria, and the department drainage manual. Access permit applicants shall submit drainage analysis documentation to the department prior to changing site drainage conditions.

**S. Right-of-way fencing:** Driveways shall not be permitted through an existing right-of-way fence, the continuation of which is necessary for the safety of the traveling public, unless the applicant first agrees in writing to construct and maintain a gate or a cattle guard and additional fence in good repair and to keep the gate closed to livestock. The department shall determine whether a gate or cattle guard is required. All new fencing along a state highway shall be constructed so that clear sight triangles are provided for ingressing or egressing vehicles. This may



require an offset from the right-of-way line to meet the minimum clear site triangles, on a case by case basis.

**T. Mailboxes:**

Mailboxes installed within the state highway right-of-way shall be constructed in conformance with the rules and regulations of the U.S. Postal service and the design standards of the department. AASHTO's *a guide for erecting mailboxes on highways*, should also be used for the location and design of mailbox installations.

**U. Utilities:** All utilities located within the state highway right-of-way shall comply with the department's utility accommodations Policy and 17.4.2. NMAC.

**V. Environmental review:** As may be required by law. [18.31.6.18 NMAC - Rp, 18.31.6.18 NMAC, 6/27/2017]

**18.31.6.19 ACCESS CONTROL REVIEW PROCEDURES:**

**A. Purpose:** The access control review procedures define the process that the department shall follow when considering requests for permanent breaks in existing access control lines, and for establishing or modifying access control limits on new or existing state, federal and interstate highways. Decisions regarding access control matters on state highways shall be addressed by the access control review committee of the department. Review and approval of an access break in established access control lines shall be required by the access control review committee. Refer to the *state access management manual* for further clarification of the access control review procedures.

**B. Access control review committee:**

**(1) Purpose:** The purpose of access control review committee is to review all access control requests by department staff members who have the expertise to identify issues that need to be resolved before access control limits are established or modified, or access

breaks are recommended for approval.

**(2) Authority:**

The access control review committee has authority to deny requested access control breaks for existing access control facilities. Access control breaks denied by the committee may be appealed to the secretary of the New Mexico department of transportation or his/her designee.

**(3) Quorum**

definition: It shall be required that a simple majority of voting members of the committee, or their alternates, be in attendance for a quorum.

**C. Operating procedures:**

**(1)** The two basic functions of the access control review committee are:

**(a)**

To make recommendations to the secretary, or his/her designee, on requests for establishing access control on new or existing state, federal and interstate highways; and,

**(b)**

To make recommendations to the secretary, or his/her designee, regarding requests for permanent breaks in existing access control lines on state, federal and interstate highways.

**(2)** The

committee shall have the authority to deny access control breaks. A denial by the committee may be appealed to the secretary, or his/her designee. Any access control breaks permitted shall, as a minimum, be in conformance with criteria contained in the most current edition of this rule, the *interstate access control policy* (CP 65), and any other applicable statutes, policies or procedures.

**D. New or modified access control limits on state, federal or interstate highways:**

Operating procedures of the access control review committee for requests to establish access control on new highways or existing non-access controlled highways and procedures for modifying access control limits which shall include but not limited to shifting, extending or reducing on access-controlled highways shall be as follows. Refer to the *state access*

*management manual* for further clarification.

**(1)** A request for the establishment or modification of access control shall be received by the chairperson of the access control review committee from a department project development engineer or from other government agencies. It shall be the responsibility of the requestor, whether representing the department or other government agency, to provide a complete information/request package showing: Location, identified by stationing, distances and proposed right-of-way map; specific purpose, defined in a feasibility study or corridor study; and, source of funding, for all costs including engineering.

**(2)** The chairperson shall request the right of way bureau chief to review the right-of-way map(s) and request lands engineering to prepare a draft administrative determination prior to review and consideration by the committee. The draft administrative determination should be reviewed by the project development engineer, or requestor, and the traffic technical support engineer prior to review and consideration by the committee.

**(3)** The access control review committee shall either recommend approval of the draft administrative determination as presented or recommend approval based upon committee discussions and recommended modifications. The access control review committee may also recommend deferral of action on an administrative determination to a later meeting if additional information is required by the committee for evaluation. If the access control review committee votes to recommend disapproval of a draft administrative determination, they shall provide specific reasons to the requestor for their recommendation.

**(4)** After the administrative determination has been recommended for approval by the committee, it shall be sent to the secretary or his/her designee, for review and approval or disapproval. The request shall be sent to FHWA for

approval if on a federal or interstate highway.

(5) If the request is disapproved by the secretary or FHWA, it shall be sent back to the chairperson of the committee to inform the requestor of the disapproval.

(6) Once all approvals are obtained, the chairperson shall send all documents to the office of record, which is the right of way bureau chief's office. The right of way bureau chief, or his/her designee, shall send a copy of the approved resolution to the owners of record of all affected properties.

**E. Requests for interstate access control breaks:**

Requests for interstate access control breaks, which are requests for direct access to the interstate or requests that will have a major impact on the operation or function of the existing interchange, ramps, existing crossroad, etc., shall be handled as specified by applicable state and federal law, rules, regulations and procedures.

**F. Requests for access control breaks:** Operating procedures of the access control review committee for requests for permanent access control breaks within the limits of existing access control rights-of-way on all federal or state highways (other than interstate) shall be as follows.

(1) A request for an access control break shall be received by the chairperson of the access control review committee from a department district office, a project development engineer, an access control study team, another governmental agency or from an individual from the public or a private firm. For requests that create major impacts (i.e. requires a new interchange or major modifications), it shall be the responsibility of the requestor to provide a complete feasibility study similar to that required for interstate access. For requests that may create intermediate impacts (i.e. require traffic signals, require intermediate geometric improvements, etc.), the requestor

shall furnish a traffic engineering evaluation or other reports to determine if the requested access is feasible. For access requests that appear to be minor, the request shall be submitted to the access control review committee for processing.

(2) Once all pertinent information is received, the request shall be placed on the agenda for the next Access control review committee meeting. The access control review committee shall consider all pertinent data available concerning the request for a break in the existing access control line.

(3) The Access control review committee shall recommend approval of the access control break as presented; or, recommend approval based upon committee discussions and recommended modifications; or, recommend deferral if additional information is required; or deny the request. The committee may request that a specific report or feasibility study be conducted if after reviewing the request the committee considers it to have major or intermediate impacts. If the access control review committee votes to deny an access control break, specific reasons for the denial shall be provided and a copy shall be sent to the secretary or his/her designee. A denial by the committee may be appealed to the secretary, or his/her designee.

(4) After the access control break (administrative determination) has been recommended for approval by the committee, it shall be sent to the secretary or his/her designee, for review and approval or disapproval. The request shall be sent to FHWA for approval if on a federal or interstate highway.

(5) Once all approvals are obtained, the chairperson shall send all documents to the office of record, which is the right of way bureau chief's office. The right of way bureau chief shall request the appropriate appraisal difference be paid back to the department.

(6) Once all

approvals have been obtained and the appraisal difference has been paid back to the department, the access-controlled right-of-way becomes non-access controlled right-of-way and the right of way bureau chief, or his/her designee, informs the requestor and the respective district that the requests for access may proceed contingent on all department requirements being met. The respective district shall be responsible for making sure all construction is completed in accordance with the department's regulations and any requirements that were made by the department regarding the approval of the access control break.

**G. Temporary construction access breaks:** Any requests for temporary construction access breaks for department construction projects should be incorporated in roadway plans during their development. These requests should follow the format described in the access permit form C-196.

**H. Temporary access breaks:** Any request for a temporary access break, which is not related to a construction project, shall be submitted to the access control review committee for their review and approval. The temporary access break does not require an administrative determination or approval of the secretary, but shall have FHWA approval if for a federal or interstate highway. If the committee denies a temporary access break, it can be appealed to the secretary, or his/her designee. If an appeal is approved by the secretary, or his/her designee, the request must be forwarded to FHWA for their review and approval if for a federal or interstate highway.

**I. Access control recommendations by other government agencies:**

(1) All access control recommendations by other government agencies for federal or state highways shall be submitted to the departments access control review committee in compliance with 18.31.6.19 NMAC.

(2) Any and all access control actions/

recommendations (made by other governmental agencies) on federal or state highways which have not been approved according to the access control review procedures shall not be effective until acted on as set forth herein.

[18.31.6.19 NMAC - Rp, 18.31.6.19 NMAC, 6/27/2017]

**HISTORY OF 18.31.6 NMAC:**

**Pre-NMAC History:**

Material in the part was derived from that previously filed with the State Records and Archives under: SHTD Rule No. 89-1(L), Regulations for Driveways and Median Openings on Non-Access Controlled Highways, 6/9/1989.

**History of Repealed Material:**

18 NMAC 31.6, Requirements for Driveways and Median Openings on Non-Access Controlled Highways, 12/14/1998.

18.31.6 NMAC, State Highway Access Management Requirements, filed 10/1/2001 - Repealed effective 6/27/2017.

**Other History:**

Effective 10/15/2001, 18.31.6 NMAC, State Highway Access Management Requirements, replaced 18 NMAC 31.6, Requirements for Driveways and Median Openings on Non-Access Controlled Highways. 18.31.6 NMAC, State Highway Access Management Requirements (filed 10/1/2001) was replaced by 18.31.6 NMAC, State Highway Access Management Requirements, effective 6/27/2017.

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**End Of Adopted Rules**

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Issue 8	April 13	April 25
Issue 9	April 27	May 16
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