

New Mexico Register

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

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The New Mexico Register

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Volume XXXI, Issue 4

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Notices of Rulemaking and Proposed Rules

ACCOUNTANCY, BOARD OF PUBLIC

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Public Accountancy Board ("Board") will hold a rule hearing on Tuesday, April 28, 2020 at 9:00 a.m. Following the rule hearing, the Board will convene a board meeting to consider adoption of the rules and address regular business. The rule hearing and board meeting will be held at the New Mexico Regulation and Licensing Department, 5500 San Antonio Dr. NE, Albuquerque, New Mexico, 87109.

The purpose of the rule hearing is to consider proposed amendments to the following rules:

16.60.1.7 NMAC – Definitions;
16.60.1.9 NMAC – Board Operation;
16.60.1.10 NMAC – Fees and Obligations;
16.60.2.10 NMAC – Examination Administration;
16.60.3.8 NMAC – Application Requirements;
16.60.3.9 NMAC – Initial Certificate/License Requirements
16.60.3.12 NMAC – Reinstatement Requirements
16.60.3.15 NMAC – Continuing Professional Education (CPE) Required to Obtain or Maintain an "Active" CPA License;
16.60.4.8 NMAC – Firm Permit Application, Renewal, Reinstatement and Notification Requirements;
16.60.5.11 NMAC – Rules of Conduct; and
16.60.5.13 NMAC – Unauthorized Use of the CPA Title.

To obtain and review copies of the proposed changes you may go to the Board's website at: <http://www.rld.state.nm.us/boards/Accountancy.aspx> or contact the New Mexico Public Accountancy Board at 505.222.9850 or by email at Accountancy.Board@state.nm.us.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Jeanette Contreras, Board Executive Director, via electronic mail at Accountancy.Board@state.nm.us by regular mail at 5500 San Antonio Dr. NE, Albuquerque, NM 87109, no later than Monday, April 27, 2020. Persons will also be given the opportunity to present their comments at the rule hearing. All written comments will be posted to the Board's website at: <http://www.rld.state.nm.us/boards/Accountancy.aspx>, no more than three business days following receipt to allow for public viewing.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Jeanette Contreras, Board Executive Director at (505) 222-9851.

Statutory Authority: The 1999 New Mexico Public Accountancy Act, Sections 61-28B-5, NMSA 1978, among other provisions, specifically authorizes the Board to "adopt and file rules necessary to carry out the provisions of the 1999 Public Accountancy Act."

Summary of Proposed Changes:

In addition to making minor clarification changes, the proposed rules are summarized as follows:

16.60.1.7 NMAC - Definitions

The amendments to this section clarify and create new definitions that will create better understanding of the Act.

16.60.1.9 NMAC - Board Operation

The amendment to this section will create flexibility for unforeseen situations in regards to the amount of board meetings required a year.

16.60.1.10 NMAC – Fees and Obligations

The amendment to this section will remove the fee charged for a name change due to marriage, divorce, legal name change, etc.

16.60.2.10 NMAC - Examination Administration

The amendment to this section will increase the amount of times a candidate can retake the exam which will be in accordance with proposed 2020 law change.

16.60.3.8 NMAC - Application Requirements

The amendments to this section will allow the board to accept electronic signatures.

16.60.3.9 NMAC - Initial Certificate/License Requirements

The amendment to this section will update the facility used for required background checks and will clarify what is considered a complete renewal application.

16.60.3.12 NMAC - Reinstatement Requirements

The amendment to this section will allow the board the opportunity to assess the professional competence of an applicant after five (5) years of not practicing Certified Public Accountancy.

16.60.3.15 NMAC - Continuing Professional Education (CPE) Required to Obtain or Maintain an "Active" CPA License

The amendments to this section will clarify what is considered a complete renewal application; specify what services an "inactive" license holder can perform; assess the competency of a licensee requesting "active" status after being in "inactive" status for five (5) or more years; comply with the Uniform Accountancy Act model rules and current nano-learning methods and to maintain reciprocity with states adapting new rules; clarify what is acceptable publications to earn continuing professional education; clarify what is considered

technical continuing professional education; add to what is required on a continuing profession education completion certificate; and add records of completion as evidence of compliance with CPE requirements.

16.60.4.8 NMAC - Firm Permit Application, Renewal, Reinstatement and Notification Requirements

The amendment to this section will comply with the firm mobility law and allow the Board to accept electronic signatures.

16.60.5.11 NMAC - Rules of Conduct

The amendment to this section will allow the public the opportunity to ensure their Certified Public Accountant carries an active license or firm permit.

16.60.5.13 NMAC - Unauthorized Use of the CPA Title

The amendments to this section will clarify the “response” requirements for board communications and to comply with firm mobility law changes.

CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

NOTICE OF PUBLIC HEARING

Protective Services Division (PSD) of the Children, Youth and Families Department (CYFD) will hold a public hearing in Santa Fe on Friday, March 27th, 2020, from 10:00 a.m. to 12:00 p.m. at the PERA Building, 1120 Paseo de Peralta, Santa Fe, NM Room #227, to take comments regarding the proposed changes to 8.26.4 NMAC—Licensing Requirements for Foster and Adoptive Homes.

Proposed change is to remove a duplicate paragraph from the policy that was inadvertently allowed in the new rule that became effective on February 11, 2020. This paragraph

should have been removed in the previous promulgation.

A free electronic copy of the proposed changes can be found at <https://cyfd.org/for-providers/rfp>. A hard copy of the proposed changes may be reviewed between 8:00 a.m.-5:00 p.m. at the PSD Director’s office, Room 254, in the PERA building in Santa Fe.

Written comments can be provided in person at the public hearing or via e-mail to Serra Dittel-Payne at serra.dittel-payne@state.nm.us or by mail to CYFD, Serra Dittel-Payne, Protective Services Division, PO Drawer 5160, Santa Fe, NM 87502. All written comments must be received no later than 5:00 p.m. on Friday, March 27th, 2020. Written comments provided carry the same weight as comments received during the public hearings.

Subsection D of Section 9-2A-7 NMSA 1978 states “The secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions” which provides the authority authorizing the proposed rule and the adoption of the proposed rule.

The PERA building is accessible to people with disabilities. Documents can be available in different formats to accommodate a particular disability upon request by calling 505-827-8400. If assistance is required to attend the hearing, please call 505-827-8400 to arrange accommodation.

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT FORESTRY DIVISION

NOTICE OF PROPOSED RULEMAKING

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD), Forestry

Division hereby gives notice of the following proposed rulemaking. EMNRD proposes to amend its rule, 19.21.2 NMAC, Endangered Plant Species List and Collection Permits, by removing *Mammillaria wrightii* var. *wilcoxii* (*Wilcox nipple cactus*) from the list of state endangered plants in 19.21.2.9 NMAC and adding *Townsendia gypsophila* (Gypsum Townsend’s aster), *Sclerocactus cloverae* (Clover’s cactus), *Agalinis calycina* (Leoncita false-foxglove), *Hexalectris colemanii* (Coleman’s coral-root), *Scrophularia macrantha* (Mimbres figwort), *Castilleja ornata* (Swale paintbrush), *Castilleja tomentosa* (Tomentose paintbrush), *Penstemon metcalfei* (Metcalf’s beardtongue), *Linum allredii* (Allred’s flax), and *Cymopterus spellenbergii* (Spellenberg’s springparsley).

In addition, EMNRD proposes the following name changes: *Coryphantha robustispina* ssp. *scheeri* replaces *Coryphantha scheeri* var. *scheerii*; *Argemone pinnatisecta* replaces *Argemone pleiacantha* ssp. *pinnatisecta*; and *Hexalectris arizonica* replaces *Hexalectris spicata*. EMNRD also proposes to add definitions of “department” and “state forester” in 19.21.2.7 NMAC; revise 19.21.2.2 NMAC, Scope, 19.21.2.3 NMAC, Statutory Authority, 19.21.2.6 NMAC, Objective, and 19.21.2.15, Protection and Penalties, to reflect NMSA 1978, Section 75-6-1; and make style changes in 19.21.2.8 NMAC and 19.21.2.10 through 19.21.2.14 NMAC.

Purpose of Amendment. EMNRD proposes the amendment to remove *Mammillaria wrightii* var. *wilcoxii* from the list of state endangered plants in 19.21.2.9 NMAC because threats are limited and it is more common and widespread than documented at the time of listing. Illegal collections may still occur but have not been documented. EMNRD proposes to add *Townsendia gypsophila* (Gypsum Townsend’s aster), *Sclerocactus cloverae* (Clover’s cactus), *Scrophularia macrantha* (Mimbres figwort),

Castilleja tomentosa (tomentose paintbrush), *Penstemon metcalfei* (Metcalf's beardtongue), *Cymopterus spellenbergii* (Spellenberg's springparsley), and *Linum allredii* (Allred's flax) to the list of state endangered plants because of their overall rarity and documented threats. EMNRD proposes the amendment to add *Agalinis calycina* (Leoncita false-foxglove), *Hexalectris colemanii* (Coleman's coral-root), and *Castilleja ornata* (Swale paintbrush) because of their extreme rarity and threats.

EMNRD proposes to change the botanical names of the following state endangered listed plants to reflect current taxonomy: *Coryphantha robustispina* ssp. *scheeri* replaces *Coryphantha scheeri* var. *scheerii*; *Argemone pinnatisecta* replaces *Argemone pleiacantha* ssp. *pinnatisecta*; and *Hexalectris arizonica* replaces *Hexalectris spicata*. In addition, EMNRD proposes to add definitions of "department" and "state forester" and revise 19.21.2.2, 19.21.2.3, 19.21.2.6, and 19.21.2.15 NMAC to reflect NMSA 1978, Section 75-6-1.

Legal Authority. EMNRD proposes this rule amendment under the authority of NMSA 1978, Section 75-6-1 and NMSA 1978, Section 9-1-5(E).

The full text of the proposed rule amendment is available from Daniela Roth at (505) 476-3347 or Daniela.roth@state.nm.us or can be viewed on the EMNRD, Forestry Division's website at <http://www.state.nm.us/SFD> or at the Forestry Division's offices in Santa Fe, Chama, Cimarron, Las Vegas, Rio Rancho, Socorro, Capitan, and Silver City.

Public Hearing and Comment.

EMNRD will hold a public hearing on the proposed rule amendment at 9 a.m. on Monday, March 30, 2020, in the Porter Hall, Wendell Chino Building, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505.

Those wishing to comment on the

proposed rule amendment may make oral or written comments or submit information at the hearing or may submit written comments by March 30, 2020 by 9 a.m. by mail or email. Please mail written comments to Daniela Roth, EMNRD, Forestry Division, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505 or submit comments by email to Daniela.Roth@state.nm.us.

Technical Information that served as a basis for the proposed rule amendments includes:

Baker, M. 2012. Current knowledge and conservation of *Hexalectris colemanii* (Orchidaceae), Coleman's coral-root. Final report. Southwest Botanical Research, Chino Valley, AZ. Bureau of Land Management (BLM) Rio Puerco Field Office, Albuquerque, NM.

BLM State Office. 2019. Monitoring summary of Brack's fishhook cactus. Excel data file on file with the EMNRD, Forestry Division, Endangered Plant Program, Santa Fe, NM.

BLM Farmington District. 2017. BLM Special Status Plant Species (SSPS) – Brack's Cactus and Aztec Gilia. Instruction Memorandum No. NMFO1210-2017-003.

Bureau of Land Management. 2008. BLM Manual 6840, Special Status Species Management.

Cervantes, S.D., P. Tonne, R. Govindarajulu, P.J. Alexander and C.D. Bailey. 2010. Population genetic analysis of *Argemone pleiacantha* subsp. *Pinnatisecta* (Sacramento prickly poppy, Papaveraceae) and re-evaluation of its taxonomic status. Journal of the Botanical Research Institute of Texas 4(1):261-269.

Convention on International Trade in Endangered Species of Wild Fauna and Flora. 2019. Appendices I, II, and III.

Crocker, K. and J.F. Glover. Reasonable foreseeable development scenario for oil and gas activities. 2018. Mancos-Gallup Administrative Draft Resource Management Plan Amendment and Environmental Impact Statement Vol. 2, Appendix I. Final Report U.S. Department of the Interior, Bureau of Land Management.

Egger, Mark. 1994. Report on the status and distribution of *Castilleja ornata* on the Gray Ranch. Letter to the Animas Foundation.

Egger, J.M. 2012. The status of *Castilleja tomentosa* A. Gray (Orobanchaceae) and first records for this species from the United States. Phytoneuron 2012-72: 1–7.

EMNRD, Forestry Division. 2017. New Mexico Rare Plant Conservation Strategy. Prepared and developed by Daniela Roth and the New Mexico Rare Plant Conservation Strategy Partnership. Santa Fe, NM.

Greenlee, E. 2015. Presumable jackrabbit and rodent predation on *Sclerocactus cloverae* ssp. *brackii*. Memorandum to Daniela Roth, EMNRD, Forestry Division, from the State of New Mexico Commissioner of Public Lands.

Miller, E. 2018. What a waste. Santa Fe Reporter. November 21- 27, 2018.

Howard, M.O. 2019. State listing nomination for Allred's flax. Unpublished report to the EMNRD, Forestry Division, Santa Fe, NM.

Institute for Applied Ecology. 2020. Draft Conservation Strategy for Clover's cactus (*Sclerocactus cloverae*) and Aztec gilia (*Aliciella formosa*). Prepared for the United States Department of the Interior (USDI), BLM New Mexico State Office, Agreement L15AC00263.

Kennedy, A.H. and L.E. Watson. 2010. Species delimitations and phylogenetic relationships with the

fully myco-heterotrophic *Hexaletris* (Orchidaceae).

McIntosh, L. 1994. First report of *Castilleja ornata* (Scrophulariaceae) from the United States. *Phytologia* 76 (4): 329-332.

Muldavin, E., R. Sivinski, M. East, Y. Chauvin, and M. Horner. 2016. Brack's hardwall cactus. Distribution, habitat, and status survey 2015. Natural Heritage New Mexico Report 390 – May 2016. Unpublished report prepared for the USDI, BLM State Office, Santa Fe, NM.

New Mexico Department of Game and Fish. 2005. Recovery and Conservation Plan for Four Invertebrate Species: Noel's amphipod (*Gammarus desperatus*), Pecos assiminea (*Assimineia pecos*), Koster's springsnail (*Juturnia kosteri*), and Roswell springsnail (*Pyrgulopsis roswellensis*). Prepared by Blue Earth Consultants, Inc., Santa Fe, NM, and the New Mexico Department of Game and Fish (NMDGF) for the NMDGF, Santa Fe, NM.

New Mexico Rare Plant Technical Council. 1999. New Mexico Rare Plants. Albuquerque, NM: New Mexico Rare Plants Home Page. <http://nmrareplants.unm.edu> (latest update: 12 February 2019).

Porter, M.J. and A. Clifford. 2018. Genetic diversity within *Sclerocactus cloverae* Heil & Porter based on ddRAD-seq: the genetic basis for subspecies recognition. Unpublished report for the USDI, BLM State Office, Santa Fe, NM.

Roth, D. 2020. Leoncita false-foxglove (*Agalinis calycina*). Status Report. EMNRD, Forestry Division, Santa Fe, NM. In prep for the U.S. Department of the Interior, Fish and Wildlife Service (USFWS), R2, Albuquerque, NM.

Roth, D. 2018. Success log. Summary of transplant success based on monitoring reports for

Sclerocactus cloverae ssp. *brackii* transplants. Excel data file on file with the EMNRD, Forestry Division, Endangered Plant Program, Santa Fe, NM.

Roth, D. 2018. GIS shape files on the distribution and abundance of *Scrophularia macrantha*. On file with the EMNRD, Forestry Division, Endangered Plant Program, Santa Fe, NM.

Roth, D. 2017. GIS shape files on the distribution and abundance of *Castilleja tomentosa*. On file with the EMNRD, Forestry Division, Endangered Plant Program, Santa Fe, NM.

Roth, D. 2017. Swale paintbrush (*Castilleja ornata*) Status survey report. Unpublished Section 6 report prepared by EMNRD, Forestry Division for the USFWS, R2, Albuquerque, NM.

Roth, D. 2016. Wildfire Impacts on Species of Concern in the Gila National Forest, New Mexico. Unpublished report prepared by the EMNRD, Forestry Division for the USFWS, R2, Albuquerque, NM.

Roth, D. 2015. Status Survey for Gypsum Townsend's Aster (*Townsendia gypsophila*), Sivinski's Scorpionweed (*Phacelia sivinskii*), Todilto Stickleaf (*Mentzelia todiltoensis*), and Tufted Sand Verbena (*Abronia bigelovii*) on Zia Pueblo Lands in Sandoval County, New Mexico. Unpublished report prepared by EMNRD, Forestry Division, Santa Fe, NM, for the USFWS, R2, Albuquerque, NM.

Roth, D. and R. Sivinski. 2015. Survey and status report for rare gypsophilic plants in the Ojito/White Mesa area of Sandoval County, New Mexico. Unpublished report prepared by EMNRD, Forestry Division, Santa Fe, NM, for the USDI, BLM Rio Puerco Field Office, Albuquerque, NM.

Roth, D. 2015. Brack's cactus monitoring plots – site visit.

Memorandum to Andrew Frederick, EMNRD, Forestry Division, from the EMNRD, Forestry Division.

SEINet. 2019. List of specimens and general observations of *Scrophularia macrantha* in New Mexico. Accessed online on 1/2/2019 via <http://swbiodiversity.org/seinet/>

SEINet. 2019. List of specimens and general observations of *Mammillaria wrightii* var. *wilcoxii* in the United States and Mexico. Accessed online on 1/2/2019 via <http://swbiodiversity.org/seinet/>

Sivinski, R. 2017. Guadalupe Mt Rare Plant Survey, Rio Grande Del Norte National Monument, New Mexico. Unpublished report prepared by RCS Southwest for the USDI, BLM Taos Field Office, Taos, NM.

Sivinski, R.C. 2011. *Agalinis calycina* (Leoncita false-foxglove): A conservation status assessment. Section 6 Progress Report prepared by the EMNRD, Forestry Division, Santa Fe, for the USFWS, R 2, Albuquerque, NM.

Sivinski, R.C. and M.O. Howard. 2011. A new species of *Linum* from the northern Chihuahuan Desert. *Phytoneuron* 2011-33: 1-7.

Sivinski, R.C. and P. Tonne. 2011. Survey and assessment of aridland spring ciénegas in the southwest region. Section 6, Segment 25, Progress report submitted to: EMNRD, Forestry Division, Santa Fe, NM, and U.S. Department of the Interior, USFWS, R 2, Albuquerque, NM.

Zimmerman, Allan D. and Bruce D. Parfitt. 2004. Cactaceae: Coryphantha. *Flora of North America*, Vol. 4 pg 226.

Copies of the technical information may be obtained from Daniela Roth at (505) 476-3347 or Daniela.Roth@state.nm.us, or may be viewed on the EMNRD, Forestry Division's website at <http://www.state.nm.us/SFD>.

If you are an individual with a disability who needs 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 Daniela Roth at (505) 476-3347 or through the New Mexico Relay Network at 1-800-659-1779 one week prior to the hearing. Public documents can be provided in various accessible formats. Please contact Daniela Roth at (505) 476-3347, if a summary or other type of accessible format is needed.

GAMING BOARD

NOTICE OF PUBLIC HEARING FOR RULEMAKING

The New Mexico Gaming Control Board (NMGCB) has scheduled a public hearing to consider changes to rules governing the Bingo and Raffle Act for Friday, March 27, 2020 at 9:00 AM at the NMGCB Board Room, which is an accessible facility, at 4900 Alameda Boulevard NE, Albuquerque, NM 87113. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please call Erin Thompson at (505) 841-9707 by March 24, 2020 or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats.

The GCB hearing officer may consider the following rulemaking proposals at the meeting:

Amend:

15.4.2 NMAC
15.4.3 NMAC
15.4.4 NMAC
15.4.8 NMAC
15.4.9 NMAC
15.4.11 through 15.4.14 NMAC

Repeal and Replace:

15.4.1 NMAC
15.4.5 NMAC

15.4.6 NMAC
15.4.7 NMAC
15.4.10 NMAC

A summary of the proposed revisions and copies for the full text of the proposed rules may be accessed at the NMGCB's website (www.NMGCB.org), or by contacting Erin Thompson at Erin.Thompson2@state.nm.us or via regular mail at 4900 Alameda Boulevard NE, Albuquerque, NM 87113 or (505) 841-9707.

At the hearing, the hearing officer will take oral and written comments related to the rulemaking actions listed above and during the meeting, consider public input in order to make a recommendation to the board for action with regard to proposed rules. Gaming Control Board members will consider and take action on the hearing officer's recommendations at a subsequent board meeting.

Interested persons may submit comments on the proposed rules at the rule hearing or may submit written comments via email at GCB-Rules@state.nm.us. Written comments must be received no later than 5:00 PM on March 26, 2020. If submitting written comments by email, please indicate in the subject line the number of each rule(s) for which you are providing comments. The agency will post written comments on its website as soon as practicable and no more than 3 business days following receipt to allow for public review. All written comments received by NMGCB shall also be available for public inspection at the NMGCB office. Persons offering written comments at the hearing must have eight (8) copies for the hearing officer and the board (at a later date) to review. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in the Public Records Act, Section 14-3-1, et seq., and in the State Rules Act, Section 14-4-1, et seq., NMSA 1978.

REGULATION AND LICENSING DEPARTMENT OPTOMETRY BOARD

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Board of Optometry will hold a rule hearing on Friday, April 3, 2020, at 10:00 a.m. Following the rule hearing, the Board will convene a board meeting to determine if the Board will adopt the rules and take care of other regular business. The rule hearing and board meeting will be held at the Gaming Control Board, 4900 Alameda Blvd NE, Albuquerque, New Mexico, 87113 in the Conference Room.

The purpose of the rule hearing is to consider proposed amendments to the following rules:

16.16.3.9 NMAC – APPLICATION REQUIREMENTS:

16.16.4.9 NMAC – APPLICATION REQUIREMENTS:

Summary of Proposed Changes:

16.16.3.9 NMAC – APPLICATION REQUIREMENTS:

Current application requirements for licensure can be overly burdensome for candidates. These changes will expedite the process for all applicants and remove unnecessary hurdles to applying for licensure in New Mexico.

16.16.4.9 NMAC – APPLICATION REQUIREMENTS:

Current application requirements for licensure can be overly burdensome for candidates. These changes will expedite the process for all applicants and remove unnecessary hurdles to applying for licensure in New Mexico.

To obtain and review copies of the proposed changes you may go to the Board's website: http://www.rld.state.nm.us/boards/Optometry_Rules_and_Laws.aspx, or contact the Boards and Commissions Division at 505.476.4622.

The Board is currently accepting

public comments on the proposed amendments. Please submit written comments on the proposed changes to Alexis Levy, Board Administrator, via electronic mail at bd@state.nm.us or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Thursday, April 2, 2019. Persons will also be given the opportunity to present their comments at the rule hearing. All written comments will be posted to the Board's website at: http://www.rld.state.nm.us/boards/Optometry_Rules_and_Laws.aspx, no more than three business days following receipt to allow for public view.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Alexis Levy, Board Administrator at (505) 476-4622.

Statutory Authority: Legal authority for this rulemaking can be found in the Optometry Act, NMSA 1978 Sections 61-2-1 through -18 which, among other provisions, specifically authorizes the Board to "adopt rules necessary to implement the provisions of the Optometry Act." Section 61-2-6(D), NMSA 1978.

**End of Notices of
Rulemaking and
Proposed Rules**

Adopted Rules

Effective Date and Validity of Rule Filings

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

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION COMMISSION

This is an amendment to 19.15.5 NMAC, amending Sections 3, 8, 9, and 10, effective 2/25/2020.

Explanatory statement: Statute citations were corrected throughout the rule to conform to correct legislative styles.

19.15.5.3 STATUTORY AUTHORITY: 19.15.5 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11, [and] Section 70-2-12, Section 70-2-31 and Section 70-2-31.1 NMSA 1978.
[19.15.5.3 NMAC – N, 12/1/2008, A, 2/25/2020]

19.15.5.8 ENFORCEMENT OF STATUTES AND RULES:
The division is charged with the duty and obligation of enforcing the state's rules and statutes relating to the conservation of oil and gas, including the prevention of waste and the protection of correlative rights, and [including] the protection of public health and the environment. An owner or operator shall obtain information pertaining to the regulation of oil and gas before beginning operations.
[19.15.5.8 NMAC - Rp, 19.15.1.12 NMAC, 12/1/2008, A, 2/25/2020]

19.15.5.9 COMPLIANCE:
A. An operator is in compliance with Subsection A of 19.15.5.9 NMAC if the operator:
(1) currently meets the financial assurance requirements of 19.15.8 NMAC;
(2) is not subject to a division or commission

order, issued after notice and hearing, finding the operator to be in violation of an order requiring corrective action;

(3) does not have a penalty assessment that is unpaid more than [70] 30 days after issuance of the order assessing the penalty; and

(4) has no more than the following number of wells out of compliance with 19.15.25.8 NMAC that are not subject to an agreed compliance or final order setting a schedule for bringing the wells into compliance with 19.15.25.8 NMAC and imposing sanctions if the schedule is not met:

(a) two wells or fifty percent of the wells the operator operates, whichever is less, if the operator operates 100 wells or less;

(b) five wells if the operator operates between 101 and 500 wells;

(c) seven wells if the operator operates between 501 and 1000 wells; and

(d) 10 wells if the operator operates more than 1000 wells.

~~[B.] The division shall notify an operator on a monthly basis when, according to records on file with the division, a well on the inactive well list described in Subsection F of 19.15.5.9 NMAC shows no production or injection for the past 12 months by making such information available on the division's website. Further, at least 60 days prior to commencing an enforcement action against an operator for a violation of 19.15.5.9 NMAC, the division shall notify the operator by first class mail to the address provided to the division pursuant to Subsection C of 19.15.9.8 NMAC.~~

~~C. The division shall make available on its website and~~

~~update weekly the status of operators' financial assurance 19.15.8 NMAC requires, according to division records:~~

~~D. Orders requiring corrective action:~~

~~(1) The division shall make available on its website division or commission orders, issued after notice and hearing, finding an operator to be in violation of an order requiring corrective action:~~

~~(2) An operator who contests an order finding it to be in violation of an order requiring corrective action may appeal and may seek a stay of the order. An order that is stayed pending appeal does not affect an operator's compliance with Subsection A of 19.15.5.9 NMAC.~~

~~(3) An operator who completes the corrective action the order requires may file a motion with the order's issuer to declare the order satisfied. The division or commission, as applicable, may grant the motion without hearing, or may set the matter for hearing.~~

~~E. Penalty assessments:~~

~~(1) The division shall make available on its website penalty assessments assessed under the Oil and Gas Act over the last 12 months and the date the operator paid them, according to division records.~~

~~(2) Any order that is stayed pending appeal does not affect an operator's compliance with Subsection A of 19.15.5.9 NMAC.~~

~~F] B. Inactive wells.~~

~~(1) The division shall make available on its website, and update daily, an "inactive well list" listing each well, by operator, that according to division records:~~

~~(a)~~
~~shows no production or injection for~~
~~past 15 months;~~

~~(a)~~ ~~(b)~~
does not have its well bore plugged in
accordance with 19.15.25.9 NMAC
through 19.15.25.11 NMAC;

~~(b)~~ ~~(c)~~
is not in approved temporary
abandonment in accordance with
19.15.25.12 NMAC through
19.15.25.14 NMAC; and

~~(c)~~ ~~(d)~~
is not subject to an agreed compliance
or final order setting a schedule for
bringing the well into compliance
with 19.15.25.8 NMAC [and
imposing sanctions if the operator
does not meet the schedule].

(2) [For
purposes of 19.15.5.9 NMAC, the
listing of a well on the division's
inactive well list as a] A well inactive
for more than [one year plus 90-
days] 15 months creates a rebuttable
presumption that the well is out of
compliance with 19.15.25.8 NMAC.

C. Financial
assurance. The division shall make
available on its website and update
weekly the status of operators'
financial assurance that 19.15.8
NMAC requires, according to division
records.

[19.15.5.9 NMAC - Rp, 19.15.1.40
NMAC, 12/1/2008; A, 11/30/2016, A,
2/25/2020]

19.15.5.10 [COMPLIANCE PROCEEDINGS:] ENFORCEMENT:

[A.]—The provisions
in 19.15.4 NMAC applicable to
adjudicatory proceedings shall apply
to compliance proceedings unless
altered or amended by 19.15.5.10
NMAC.

B.—A compliance
proceeding is an adjudicatory
proceeding in which the division
seeks an order imposing sanctions for
violation of a provision of the Oil and
Gas Act, NMSA 1978, Sections 70-
2-1 through 70-2-38 or a provision of
a rule or order issued pursuant to the
act. Such sanctions may include but
are not limited to:

~~(1)~~—requiring

compliance with a provision of
the Oil and Gas Act, NMSA 1978,
Sections 70-2-1 through 70-2-38 or
a provision of a rule or order issued
pursuant to the act;

~~(2)~~—assessment
of civil penalties pursuant to NMSA-
1978, Section 70-2-31(A); Subsection
A of Section 70-2-31 NMSA 1978;

~~(3)~~—corrective
action including but not limited-
to abatement or remediation of
contamination and removal of surface
equipment;

~~(4)~~—plugging
and abandonment of a well and
restoration and remediation of the
well location, and authority for the
division to forfeit the applicable
financial assurance if the well is
not plugged and abandoned and the
location restored and remediated;

~~(5)~~—denial,
cancellation or suspension of a
permit;

~~(6)~~—denial,
cancellation or suspension of
authorization to transport; or

~~(7)~~—shutting in
a well or wells.

C.—The division
initiates an administrative compliance
proceeding by filing a written
application with the division clerk:

~~(1)~~—identifying
the operator and any other responsible
parties against whom the order is
sought; including the surety if the
division seeks an order allowing
forfeiture of a surety bond;

~~(2)~~—identifying
the provision of the Oil and Gas Act,
NMSA 1978, Sections 70-2-1 through
70-2-38, or the provision of the rule
or order issued pursuant to the act,
allegedly violated;

~~(3)~~—providing
a general description of the facts
supporting the allegations;

~~(4)~~—stating the
sanction or sanctions sought; and

~~(5)~~—providing
proposed legal notice.

D.—The division
shall provide notice of compliance
proceedings as follows:

~~(1)~~—the
division shall publish notice in

accordance with 19.15.4.9 NMAC:

~~(2)~~—the
division shall provide notice to the
operator and any other responsible
parties against whom the compliance
order is sought by following the
provisions of 19.15.4.12 NMAC.

E.—The director may
enter into an agreed compliance
order with an entity against whom
compliance is sought to resolve
alleged violations of any provision
of the Oil and Gas Act, NMSA-
1978, Sections 70-2-1 through 70-
2-38 or any provision of any rule
or order issued pursuant to the
act. The director may enter into an
agreed compliance order prior to
or after the filing of an application
for an administrative compliance
proceeding. An agreed compliance
order shall have the same force and
effect as a compliance order issued
after an adjudicatory hearing.

F.—Nothing in
19.15.5.10 NMAC precludes the
division from bringing other actions
provided for in the Oil and Gas
Act, NMSA 1978, Sections 70-2-1
through 70-2-38, including but not
limited to the following: suit for
indemnification pursuant to NMSA-
1978, Section 70-2-14(E) or NMSA-
1978, Section 70-2-38(B); an action
through the attorney general with
respect to the forfeiture of illegal
oil or illegal gas pursuant to NMSA-
1978, Section 70-2-32; an injunction
under NMSA 1978, Section 70-2-28;
or collection of penalties pursuant to
NMSA 1978, Section 70-2-31(A).
[19.15.5.10 NMAC - Rp,
19.15.14.1227 NMAC, 12/1/2008]]

A. General.
Whenever the division determines that
a person violated or is violating the
Oil and Gas Act or a provision of any
rule, order, permit or authorization
issued pursuant to the Oil and Gas
Act, the division may seek a sanction
by:

~~(1)~~—issuing
a temporary cessation order if it
determines that the alleged violation
is causing or will cause an imminent
danger to public health or safety or a
significant imminent environmental
harm. The temporary cessation order

shall remain in place until the earlier of when the division determines that the alleged violation is abated or 30 days, unless a hearing is held before the division and a new order is issued;

(2) issuing a notice of violation; or

(3) commencing a civil action in district court.

B. Sanctions. The division may seek one or more of the following sanctions:

(1) a civil penalty;

(2) modification, suspension, cancellation or termination of a permit or authorization;

(3) plugging and abandonment of a well;

(4) remediation and restoration of a well location and associated facilities, including the removal of surface and subsurface equipment and other materials;

(5) remediation and restoration of a location affected by a spill or release;

(6) forfeiture of financial assurance;

(7) shutting in a well or wells; and

(8) any other remedy authorized by law.

C. Notice of violation.

(1) A notice of violation issued by the division shall state with reasonable specificity:

(a) the identity of the alleged violator;

(b) the nature and factual and legal basis of the alleged violation, including the provision of the Oil and Gas Act or rule, order, permit or authorization allegedly violated;

(c) whether compliance is required immediately or within a specified time period;

(d) the sanction(s) available for the alleged violation, the sanction(s) proposed by the division, and a statement that the division will take

into consideration the violators good faith efforts to comply with the applicable requirements;

(e) the availability of a process for informal review and resolution of the alleged violation, and the procedure to initiate the informal review process, including the contact information of the appropriate division employee;

(f) a statement that if the notice of violation is not informally resolved within 30 days of service, the division will hold a hearing, but that the hearing shall not prohibit the parties from negotiating and settling the notice of violation at any time; and

(g) the date of the hearing, which shall be no later than 90 days after the date of the notice of violation.

(2) The division shall serve the notice of violation on the alleged violator by certified mail, and may provide the notice of violation by electronic mail if possible.

(3) If during the informal review the division and the alleged violator agree to resolve the alleged violation, they shall incorporate their agreement into a stipulated final order signed by both parties. The stipulated final order shall state that the alleged violator admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives the alleged violator's right of review by the commission.

(4) If the division and the alleged violator fail to enter a stipulated final order within 30 days of service, the division shall hold a hearing at the division's principal office.

D. Civil penalties.

A civil penalty assessed by the division shall account for the seriousness of the violation, good faith efforts to comply with the applicable requirement, history of noncompliance under the Oil and Gas Act and other relevant factors. The civil penalty assessed by the division shall not exceed \$2,500 per day of

noncompliance for each alleged violation, unless the alleged violation presents a risk either to the health or safety of the public or of causing significant environmental harm, or unless the noncompliance continues beyond the time specified in the notice of violation or stipulated final order, whereupon the civil penalty may not exceed \$10,000 per day of noncompliance for each alleged violation, provided that the civil penalty assessed by the division for an alleged violation shall not exceed \$200,000.

E. Adjudicatory procedures. These adjudicatory procedures shall apply to hearings on temporary cessation orders and notices of violation before the division, and the provisions of 19.15.4 NMAC shall not apply.

(1) **General provisions.**

(a) **Designation of parties.** The parties shall be the division and the person served with a notice of violation or order, referred to herein as "respondent".

(b) **Representation.** Respondent may appear and participate in a hearing either pro se or through counsel, provided that a collective entity, including a corporation, partnership, unincorporated association, political subdivision or governmental agency shall appear only through counsel or a duly authorized officer or member.

(c) **Rule applicability.** In the absence of a specific provision in this section, the hearing examiner may apply the New Mexico rules of civil procedure and evidence.

(d) **Computation of time.** In computing any period of time under 19.15.5.10 NMAC the day of the event from which the designated period begins to run shall not be included, and the last day of the computed period shall be included, unless it is a Saturday, Sunday or legal state holiday, in which case the time is extended until the next day which is not a Saturday, Sunday or legal state holiday.

Whenever a party must act within a prescribed period after service, and service is by first class mail only, three days is added to the prescribed period.

(e)

Extensions of time. The hearing examiner may grant an extension of time to file a document or continue a hearing upon timely motion upon consent of the parties, or for good cause shown after consideration of prejudice to the other party and undue delay to the hearing.

(f)

Filing of documents. A party shall file the original of each document and serve a copy on the other party, accompanied by a certificate of service identifying the method and address used to complete service.

(g)

Service of documents. A party shall serve each document on the other party or its counsel, as applicable, by personal service or first class mail, or by electronic mail if the parties agree.

(h)

Form of documents. Unless otherwise ordered, all documents, except exhibits, shall be on 8 1/2 x 11-inch white paper, shall contain the caption of the notice of violation or temporary cessation order on the first page and shall be signed by the party or its counsel, as applicable.

(2) Pre-

hearing procedures.

(a)

Docketing. At the expiration of the 30 day period for informal resolution of a notice of violation, when a party appeals a final order under Subsection E of 19.15.5.10 NMAC, or when the division gives notice that it intends to extend a temporary cessation order, the division shall docket the notice of violation or order for hearing, identify the factual basis for the alleged violation and proposed sanction(s), and serve a notice of docketing on respondent.

(b)

Answer. No later than 10 days after service of the notice of docketing, respondent shall file an answer stating its objection, if any, and the factual and legal basis for such objection, to

each alleged violation and proposed sanction in the notice of violation or order.

(c)

Hearing examiner. The hearing examiner shall have the authority to take all measures necessary to conduct a fair, impartial and efficient adjudication of issues, and to maintain order and avoid undue delay, including the authority to conduct pre-hearing conferences and hearings, rule on procedural and evidentiary motions, govern the examination of witnesses and the admission of evidence, issue orders and prepare a recommended decision. After the division issues the notice of violation, the hearing examiner shall not discuss ex parte the merits of the proceeding with the division or the respondent.

(d)

Pre-hearing conference. The hearing examiner may hold a pre-hearing conference to narrow the issues, eliminate or resolve preliminary matters and encourage settlement, and may issue a pre-hearing order on procedural and evidentiary matters, including a schedule for the filing of motions and testimony, stipulations regarding alleged violations and requested relief, including proposed civil penalties or elements thereof, and any other matter necessary for the efficient conduct of the hearing.

(e)

Pre-hearing statements. No later than seven calendar days before the hearing, a party who intends to present evidence at the hearing shall file and serve a statement that contains the following information:

(i)

the name, address, employment and qualifications, including education and work history, of each witness;

(ii)

a statement identifying the opinions and factual assertions supporting each witness' testimony;

(iii)

the exhibits and other evidence to be presented by each witness; and

(iv)

procedural matters that are to be resolved prior to the hearing.

(f)

Enforcement. The hearing examiner may enforce the requirements of 19.15.5.10 NMAC by any appropriate means, including the exclusion of testimony, exhibits and other evidence.

(g)

Motions.

(i)

General. All motions, except motions made orally during the hearing, shall be in writing, specify the grounds for the motion, state the relief sought, indicate whether the motion is opposed or unopposed and be served on the other party.

(ii)

Unopposed motions. An unopposed motion shall state that concurrence of the other party was obtained and shall be accompanied by a proposed order approved by the parties.

(iii)

Opposed motions. An opposed motion shall state either that concurrence was sought and not obtained, or the reason that concurrence was not sought.

(iv)

Response. No later than 10 days after service of an opposed motion, the opposing party may file a response. Failure to file a response shall be deemed a waiver of any objection to the granting of the motion.

(v)

Reply. No later than 10 days after service of a response to an opposed motion, the moving party may file a reply.

(vi)

Decision. The hearing examiner shall decide all motions without a hearing, unless otherwise ordered by the hearing examiner sua sponte or upon written request of a party.

(h)

Shortening Deadlines. On the written request of the alleged violator showing good cause, the hearing examiner may shorten the deadlines specified in Paragraph (2) of Subsection E of 19.15.10 NMAC to conduct the hearing on the division's application for a temporary cessation order as expeditiously as possible. If the division opposes the request

to shorten deadlines, the procedures for opposed motions set forth in Subparagraph (g) of Paragraph (2) of Subsection G of 19.15.5.10 NMAC shall not apply and the hearing examiner shall decide the request, with or without hearing, as quickly as practicable.

(3) Hearing procedures.

(a) General. The hearing examiner shall admit all evidence, unless he or she determines that the evidence is irrelevant, immaterial, unduly repetitious or otherwise unreliable or of little probative value. Evidence relating to settlement that would be excluded by the New Mexico Rules of Evidence is not admissible.

(b) Witness examination. Witnesses shall be examined orally and under oath or affirmation, provided that the parties may stipulate to the admission of the testimony of a witness, or part thereof. Parties shall have the right to cross-examine a witness, provided that the hearing examiner may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the direct testimony.

(c) Exhibits. A party shall label each exhibit used during the hearing or offered into evidence with a designation identifying the party, the witness using or offering the exhibit and a serial number.

(d) Burden of persuasion. The division has the burden of going forward with the evidence and of proving by a preponderance of the evidence the facts relied upon to show the alleged violation occurred and that the proposed civil penalty is appropriate. Following the establishment of a prima facie case, respondent shall have the burden of going forward with any adverse evidence or defense to the allegations.

(4) Post-hearing procedures.

(a) Transcript. The hearing shall be transcribed verbatim. Respondent may order a copy of the transcript from the reporter at its own expense.

(b) Recommended decision. The hearing examiner shall prepare a recommended decision for review by the director.

(c) Final order. The director shall file a final order addressing the material issues of fact and law and may assess a sanction for each alleged violation, which shall be served on the division and the respondent.

F. Commission review. No later than 30 days after the director serves the final order, a party may file a notice of appeal with the commission and shall serve the notice of appeal on the other party. The commission shall schedule a hearing on the appeal and notify the parties of the date and time of the hearing. The commission shall conduct a de novo review, provided however, that the parties may stipulate to the issues to be heard and to the admission of all or part of the record before the division. The commission shall conduct the hearing in accordance with the adjudicatory procedures in Paragraph (1), Subparagraphs (c) through (g) of Paragraph (2), Paragraph (3) and Subparagraph (a) of Paragraph (4) of Subsection E of 19.15.5.10 NMAC.

G. Rehearings. A party may file an application for rehearing with the commission pursuant to Section 70-2-25 NMSA 1978.

H. Payment of civil penalty. Respondent shall pay the full amount of the civil penalty assessed in the final order (i) no later than 30 days after the director serves the final order, or (ii) if respondent files a notice of appeal to the commission or the district court pursuant to Section 70-2-25 NMSA 1978, no later than 30 days after the commission or the district court files a final order or the appeal is withdrawn.

I. Resolution after commencement of hearing. If the parties agree to resolve a notice of violation at any time after the commencement of a hearing, they shall file a stipulated final order signed by both parties. The stipulated

final order shall state that respondent admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives respondent's right of review by the commission or the court, as applicable.

J. Publication. On or about October 1 of each year, the division shall publish a list identifying the temporary cessation orders and notices of violation issued during the preceding year, along with the civil penalty paid, if any.

K. Reservation. Nothing in 19.15.5.10 NMAC precludes the division from bringing any other action and seeking any relief allowed by the Oil and Gas Act. [19.15.5.10 NMAC – Rp, 19.15.5.10 NMAC, 2/25/2020]

ENVIRONMENT DEPARTMENT

At its January 24, 2020 meeting, the Environmental Improvement Board repealed 20.4.3 NMAC, Annual Hazardous Waste Fees, filed 11/30/1995, and replaced it with 20.4.3 NMAC, Hazardous Waste Fees, adopted February 3, 2020 and effective March 5, 2020.

ENVIRONMENT DEPARTMENT

TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 4 HAZARDOUS WASTE PART 3 HAZARDOUS WASTE FEES

20.4.3.1 ISSUING AGENCY: Environmental Improvement Board.
[20.4.3.1 - Rp. 20.4.3.1 NMAC, 3/5/2020]

20.4.3.2 SCOPE: This part applies to generators of hazardous waste, and to owners and operators of hazardous waste treatment, storage and disposal facilities which receive

imported hazardous waste.

[20.4.3.2 - Rp. 20.4.3.2 NMAC, 3/5/2020]

20.4.3.3 STATUTORY

AUTHORITY: Subsection J of Section 74-4-4.2 NMSA 1978, directs the board to provide a schedule of business fees for businesses engaged in regulated hazardous waste activity and a schedule of generation fees for businesses generating hazardous waste.

[20.4.3.3 - Rp. 20.4.3.3 NMAC, 3/5/2020]

20.4.3.4 DURATION:

Permanent.

[20.4.3.4 - Rp. 20.4.3.4 NMAC, 3/5/2020]

20.4.3.5 EFFECTIVE

DATE: March 5, 2020, unless a different date is cited at the end of a section or paragraph

[20.4.3.5 - Rp. 20.4.3.5 NMAC, 3/5/2020]

20.4.3.6 OBJECTIVE:

The objective of this part is to provide a schedule of annual fees for hazardous waste generators and treatment, storage and disposal facilities which receive imported hazardous waste, as well as business fees for specific activities or events. The annual and business fees collected will be deposited in the hazardous waste fund to meet necessary expenses in the administration and operation of the state hazardous waste program.

[20.4.3.6 - Rp. 20.4.3.6 NMAC, 3/5/2020]

20.4.3.7 DEFINITIONS:

Unless otherwise defined in this part, the words and phrases used in this part have the same meanings as in 20.4.1 NMAC, Hazardous Waste Management. As used in this part:

A. “Act” means the New Mexico Hazardous Waste Act, Sections 74-4-1 to 74-4-14 NMSA 1978;

B. “Annual fee” means the hazardous waste fee in

20.4.3.200 NMAC through 20.4.3.203 NMAC;

C. “Annual imported waste compensating fee” means the fee on imported hazardous waste in 20.4.3.300 NMAC through 20.4.3.302 NMAC;

D. “Business fee” means the fee designated for specific activities or events in 20.4.3.400 NMAC through 20.4.3.402 NMAC;

E. “CFR” means the most recent Code of Federal Regulations adopted by reference at 20.4.1 NMAC;

F. “Compliance assistance visit for salvage yards” means a pre-arranged inspection at a salvage yard in order for the salvage yard to acquire a New Mexico Motor Vehicle Division Auto Recycler’s license;

G. “Cleanup” means any activities associated with the removal or remediation of hazardous waste at a site, but does not include closure of a solid or hazardous waste management unit;

H. “Department” means the New Mexico environment department;

I. “Episodic generator” means a generator that has a planned or unplanned event that does not normally occur during generator operations, resulting in an increase in the generation of hazardous waste that exceeds the calendar month quantity limits for the generator’s usual category;

J. “Emergency Environmental Protection Agency (“EPA”) identification number” means a generator that meets the definition of a large quantity or small quantity generator due to an emergency and requires an EPA identification number to dispose of the hazardous waste;

K. “Generator” means a generator under 20.4.1 NMAC, Hazardous Waste Management, who is a large quantity generator, small quantity generator, or very small quantity generator of hazardous waste under this part;

L. “Hazardous waste” means all waste or material

regulated as hazardous waste under 20.4.1 NMAC, Hazardous Waste Management;

M. “Imported hazardous waste” means hazardous waste that was generated outside of the state of New Mexico, including waste generated outside the United States, and that has been transported into the state for treatment, storage, or disposal;

N. “Large quantity generator” means a generator who generates more than 1,000 kilograms (or more than 2,204 pounds) of hazardous waste during any month in the calendar year; or a generator who generates more than 1 kilogram (or more than 2.2 pounds) of acutely toxic or “p-listed” hazardous waste in any month in the calendar year; or a generator that accumulates more than 6,000 kilograms (or more than 13,227 pounds) of hazardous waste on site in any month in the calendar year;

O. “Person” means any individual, trust, firm, joint stock company, federal agency, corporation, including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state or any interstate body;

P. “Recycled” means “used or reused” or “reclaimed” as those terms are defined in 40 CFR, Part 261.1(c);

Q. “Secretary” means the secretary of environment;

R. “Site” means an “individual generation site” as defined in 40 CFR, Part 260.10;

S. “Small quantity generator” means a generator who generates more than 100 kilograms (or more than 220 pounds) but less than 1,000 kilograms (or less than 2,204 pounds) of hazardous waste during any month in the calendar year; or a generator that accumulates more than 1,000 kilograms (or more than 2,204 pounds) of hazardous waste on site in any month in the calendar year;

T. “Very small quantity generator” means a generator who generates less than 100 kilograms (or less than 220 pounds)

in any month in the calendar year and never accumulates more than 1,000 kilograms (or more than 2,204 pounds) of hazardous waste on site in any month in the calendar year.
[20.4.3.7 - Rp. 20.4.3.7 NMAC, 3/5/2020]

20.4.3.8 - 20.4.3.107
[RESERVED]

20.4.3.108 SAVING
CLAUSE: Amendment of these fee regulations shall not affect any administrative or judicial enforcement action pending on the effective date of this part.
[20.4.3.108 - Rp. 20.4.3.108 NMAC, 3/5/2020]

20.4.3.109 [RESERVED]
[Repealed, 3/5/2020]

20.4.3.110 [RESERVED]
[Repealed, 3/5/2020]

20.4.3.111 ORPHAN
WASTE: Nothing in this part is intended to require the payment of annual hazardous waste fees on orphan hazardous waste or waste generated as a result of the cleanup of orphan hazardous waste. "Orphan hazardous waste" means hazardous waste for which a responsible party cannot be identified. The department may collect any fees otherwise owed from the person responsible for the creation of the orphan hazardous waste, if later identified.
[20.4.3.109 - Rp. 20.4.3.109 NMAC, 3/5/2020]

20.4.3.112 - 20.4.3.199
[RESERVED]

20.4.3.200 ANNUAL FEES:
Based on activities as defined in 20.4.3.7 NMAC, facilities shall pay fees to the department annually, in accordance with the provisions of this part.
[20.4.3.200 - Rp. 20.4.3.200 NMAC, 3/5/2020]

20.4.3.201 FEE SCHEDULE:
Annual fees are set forth below:
A. Very small quantity generator: \$100;

B. Small quantity generator: \$500;

C. Large quantity generators that generate 100,000 pounds or less of hazardous waste annually: \$5,000;

D. Large quantity generators that generate more than 100,000 pounds but less than 400,000 pounds of hazardous waste annually: \$10,000;

E. Large quantity generators that generate 400,000 pounds or more of hazardous waste: \$20,000.
[20.4.3.201 - Rp. 20.4.3.201 NMAC, 3/5/2020]

20.4.3.202 FEE
CALCULATION:

A. Nothing herein is intended to affect the generator's obligations with respect to reporting or record keeping under other applicable laws and regulations.

B. The total annual fees due are the cumulative total of the fees for all sites engaged in activities as defined in 20.4.3.7 NMAC during the calendar year prior to the year in which the fee is to be paid, subject to the limits set forth in 20.4.3.109 NMAC;

C. Beginning January 1 following the effective date of these fee regulations, the fees listed in 20.4.3.401 NMAC shall be adjusted annually to account for inflation. The amounts shall be adjusted by the percentage of the preceding calendar year's change in the consumer price index for All Urban Consumers (CPI-U), United States City Average for All Items, published by the United States Department of Labor. The amount of change in the fee shall be rounded to the nearest one dollar (\$1.00).
[20.4.3.202 - Rp. 20.4.3.202 NMAC, 3/5/2020]

20.4.3.203 TRANSFER OF OWNERSHIP/OPERATIONS:
The transferor must report the waste generated during the calendar year in which the transfer takes place on a form obtained from the department. This report and payment shall be

submitted to the department at the time of transfer.
[20.4.3.203 - Rp. 20.4.3.203 NMAC, 3/5/2020]

20.4.3.204 - 20.4.3.299
[RESERVED]

20.4.3.300 IMPORTED WASTE COMPENSATING FEES: ANNUAL IMPORTED WASTE COMPENSATING FEES: For waste that is generated out-of-state, but treated, stored, or disposed of in New Mexico, an annual imported waste compensating fee shall be paid in lieu of the fee provided for in 20.4.3.200 NMAC through 20.4.3.203 NMAC. The owner or operator of the facility first receiving the imported hazardous waste shall pay to the department annually one cent (\$0.01) per pound of hazardous waste managed in New Mexico, in accordance with the provisions of this part.
[20.4.3.300 - Rp. 20.4.3.300 NMAC, 3/5/2020]

20.4.3.301 FEE SCHEDULE:
The annual fee and the exclusions applicable thereto shall apply to imported hazardous waste to the same extent as if the waste had been generated within the state. For purposes of determining the volume of waste and the fees due, all imported hazardous waste received by a facility, during the calendar year prior to the year in which the fee is to be paid, shall be considered to have been received from a single source.
[20.4.3.301 - Rp. 20.4.3.301 NMAC, 3/5/2020]

20.4.3.302 TRANSFER OF OWNERSHIP/OPERATIONS:

A. If there is a transfer of ownership or operations, the owner or operator of the facility on the date an imported waste compensating fee is due under 20.4.3.500 NMAC is liable for payment of that fee in full.

B. The transferor must report the imported waste received during the calendar year in which the transfer takes place to the department, on a form obtained from

the department. This report shall be submitted to the department at the time of transfer.

C. At the time of transfer, the transferor must also provide a copy of the above report to the person who will be liable for the fee based on the waste reported. In addition to the report, the transferor must provide to that person any manifests prepared on the waste reported, or copies thereof, and any other information used to prepare the report. Manifests and other information need not be sent to the department under this section, unless requested by the department.
[20.4.3.302 - Rp. 20.4.3.302 NMAC, 3/5/2020]

20.4.3.303 - 2.4.3.399
[RESERVED]

20.4.3.400 BUSINESS FEES:
Business fees shall be paid for each of the events outlined in 20.4.3.401 NMAC.
[20.4.3.400 - Rp. 20.4.3.400 NMAC, 3/5/2020]

20.4.3.401 FEE SCHEDULE:
Business fees are set forth in the schedules below and due at time of request.

A. Episodic generators, for each planned or unplanned event: \$500;

B. Generators or co-generators requesting temporary or emergency EPA identification number: \$100;

C. Salvage yards, for each compliance assistance visit requested: \$100;

D. Generators notifying of 40 CFR 262 Subpart K activities: \$100;

E. Generators notifying of 40 CFR 250.10 (hazardous secondary materials activities): \$100;
[20.4.3.401 - Rp. 20.4.3.401 NMAC, 3/5/2020]

20.4.3.402 FEE CALCULATION:

A. The business fee shall be paid in full if applicable

during any part of the calendar year.

B. The business fees are due for all sites engaged in activities as defined in 20.4.3.7 NMAC during the calendar year prior to the year in which the fees are to be paid, subject to the limits set forth in 20.4.3.109 NMAC.

C. Beginning January 1 following the effective date of these fee regulations, the fees listed in 20.4.3.401 NMAC shall be adjusted annually to account for inflation. The amounts shall be adjusted by the percentage of the preceding calendar year's change in the consumer price index for all urban consumers (CPI-U), United States City Average for All Items, published by the United States department of labor. The amount of change in the fee shall be rounded to the nearest one dollar (\$1.00).

[20.4.3.402 - Rp. 20.4.3.402 NMAC, 3/5/2020]

20.4.3.403 - 20.4.3.499
[RESERVED]

20.4.3.500 DUE DATES:
The annual fees for which this part provides are due and payable on August 1 of each year.
[20.4.3.500 - Rp. 20.4.3.500 NMAC, 3/5/2020]

20.4.3.501 MANNER OF PAYMENT: The person paying fees under this part shall complete a fee report form obtained from the department, and submit the report to the department, together with any documentation requested by the department. The report shall include a certification of the truthfulness of all of the matters and facts contained in the report, as provided in 20.4.3.502 NMAC. All fees shall be paid to NMED by certified check or money order payable to the New Mexico Environment Department or the Hazardous Waste Bureau, by electronic funds transfer (with prior notice to NMED), or by other methods deemed acceptable by NMED. Cash payments are not an acceptable method of payment. All payments must include the name,

address, and contact information for the facility and must be addressed to the New Mexico Environment Department – Hazardous Waste Bureau.

[20.4.3.501 - Rp. 20.4.3.501 NMAC, 3/5/2020]

20.4.3.502 CERTIFICATE:

The certification required by 20.4.3.501 NMAC shall be made on oath or affirmation in accordance with Sections 14-13-1 and 14-13-2 NMSA 1978, by the chief executive officer or his designee in the case of a corporation, the managing partner in the case of a partnership, the proprietor in the case of a sole proprietorship, or the official with authority to execute the certification in the case of a government entity.
[20.4.3.502 - Rp. 20.4.3.502 NMAC, 3/5/2020]

20.4.3.503 - 20.4.3.599
[RESERVED]

20.4.3.600 LATE CHARGES; ENFORCEMENT: LATE CHARGES: If any fee for which this part provides is not paid in full when due, the person owing the fee shall pay a billing charge of one hundred dollars (\$100), plus late charges in the amount of an additional one percent of all fees owed for every month or part of a month in which the fees remain unpaid beyond the due date. Billing and late charges shall be considered hazardous waste fees for deposit in the hazardous waste fund, pursuant to Section 74-4-4.5 NMSA 1978, and are independent of any penalties assessed under the act.
[20.4.3.600 - Rp. 20.4.3.600 NMAC, 3/5/2020]

20.4.3.601 VERIFICATION BY THE DEPARTMENT:

A. The department may at any time verify the accuracy of reports submitted and amounts paid pursuant to this part. It may use any relevant information for verification purposes, including, but not limited to, the biennial reports submitted pursuant to 20.4.1 NMAC, Hazardous Waste Management, or 40

CFR, Parts 262.41, 264.75 or 265.75, and any manifests prepared for waste shipments. Persons who are subject to this part shall make these and other records relating to the waste generated, manifested or managed available to the department upon request.

B. If the department determines that a fee report submitted pursuant to 20.4.3.501 NMAC does not accurately state the quantity of waste generated, the quantity of imported hazardous waste treated, stored or disposed of, or the fees owed, it shall notify the person submitting the report of the discrepancy and may recalculate the annual fee based on the department's determination.

C. Before assessing a recalculated fee, the department shall send notice of its determination and its intent to reassess the fee to the person who had submitted the report. That person shall have 30 days from the date of the notice to provide the department with any documentation to rebut the determination. Once the department has reviewed any documentation submitted, it will send notice of fee assessment to the person owing a fee. Any amounts that the department determines were due, together with the billing and late charges on the amounts due and unpaid, shall be paid within 60 days of the date of the notice of fee assessment.
[20.4.3.601 - Rp. 20.4.3.601 NMAC, 3/5/2020]

20.4.3.602 ADMINISTRATIVE APPEAL:

A. A notice of fee assessment issued under Subsection C of 20.4.3.601 NMAC may be appealed by filing a written request for hearing with the hearing clerk designated by the secretary within thirty days of the date of the notice. The written request shall be accompanied by a copy of the fee assessment being contested and shall set forth the grounds upon which the appellant disagrees with the assessment.

B. Except as otherwise provided, notice of docketing and hearing officer assignment, motions, pre-hearing procedures and discovery, and hearing and post-hearing procedures shall be governed by 20.1.5 NMAC, Adjudicatory Procedures - Environment Department. The hearing officer shall schedule the hearing for no later than 90 days after service of the notice of docketing.

C. The department shall not seek collection of the fee or take enforcement action on the fee assessment until the secretary has issued a decision on the appeal. Late charges on the amount assessed shall continue to accrue and shall be payable if the assessment is upheld or upheld with modifications. If the assessment is modified on appeal, late charges shall be calculated based on the assessment as modified.
[20.4.3.602 - Rp. 20.4.3.602 NMAC, 3/5/2020]

20.4.3.603 FAILURE TO SUBMIT REPORTS OR PAY FEES:

A. Failure to complete or submit a report in the manner required by 20.4.3.501 NMAC, or to pay fees in full when due, may result in enforcement proceedings under the act. Enforcement actions may include, but are not limited to, the revocation or suspension of any permit issued by the department pursuant to the act to the person failing to complete or submit the fee report or pay the fees as required.

B. Any person who knowingly omits material information from or makes any false statement or representation in a fee report may be subject to criminal penalties under the act.
[20.4.3.603 - Rp. 20.4.3.603 NMAC, 3/5/2020]

20.4.3.604 - 20.4.3.699 [RESERVED]

20.4.3.700 RECORDS AND RECORD KEEPING: RECORDKEEPING REQUIRED: All persons subject to this part are

required to retain the documentation necessary to support their fee calculations, including all records used as a basis for the calculations.
[20.4.3.700 - Rp. 20.4.3.700 NMAC, 3/5/2020]

20.4.3.701 RETENTION RECORDS: The records required by 20.4.3.700 NMAC, together with copies of any fee reports submitted under these regulations, shall be retained for three years from the date of payment of the fees to which the records and reports apply. The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.
[20.4.3.701 - Rp. 20.4.3.701 NMAC, 3/5/2020]

20.4.3.702 - 20.4.3.799 [RESERVED]

20.4.3.800 MISCELLANEOUS PROVISIONS: DEPOSIT IN THE HAZARDOUS WASTE FUND: All fees collected pursuant to this part shall be transmitted to the state treasurer for credit to the hazardous waste fund, and used for the sole purpose of meeting necessary expenses in the administration and operation of the hazardous waste program.
[20.4.3.800 - Rp. 20.4.3.800 NMAC, 3/5/2020]

20.4.3.801 ANNUAL REPORT: Within 90 days of the end of each state fiscal year, the department shall prepare and submit to the environmental improvement board a report describing the funds received pursuant to these regulations and the activities performed with the use of these funds. This report shall be made available to members of the public upon request. The department may charge a fee for copies to cover its costs in printing or duplicating the report.
[20.4.3.801 - Rp. 20.4.3.801 NMAC, 3/5/2020]

20.4.3.802 COMPLIANCE WITH OTHER REGULATIONS:

Compliance with this part does not relieve a person of the obligation to comply with other applicable state and federal regulations.

[20.4.3.802 - Rp. 20.4.3.802 NMAC, 3/5/2020]

20.4.3.803

CONSTRUCTION: This part shall be liberally construed to effectuate the purpose of the act.

[20.4.3.803 - Rp. 20.4.3.803 NMAC, 3/5/2020]

20.4.3.804 SEVERABILITY:

If any provision or application of this part is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[20.4.3.804 - Rp. 20.4.3.804 NMAC, 3/5/2020]

20.4.3.805 - 20.4.3.899

[RESERVED]

HISTORY OF 20.4.3 NMAC:

Pre-NMAC Regulatory Filing

History: This part is derived in part from material previously filed with the State Records Center and Archives under Annual Hazardous Waste Fee Regulations, EIB/AHWFR-1, filed January 19, 1994.

History of Repealed Material:

20.4.3 NMAC - Hazardous Waste Fees, filed 1/19/1994 was repealed and replaced by 20.4.3 NMAC - Hazardous Waste Fees, effective 3/5/2020.

ENVIRONMENT DEPARTMENT

This is an amendment to 20.4.2 NMAC, Sections 2, 7, 201, 203 through 210, 301, 302 and 401, effective 3/5/2020. Section 7 has been renumbered pursuant to style and format recommendation from SRCA, Administrative Law Division.

20.4.2.2 SCOPE: This part applies to all persons who own or

operate a permitted facility at which the treatment, storage or disposal of hazardous waste is occurring or has occurred, all persons seeking or required to obtain a permit for the treatment, storage or disposal of hazardous waste or corrective action, all persons subject to an enforceable document under the New Mexico Hazardous Waste Act, and all persons engaging in or required to engage in closure, post closure care and corrective action under the New Mexico Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978.

[12/31/1998; 20.4.2.2 NMAC - Rn, 20 NMAC 4.2.I.102, 8/18/2006; A, 3/5/2020]

20.4.2.7 DEFINITIONS:

Unless otherwise defined in this part, the words and phrases used in this part have the same meanings as in 20.4.1 NMAC, Hazardous Waste Management regulations. As used in this part:

A. Terms beginning with the letter "A":

(1)

"Accelerated corrective action completion report" or "accelerated corrective measures completion report" means a report on implementation of presumptive remedies at small and relatively simple units where groundwater contamination is not a component of the accelerated cleanup, where the remedy is considered to be the final remedy for the unit, and where the field work will be accomplished within 180 days of commencement;

(2)

"Accelerated corrective action work plan" or "accelerated corrective measures work plan" means a work plan to implement presumptive remedies at small and relatively simple units where groundwater contamination is not a component of the accelerated cleanup, where the remedy is considered to be the final remedy for the unit, and where the field work will be accomplished within 180 days of commencement;

(3) "Act"

means the New Mexico Hazardous

Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978;

(4)

"Administrative authority" means the secretary of the New Mexico environment department, or the secretary's designee, or, in the case of provisions for which the state is not authorized, the United States environmental protection agency (EPA);

(5)

"Administratively complete" means a determination made by the secretary that an application contains all the general information required in 40 CFR 270.13, applicable specific information in sections 40 CFR 270.14 through 270.28 and is complete as defined by the regulations of 20.4.1.900 NMAC incorporating 40 CFR 270.10 (c) and (d);

(6)

"Area of concern" or "AOC" means any area having a known or suspected release of hazardous waste or hazardous constituents that is not from a solid waste management unit and that the secretary has determined may pose a current or potential threat to human health or the environment, pursuant to 20.4.1.500 NMAC (incorporating 40 CFR 270.32 (b) (2)). An area of concern may include buildings, and structures at which releases of hazardous waste or constituents were not remediated, including one-time and accidental events;

B. Terms beginning with the letter "B":

(1)

"Background study report" means a report documenting the results of a study to determine background concentrations of naturally occurring inorganic compounds;

(2)

"Background study work plan" means a plan proposing the methods to evaluate naturally occurring concentrations of inorganic compounds in environmental media;

C. Terms beginning with the letter "C":

(1)

"Certification of completion" means a report documenting completion of corrective action required at a

unit, submitted to the NMED to demonstrate that corrective action requirements for the unit, have been satisfied;

(2) **“Closure certification document”** means all documentation certified by a New Mexico registered professional engineer in a certification of closure that is submitted by an owner or operator;

(3) **“Corrective action”** means any activity related to site assessment, investigation, remediation, characterization or monitoring including reporting and document submittals at SWMUs or AOCs, including activities related to off-site migration;

(4) **“Corrective action complete with controls”** means that NMED has determined that no additional remedial activity is required at a unit, but the unit requires continued performance of operation and maintenance, or monitoring actions for engineering controls, or institutional controls;

(5) **“Corrective action complete without controls”** means that NMED has determined that no additional remedial activity is required at a unit;

(6) **“Corrective measures evaluation”** or **“CME”** or **“corrective measures study report”** or **“CMS report”** means a report or study that evaluates remedial alternatives for the purpose of remedy selection and includes specifications to implement a proposed remedy;

(7) **“Corrective measures evaluation work plan”** or **“CME work plan”** or **“corrective measures study work plan”** or **“CMS work plan”** means a plan to identify, develop and evaluate potential corrective measures (remedy) alternatives;

(8) **“Corrective measures implementation work plan”** or **“CMI work plan”** means plans and specifications to implement the approved remedy at a facility;

(9) **“Corrective measures implementation report”**

or **“CMI report”** means a report signifying completion of the remedy approved by NMED for termination of corrective action;

D. **Terms beginning with the letter “D”:** [RESERVED]

E. **Terms beginning with the letter “E”:**

(1) **“Emergency permit”** means an emergency permit as defined at 40 CFR 270.61;

(2) **“Enforceable document”** means an order, a plan, or other document issued by EPA or the state under an authority that meets the requirements of 40 CFR 271.16 (e);

F. **Terms beginning with the letter “F”:**

(1) **“FFCO”** means federal facility compliance order;

(2) **“Frequent monitoring plan”** means a plan that describes proposed periodic monitoring activities for detection compliance or corrective action monitoring, monitoring of a remediation system, or other corrective measure monitoring for a single site or contiguous sites with shared boundaries;

(3) **“Frequent monitoring report”** or **“Frequent progress report”** means a report that describes periodic monitoring activities and results for detection, compliance or corrective action monitoring, monitoring of a remediation system, or other corrective measure monitoring or progress related to a corrective measure for a single site or contiguous sites with shared boundaries;

G. **Terms beginning with the letter “G”:** [RESERVED]

H. **Terms beginning with the letter “H”:**

(1) **“Hazardous waste management activity”** means the treatment, storage, or disposal of hazardous waste within a hazardous waste management unit at a facility subject to a hazardous waste permit or operated under interim status and subject to permit authorization, or

any closure or post-closure care activity required at a hazardous waste management unit;

(2) **“HWMR”** means the New Mexico Hazardous Waste Management regulations, Title 20, Chapter 4, Part 1 of the New Mexico administrative code;

I. **Terms beginning with the letter “I”:**

(1) **“Interim measure monitoring report”** means a report which describes results of the monitoring activities conducted during implementation of measures to abate, minimize, stabilize, mitigate, or eliminate a release or threat of release, implemented prior to implementation of a final remedy;

(1) **“Interim measures report”** means a report that describes the results of interim corrective measures conducted to abate, minimize, stabilize, mitigate, or eliminate a release or threat of release, implemented prior to implementation of a final remedy;

(2) **“Interim measures work plan”** means a work plan to implement proposed interim corrective measures conducted to abate, minimize, stabilize, mitigate, or eliminate a release or threat of release, implemented prior to implementation of a final remedy;

(3) **“Investigation report”** or **“RFI report”** or **“RCRA facility investigation report”** or **“phase report”** means a report that summarizes the results of investigation of the nature, rate, movement and extent of contamination at a unit or facility;

(4) **“Investigation work plan”** or **“RFI work plan”** or **“RCRA facility investigation work plan”** means a work plan that describes proposed investigation activities to evaluate the nature, rate, movement and extent of contamination at a unit or facility;

J. **Terms beginning with the letter “J”:** [RESERVED]

K. **Terms beginning with the letter “K”:** [RESERVED]

L. **Terms beginning with the letter “L”:**

(1) **“Letter report”** or **“supplemental report”** or **“report addendum”** means a report summarizing the results of the implementation of a work plan of limited scope where the field work was completed in seven working days or less and that did not constitute the initial field investigation at a site.

(2) **“Letter work plan”** or **“supplemental work plan”** or **“work plan addendum”** means a work plan of limited scope that describes proposed corrective action activities where the field work can be completed in seven working days or less and does not constitute the initial field investigation of a site.

M. Terms beginning with the letter “M”:

“Monitoring plan” means a plan that describes proposed periodic monitoring activities for detection, compliance or corrective action [ground-water] monitoring, monitoring of a remediation system, or other corrective measure monitoring;

N. Terms beginning with the letter “N”:

(1) **“Notice of land transfer”** means a notice that initiates NMED evaluation of the results of investigation activities conducted to evaluate the nature, rate, movement and extent of contamination and corrective measures at a property that is anticipated to be transferred to an owner other than the owner regulated by a permit or enforceable document;

(2) **“NMED”** means the New Mexico environment department;

(3) **“Notice of disapproval”** or **“disapproval”** means NMED-issued correspondence requiring revision and resubmittal of a deficient document;

O. Terms beginning with the letter “O”: **“Operation and maintenance plan”** means a plan that describes operation, maintenance and monitoring of a remediation system or other corrective measure or monitoring activity that requires continued monitoring or upkeep during implementation;

P. Terms beginning with the letter “P”:

(1) **“Periodic monitoring report”** means a report that summarizes periodic detection, compliance or corrective action ground water monitoring, monitoring of a remediation system, or other corrective measure monitoring;

(2) **“Person”** means any individual, trust, firm, joint stock company, federal agency, corporation including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state or any interstate body; and shall include each department, agency and instrumentality of the United States;

(3) **“Petition for NFA review”** or **“Petition for corrective action complete review”** means a petition to change the status of a unit from “subject to corrective action” to a different status (e.g., corrective action complete or no further action required) based on the results of corrective action activities or other relevant information

(4) **“Pilot/aquifer test report”** means a report summarizing the results of pilot or aquifer tests conducted to evaluate hydrologic or other conditions for the purpose of site [investigation] characterization or remedy selection;

(5) **“Pilot/aquifer test work plan”** means a work plan for conducting pilot or aquifer tests to evaluate hydrologic or other conditions for the purpose of site [investigation] characterization or remedy selection;

Q. Terms beginning with the letter “Q”: [RESERVED]

R. Terms beginning with the letter “R”:

(1) **“RCRA facility assessment”** or **“RFA”** means the first stage in the corrective action process in which information is compiled on conditions at the site, including releases, potential releases, exposure pathways, solid waste management units, and areas of concern;

(2) **“Rejected document”** means a document

deemed unreviewable due to deficiencies related to permit or other enforceable document requirements, disorganization, or a substantial amount of missing information, inaccuracies, or unrelated or redundant information;

(3) **“Release assessment”** or **“SWMU assessment report”** means an assessment of a solid waste management unit or area of concern performed after the RCRA facility assessment but before the initiation of any field investigation or full site characterization to obtain information for use in focusing subsequent investigations or eliminating certain units or areas from further consideration;

(4) **“Remedial action plan”** or **“RAP”** means a special form of a RCRA permit as defined in 20.4.1.900 NMAC, incorporating 40 CFR 270.80;

(5) **“Remedy completion report”** means a report summarizing the results of completion of the implementation of corrective measures;

(6) **“Revision”** or **“Document revision”** means a document that is revised and resubmitted by a facility in response to comments issued by the department in a notice of disapproval or disapproval as distinct from revisions submitted in response to an approval with modification(s);

(7) **“Risk evaluation/risk assessment report”** means a report summarizing the results of a risk evaluation or assessment for the purpose of evaluating the human health and ecological risks of exposure to contaminants and determining appropriate cleanup levels at a site;

S. Terms beginning with the letter “S”:

(1) **“Secretary”** means the secretary of the New Mexico environment department;

(2) **“Solid waste management unit”** or **“SWMU”** means any discernible unit at which solid wastes have been placed at any time, irrespective of

whether the unit was intended for the management of solid or hazardous waste; such units include any area at a facility at which solid wastes have been routinely and systematically released;

(3)

“Submittal” means all applications, permit modification requests, plans, reports, studies, and other documents listed in tables 2 through 7 in 20.4.2.205 NMAC through 20.4.2.210 NMAC;

(4) **“Status**

report” means a report summarizing the progress of implementation of corrective actions or corrective measures;

T. Terms beginning with the letter “T”: [RESERVED]

U. Terms beginning with the letter “U”: “Unit” means “hazardous waste management unit” as defined in 20.4.1.101 NMAC, incorporating 40 CFR 260.10, or solid waste management unit, or area of concern;

V. Terms beginning with the letter “V”: [RESERVED]

W. Terms beginning with the letter “W”: [RESERVED]

(1) **“Well completion report”** means a report summarizing the activities related to the drilling and installation of wells.

(2) **“Well abandonment report”** or **“well replacement report”** means a report summarizing the activities related to abandonment or replacement of a well;

(3) **“Well abandonment work plan”** or **“well replacement work plan”** means a work plan that describes the proposed activities to abandon or replace a well. [12/31/1998; 20.4.2.7 NMAC - Rn, 20 NMAC 4.2.1.107 & A, 8/18/2006; A, 3/5/2020]

20.4.2.201 TYPES OF FEES:

Every owner or operator engaged in hazardous waste management activities or engaged in corrective action shall pay to NMED fees in the amounts specified in Subsections A through L of 20.4.2.201 NMAC. However, if an owner or operator

has paid a fee for any type of permit application, or for the review of a submittal, prior to the effective date of these regulations, the owner or operator shall not be required to pay the fee provided for by these regulations. An owner or operator who has paid a fee provided for in table 2 or table 4 for permit applications or permit modification requests shall be required to pay the applicable fee again if the application or document is resubmitted by the owner or operator after being denied under Section 74-4-4.2 NMSA 1978 [~~Section 74-4-4.2;~~] and 20.4.1.901 NMAC by NMED. The secretary may in his discretion, based on good cause shown, determine that the fee on resubmission should be reduced or waived.

A. Annual Fees:

Every owner or operator engaged in hazardous waste management activities or engaged in corrective action shall pay to NMED an annual fee in an amount equal to the sum of the annual unit fees set forth in table 1 of 20.4.2.204 NMAC for each unit as identified in the facility permit, part A application, or enforceable document, or any combination thereof as applicable.

B. Submittal review process:

(1) For each submittal, the owner or operator shall pay the associated review fee as listed in the tables in 20.4.2.205 NMAC through 20.4.2.210 NMAC. NMED will conduct the review within the time specified in the tables in 20.4.2.205 NMAC through 20.4.2.210 NMAC. The secretary may grant an extension of time for good cause shown. NMED shall provide notice to the owner or operator of any requested time extension.

(2) NMED will invoice the owner or operator for the applicable review fee:

(a)

Within 60 days of receipt of submittal, in the case of interim status fees, corrective action submittal fees, and other fees assessed under tables 3, 5, 6, and 7 of 20.4.2.206 NMAC and 20.4.2.208 NMAC through 20.4.2.210 NMAC.

(b)

After an application is deemed administratively complete, in the case of application and permit modification fees under table 2 of 20.4.2.205 NMAC and table 4 of 20.4.207 NMAC. For class 2 permit modification requests the invoice shall be issued within 30 days of receipt and the procedures of 40 CFR 270.42, as incorporated by 20.4.1.900 NMAC, shall apply. Unless extended by the secretary, administrative completeness determination shall be made within [180] 270 days of receipt of the submittal. If the application is incomplete, NMED shall provide the owner or operator with written notice that shall list those parts of the application that are missing and describe the specific information needed to process the permit application.

(3) The timeframe for NMED review begins after receipt of payment, except for class 2 permit modification requests, in which case the time frame for NMED’s review begins upon receipt of the request.

(4) NMED will provide the owner or operator written notice of approval, approval with modifications, disapproval, denial, or rejection of the submittal. If the submittal is disapproved, denied or rejected, NMED shall provide the owner or operator with written notice providing the reasons for such action.

(5) The review times specified in the tables in 20.4.2.205 NMAC through 20.4.2.210 NMAC shall be tolled during all periods in which NMED is awaiting a response by the owner or operator to a notice under Paragraph (1) of Subsection B of 20.4.2.201 NMAC and during all time periods in which further action cannot be taken due to public comment and hearing requirements, except for class 2 permit modification requests, in which case the time frame for NMED’s review begins upon receipt of the request.

(6) If NMED fails to meet a notice date pursuant to 20.4.2.205 NMAC through 20.4.2.210

NMAC, including an administrative completeness notice date, the NMED shall, within 10 business days after the deadline, notify the secretary and the owner or operator that the deadline was not met. The written notice shall state the reasons that the deadline was not met and propose a new deadline by which the NMED will act. The owner or operator may submit a written response to the secretary regarding its proposed remedy within 10 business days of its receipt of the notification. The secretary, at his or her discretion, shall establish a new notice date and remedy within 30 days after the secretary receives notice that the deadline was not met.

(7) In the event of a conflict between review time and notice dates in these regulations and in an enforceable document, the time-periods and review process in the enforceable documents shall control.

C. Permit application, remedial action plan, and corrective action section fees: Every owner or operator seeking a permit for the treatment, storage or disposal of hazardous waste or for post closure care shall pay an application review and permit preparation fee set forth in table 2 of 20.4.2.205 NMAC. The fee for application review and permit preparation shall be in an amount equal to the sum of the fees for each unit included in the permit application. If a corrective action section is required, the owner or operator shall also pay the basic fee for corrective action preparation set forth in table 2 of 20.4.2.205 NMAC plus the additional unit fee for each corrective action unit in excess of one which is addressed by the corrective action section. NMED [shall] will perform the review of the application and prepare the draft permit within the time specified in table 2 of 20.4.2.205 NMAC after receipt of the fees.

D. Permit renewals: Every owner or operator seeking to renew a previously issued permit for the treatment, storage or disposal of hazardous waste or for post-closure

care shall pay an application review and permit preparation fee, and if required, a corrective action section fee, in the amounts and in the manner set forth in table 2 in 20.4.2.205 NMAC.

E. Interim status closure plan review fees: Every owner or operator submitting an interim status closure plan for review and approval shall pay a fee set forth in table 3 of 20.4.2.206 NMAC. The fee shall be in an amount equal to the sum of the fees set forth in table 3 of 20.4.2.206 NMAC for each unit included in the closure plan. An application to modify an approved interim status closure plan is subject to the following fees:

(1) Amendments of plans that are identified as equivalent to a class 1 or a class 2 permit modifications are subject to the corresponding fee in table 4 in 20.4.2.207 NMAC;

(2) Amendments of plans identified as equivalent to class 3 permit modifications are subject to the corresponding fee in table 3 in 20.4.2.206 NMAC.

F. Permit modification fees: Every owner or operator who requests a class 1, 2, or 3 modification to a permit, and every owner or operator whose permit is to be modified as a result of a five [(5)] year land disposal review shall pay the applicable class modification fee for each modification as set forth in table 4 of 20.4.2.207 NMAC. If the permit modification request is to add a new unit to the permit the applicable fee in table 2 of 20.4.2.205 NMAC will apply.

G. Closure report review fees: Every owner or operator who submits a closure report for review shall pay a closure report review fee as set forth in table 3 of 20.4.2.206 NMAC.

H. Corrective action submittal review fees: Every owner or operator who submits a corrective action submittal for review shall pay a corrective action submittal review fee as set forth in table 5 of 20.4.2.208 NMAC. An additional unit fee shall

be paid for each additional unit for submittals that address multiple units. Documents that contain attached documents or attached sections of other documents within the submittal will be assessed a separate document review fee for the attached document or document section corresponding to the document type listed in table 5 of 20.4.2.208 NMAC. Draft documents shall be considered initial submittals subject to the corrective action submittal review fees as set forth in table 5 of 20.4.2.208 NMAC upon resubmittal.

I. Land disposal review fee: Every owner or operator subject to a review under 20.4.1.900 NMAC (incorporating 40 CFR 270.50 (d)) shall pay a review fee as set forth in table 6 of 20.4.2.209 NMAC. At the time of invoicing, NMED shall notify the owner or operator in writing of any additional information required to process the review.

J. Audit review fee: Every owner or operator subject to an audit review required under a facility permit or enforceable document shall pay an audit fee for each audit as set forth in table 6 of 20.4.2.209 NMAC.

K. FFCO fee: Every owner or operator subject to a review of amendments, annual reports, and revisions under an FFCO shall pay a fee as set forth in table 6 of 20.4.2.209 NMAC. In the event of a conflict between the review times specified in table 6 and the FFCO, the FFCO shall control.

L. Change during interim status fee: Every owner or operator who requests a change during interim status pursuant to 20.4.1.900 NMAC (incorporating 40 CFR 270.72) shall pay the following fees:

(1) Modifications that are identified as being equivalent to class 1 or class 2 permit modifications are subject to the corresponding fee in table 7 in 20.4.2.210 NMAC;

(2) Modifications identified as equivalent

to class 3 permit modifications are subject to the corresponding fee in table 7 in 20.4.2.210 NMAC.

M. Emergency permit fee: Every facility that requests an emergency permit as required by 40 CFR 270.61 shall pay a fee as set forth in table 6 of 20.4.2.209 NMAC.

N. Adjustment for inflation: Beginning January 1 following the effective date of these fee regulations, the fees listed in 20.4.2.204 through 20.4.2.210 shall be adjusted annually to account for inflation. The amounts shall be adjusted by the percentage of the preceding calendar year's change in the consumer price index for all urban consumers (CPI-U), United States city average for all items, published by the United States department of labor. The amount of change in the fee shall be rounded to the nearest fifty dollars (\$50).

[12/31/1998; 20.4.2.201 NMAC - Rn, 20 NMAC 4.2.II.201 & A, 8/18/2006; A, 3/5/2020]

20.4.2.203 HEARING FEES:

A. An applicant for issuance, renewal, or modification of a permit, or remedy selection shall be required to pay the following hearing fees if the secretary determines that a public hearing shall be held on the application.

(1) Hearing fee: The applicant shall be invoiced a hearing fee of [~~twenty thousand dollars (\$20,000)~~] \$25,000 within [~~thirty~~] 30 days of notification by the secretary that a hearing will be scheduled.

(2) Administrative record preparation fee: The applicant shall pay an administrative record preparation fee equal to the actual cost of copying the administrative record for the public hearing process.

(3) Facility fee: The applicant shall pay a facility fee equal to the actual cost of providing the public facility, including security and other ancillary costs, necessary to conduct the public hearing.

(4) Recording and transcription service fee: The applicant shall pay a recording and transcription service fee equal to the actual cost of providing recording and transcription services for the public hearing and providing three copies of the hearing transcript to NMED.

(5) Translation service fee: If the secretary determines that translation services are required for the public hearing, the applicant shall pay a translation service fee equal to the actual cost of providing translation services necessary to conduct the public hearing.

(6) The applicant shall be invoiced for the total cost of the hearing within 90 days after the secretary's final decision under Subsection A of 20.4.2.203 NMAC. The hearing fee required under Paragraph (1) of Subsection A of 20.4.2.203 NMAC will be credited against the total cost of the hearing, or if the fee is more than the total cost of the hearing it shall be credited for future actions. [12/31/1998; 20.4.2.203 NMAC - Rn, 20 NMAC 4.2.II.201.8 & 203 & A, 8/18/2006; A, 3/5/2020]

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20.4.2.204 TABLE 1 - ANNUAL FEES:

Unit Type	Fee
Disposal	[\$4,000] \$5,500
Treatment	[\$3,000] \$4,000
Storage	[\$2,000] \$3,000
Post Closure	[\$4,000] \$5,500
Corrective Action Management (CAMU)	[\$4,000] \$5,500
Temporary (TU)	[\$3,000] \$4,000
Remedial Action Plan Unit	[\$3,000] \$4,000
Corrective Action Only	
SWMU/AOC per Unit:	\$1000
[for the first 150 units (1 to 150)]	[\$750]
[for the second 350 units (151 to 500)]	[\$350]
[for each unit over 500 (501+)]	[\$200]
Corrective Action Complete with Controls per Unit	[\$250] \$350

[12/31/1998; 20.4.2.204 NMAC - Rn, 20 NMAC 4.2.II.204 & A, 8/18/2006; A, 3/5/2020]

20.4.2.205 TABLE 2 - APPLICATION AND CORRECTIVE ACTION SECTION FEES:

Unit Type	Fee	Fee for Renewal or Modification to add a unit	Review Time
Land Disposal	[\$90,000] \$270,000	[\$60,000] \$180,000	[360] 1080 days
Post Closure	[\$90,000] \$120,000	[\$60,000] \$80,000	[360] 720 days
Land Treatment	[\$90,000] \$120,000	[\$60,000] \$80,000	360 days
Surface Impoundment	[\$75,000] \$100,000	[\$50,000] \$65,000	360 days
Incinerator	[\$75,000] \$100,000	[\$50,000] \$65,000	[360] 720 days
Boiler or Industrial Furnace	[\$75,000] \$100,000	[\$50,000] \$65,000	360 days
Subpart X	[\$90,000] \$120,000	[\$60,000] \$80,000	[360] 720 days
Waste Pile	[\$36,000] \$144,000	[\$24,000] \$96,000	[360] 720 days
Treatment in Tanks	[\$36,000] \$144,000	[\$24,000] \$96,000	[360] 720 days
Treatment in Containers	[\$36,000] \$144,000	[\$24,000] \$96,000	[360] 720 days
Storage in Tanks	[\$36,000] \$144,000	[\$24,000] \$96,000	[360] 720 days
Storage in Containers	[\$36,000] \$144,000	[\$24,000] \$96,000	[360] 720 days
Research Demonstration and Development	[\$24,000] \$32,000	[\$16,000] \$21,500	360 days
Remedial Action Plan	[\$24,000] \$32,000	[\$16,000] \$21,500	360 days
Permit for Corrective Action Only	[\$16,000] \$80,000	[\$10,000] \$65,000	360 days
Corrective Action Section	\$10,000	\$7,000	N/A
Additional SWMU/AOC Unit Fee	[\$1,000] \$1,300 for each additional unit	N/A	N/A

[12/31/1998; 20.4.2.205 NMAC - Rn, 20 NMAC 4.2.II.205 & A, 8/18/2006; A, 3/5/2020]

20.4.2.206 TABLE 3 - INTERIM STATUS CLOSURE PLAN AND INTERIM STATUS AND PERMITTED UNIT CLOSURE REPORT REVIEW FEES:

Unit Type	Fee	Amendment Fee (equivalent to Class 3 permit modification)	Review Time
Land Disposal or Land Treatment	\$20,000	\$10,000	[360] 540 days
Surface Impoundment	[\$10,000] \$25,000	[\$5,000] \$10,000	[360] 540 days
Incinerator	\$8,000	\$4,000	270 days
Boiler or Industrial Furnace	\$8,000	\$4,000	270 days
Subpart X	[\$10,000] \$30,000	[\$5,000] \$15,000	[360] 540 days

Waste Pile	\$8,000	\$4,000	270 days
Storage	[\$6,000] <u>\$12,000</u>	[\$3,000] <u>\$6,000</u>	[180] <u>270 days</u>
Treatment	[\$8,000] <u>\$10,000</u>	[\$4,000] <u>\$5,000</u>	[270] <u>360 days</u>
Closure Report	[\$6,000] <u>\$13,000</u>	NA	180 days

[12/31/1998; 20.4.2.206 NMAC - Rn, 20 NMAC 4.2.II.206 & A, 8/18/2006; A, 3/5/2020]

20.4.2.207 TABLE 4 - PERMIT MODIFICATION FEES:

Modification	Fee	Review Time
Class 1 (without prior approval)	[\$500] <u>\$1,800</u>	N/A
Class 1 (with prior approval)	[\$2,500] <u>\$6,500</u>	[120] <u>150 days</u>
Class 2	[\$6,000] <u>\$30,000</u>	Refer to 20.4.1.900 NMAC (incorporating 40 CFR 270.42 (b))
Class 3	[\$40,000] <u>\$100,000</u>	[360] <u>540 days</u>
Class 3 - Petition for Corrective Action Complete Review/Petition for No Further Action Review	[\$7,000] <u>\$30,000</u> plus [\$250] <u>\$500</u> for each additional unit up to 20 units and plus \$750 for every unit over 20 units	[270] <u>360 days</u> (plus 30 days for every [10] <u>3</u> units over 20)

[12/31/1998; 20.4.2.207 NMAC - Rn, 20 NMAC 4.2.II.207 & A, 8/18/2006; A, 3/5/2020]

20.4.2.208 TABLE 5 - CORRECTIVE ACTION SUBMITTAL REVIEW FEES:

Submittal Type	Basic Review Fee	Additional Unit Fee	Review Time
Accelerated Corrective Action Completion Report/Accelerated Corrective Measures Completion Report	[\$5,000] <u>\$11,000</u>	\$1,000	120 days
Accelerated Corrective Action Work Plan/Accelerated Corrective Measures Work Plan	[\$5,000] <u>\$9,000</u>	\$1,000	120 days
<u>Background Study Report</u>	<u>\$5,000</u>	<u>\$1,000</u>	<u>210 days</u>
<u>Background Study Work Plan</u>	<u>\$4,000</u>	<u>\$1,000</u>	<u>210 days</u>
Certification of Completion per unit	[\$500] <u>\$3,000</u>	NA	90 days
Corrective Measures Implementation Report	[\$12,000] <u>\$10,000</u>	\$1,000	360 days
Corrective Measures Implementation Work Plan	[\$6,500] <u>\$18,000</u>	\$1,000	270 days
Corrective Measures Study Report/ Corrective Measures Evaluation	[\$15,000] <u>\$30,000</u>	\$1,000	480 days
Corrective Measures Study Report/ Corrective Measures Evaluation with Risk Assessment	[\$20,000] <u>\$35,000</u>	\$1,000	480 days
Corrective Measures Study Workplan/ Corrective Measures Evaluation Workplan	[\$7,500] <u>\$8,500</u>	\$1,000	360 days
<u>Frequent Monitoring Plan</u>	<u>\$3,500</u>	<u>\$1,000</u>	<u>120 days</u>
<u>Frequent Monitoring Report/Frequent Progress Report</u>	<u>\$3,000</u>	<u>\$1,000</u>	<u>N/A</u>
[Interim Measures Monitoring Report]	[\$500]	[\$1,000]	[N/A]
Interim Measures Report	[\$3,500] <u>\$10,000</u>	\$1,000	120 days
Interim Measures Work Plan	[\$5,000] <u>\$17,000</u>	\$1,000	90 days
Investigation Report (RFI Report)/ Phase Report	[\$7,500] <u>\$18,000</u>	\$1,000	270 days

Investigation Report with Risk Assessment	[\$10,000] <u>\$20,000</u>	\$1,000	360 days
Investigation Work Plan (RFI Work Plan)	[\$10,000] <u>\$15,000</u>	\$1,000	270 days
<u>Letter Report/Supplemental Report/Report Addendum</u>	<u>\$6,000</u>	<u>\$1,000</u>	<u>180 days</u>
<u>Letter Work Plan/Supplemental Work Plan/Work Plan Addendum</u>	<u>\$5,000</u>	<u>\$1,000</u>	<u>180 days</u>
Monitoring Plan	[\$2,500] <u>\$10,000</u>	\$1,000	120 days
Notice of Land Transfer	[\$5,000] <u>\$2,000</u>	\$1,000	120 days
Operation and Maintenance Plan	[\$2,500] <u>\$9,000</u>	\$1,000	150 days
Periodic Monitoring Report	[\$2,000] <u>\$5,000</u>	\$1,000	N/A
Pilot/Aquifer Test Report	[\$1,500] <u>\$10,000</u>	\$1,000	[120] <u>180 days</u>
Pilot/Aquifer Test Work Plan	[\$1,000] <u>\$7,000</u>	\$1,000	[90] <u>150 days</u>
RCRA Facility Assessment (RFA) Report	[\$2,500] <u>\$14,500</u>	\$1,000	180 days
Release Assessment/SWMU Assessment Report	[\$3,500] <u>\$8,500</u>	\$1,000	[90] <u>180 days</u>
Remedy Completion Report	[\$4,500] <u>\$8,500</u>	\$1,000	180 days
<u>Third Revision/Third Document Revision</u>	<u>50% of corresponding Review Fee</u>	<u>N/A</u>	<u>N/A</u>
Risk Evaluation/Risk Assessment Report	[\$6,000] <u>\$14,000</u>	\$1,000	180 days
Status Report	[\$2,000] <u>\$8,000</u>	\$1,000	N/A
Well Completion Report <u>per well</u>	[\$500] <u>\$3,000</u>	NA	90 days
<u>Well Abandonment Report/Well Replacement Report per well</u>	<u>\$2,000</u>	<u>N/A</u>	<u>90 days</u>
<u>Well Abandonment Work Plan/Well Replacement Work Plan per well</u>	<u>\$2,000</u>	<u>N/A</u>	<u>90 days</u>

[20.4.2.208 NMAC - N, 8/18/2006; A, 3/5/2020]

20.4.2.209 TABLE 6 - LAND DISPOSAL, AUDIT REVIEW AND OTHER FEES:

Activity	Fee	Review Time
Land Disposal Permit Review	\$10,000	360 days
Audit Review	[\$20,000] <u>\$30,000</u>	[45] <u>60 days</u>
FFCO Administration	[\$500] <u>\$2,000</u>	90 days
<u>Emergency Permit</u>	<u>\$1,000</u>	<u>30 days</u>

[20.4.2.209 NMAC - N, 8/18/2006; A, 3/5/2020]

20.4.2.210 TABLE 7 - CHANGE DURING INTERIM STATUS FEES:

Submittal Type	Fee	Review Time
Change without prior approval	[\$500] <u>\$1,800</u>	[30] <u>45 days</u>
Change with prior approval (equivalent to Class 1 permit modification)	[\$2,500] <u>\$6,500</u>	[120] <u>150 days</u>
Change with prior approval (equivalent to Class 2 permit modification)	[\$6,000] <u>\$30,000</u>	120 days
Change with prior approval (equivalent to Class 3 permit modification)	[\$10,000] <u>\$100,000</u>	[360] <u>540 days</u>

[20.4.2.210 NMAC - N, 8/18/2006; A, 3/5/2020]

20.4.2.301 MANNER OF PAYMENT AND DUE DATES:**A. Annual Fee**

Invoices: NMED shall invoice every owner or operator for the annual fee by October 1 of every year.

B. Review Fees: Any submittals listed in tables 2 through 7 of 20.4.2.205 NMAC through 20.4.2.210 NMAC submitted by an owner or operator for review shall be invoiced for the corresponding fee by NMED.

C. Due Date:

Payment of any fee shall be due within [sixty] 60 days of receipt of the invoice unless the owner or operator submits to NMED a written request seven [(7)] days prior to the end of the [sixty] 60 day period and receives written approval to extend the time for payment before the date payment is due. Failure to submit payment within the [sixty] 60 days, or approved extension, may result in the document being denied, and further enforcement action.

D. All fees shall be paid to NMED by certified check or money order payable to the New Mexico [~~hazardous waste fund~~] environment department or the hazardous waste bureau, by electronic funds transfer (with prior notice to NMED), or by other methods deemed acceptable by NMED. Cash payments are not an acceptable method of payment. All payments must include the invoice number and be addressed to the New Mexico environment department - hazardous waste bureau.

[12/31/1998; 20.4.2.301 NMAC - Rn, 20 NMAC 4.2.III.301 & A, 8/18/2006; A, 3/5/2020]

20.4.2.302 APPEAL OF FEE ASSESSMENT:**A. Mandatory****Settlement Conference:**

Any owner or operator seeking to appeal an invoice for fees under this part must first notify the NMED in writing of the intent to appeal the invoice within [thirty] 30 calendar days of receipt of the invoice. The notice shall set forth the specific matters in dispute, the basis for the

dispute, and any matters considered necessary for NMED's consideration. The parties shall have [thirty] 30 calendar days from NMED's receipt of notification to meet or confer with NMED to attempt to resolve the matters in the dispute. The secretary may extend deadlines under this section upon a determination that good cause exists. If an agreement is reached resolving the dispute, NMED may issue a revised invoice and the owner and operator shall comply with the terms of such agreement and revised invoice. If an agreement is not reached, NMED shall issue a notification to all parties that an agreement has not been reached. Failure to notify NMED of an appeal in the required timeframe shall prohibit the owner and operator from appeal of the invoice.

B. Administrative appeal:

(1) An invoice for fees may be appealed by filing a written request for hearing with the hearing clerk designated by the secretary of environment within [thirty] 30 days of the date of the notification that an agreement has not been reached. The written request shall be accompanied by a copy of the invoice being contested and shall set forth the grounds upon which the appellant disagrees with the assessment.

(2) Except as otherwise provided, the appeal shall be governed by 20.1.5 NMAC, Adjudicatory Procedures - Environment Department. The hearing officer shall schedule the hearing for no later than [ninety] 90 days after service of the notice of docketing.

(3) NMED shall not seek collection of an appealed fee or take enforcement action on an [appealed] appeal of the fee assessment until the secretary has issued a decision on the appeal. Late charges on the amount assessed shall continue to accrue and shall be payable if the assessment is upheld or upheld with modification. If the assessment is modified on appeal, late charges shall be calculated based on the assessment as modified.

(4) If an appeal is not timely filed pursuant to this subsection, the invoice shall constitute a final action of the secretary of environment. [12/31/1998; 20.4.2.302 NMAC - Rn, 20 NMAC 4.2.III.302 & A, 8/18/2006; A, 3/5/2020]

20.4.2.401 LATE CHARGES:

If any fee required by this part is not paid in full on the date due, which shall be either [sixty] 60 days after receipt of the invoice or the end of an approved extension of the time for payment, the person owing the fee shall pay a billing charge of \$100, plus late charges in the amount of an additional one percent [(1%)] of all fees owed for every month or part of a month in which the fees remain unpaid beyond the due date. Billing and late charges shall be credited to the Hazardous Waste Fund and are independent of any penalties assessed under the act.

[12/31/1998; 20.4.2.401 NMAC - Rn, 20 NMAC 4.2.IV.401, 8/18/2006; A, 3/5/2020]

HEALTH, DEPARTMENT OF

This amendment creates a new section at 7.34.4.30 NMAC, effective 2/25/2020.

7.34.4.30 RECIPROCITY: Beginning July 1, 2020, an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo may lawfully purchase and possess cannabis, provided that the quantity of cannabis does not exceed the reciprocal limit identified in this section.

A. Reciprocal participation:

(1) **General requirements:** A reciprocal participant:

(a) may participate in the medical

cannabis program in accordance with department rules;

(b)

shall not be required to comply with the registry identification card application and renewal requirements established pursuant to this section and department rules;

(c)

shall at all times possess proof of authorization to participate in the medical cannabis program of another state, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo and shall present proof of that authorization when purchasing cannabis from a licensee; and

(d)

shall register with a licensed non-profit producer for the purpose of tracking sales to the reciprocal participant in an electronic system specified by the department.

(2) Minors:

In the event that a reciprocal participant is a minor, a licensed non-profit producer shall not sell or transfer cannabis to the minor, but may sell or transfer cannabis to a parent or legal guardian of the minor who holds proof of authorization to purchase cannabis on the minor's behalf that was issued by another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo.

B. Reciprocal

limit: A reciprocal participant may collectively possess within any three-month period a quantity of usable cannabis no greater than 230 total units. For purposes of department rules, this quantity is deemed the reciprocal limit. (For ease of reference: 230 units is equivalent to 230 grams, or approximately eight ounces, of dried usable cannabis plant material).

C. Registration;

verification; tracking: A licensed non-profit producer shall require the submittal of a reciprocal participant's contact information for registration purposes, to include the individual's

full name, date of birth, mailing address, and the enrollment number specified in the individual's medical cannabis program enrollment card (if applicable); and shall record that information in an electronic tracking system specified by the department. The licensed non-profit producer shall confirm the accuracy of a reciprocal participant's contact information prior to each transaction. A licensed non-profit producer that registers a reciprocal participant or that sells or transfers cannabis or a cannabis product to a reciprocal participant shall first verify the reciprocal participant's identity by viewing the individual's proof of authorization from the other state, territory or tribe, and also viewing the reciprocal participant's government-issued photo identification card. A licensed non-profit producer that sells or otherwise transfers cannabis or a cannabis product to a reciprocal participant shall track the sale or transfer using an electronic system specified for that purpose by the department.

D. Refusal of service:

A non-profit producer that reasonably suspects that either a person's proof of authorization or identification card is falsified may refuse to dispense cannabis to cannabis to that individual.

E. Informational

materials: At the time of a sale or transfer of cannabis to a reciprocal participant, a non-profit producer shall provide informational materials to the reciprocal participant that include, at a minimum, a notice of the time and quantity limits for reciprocity under this section, and a notice concerning state and federal prohibitions against the transport of cannabis across state and international boundaries.
[7.34.4.30 NMAC - N, 02/25/2020]

HUMAN SERVICES

DEPARTMENT

INCOME SUPPORT DIVISION

This is an amendment to 8.100.100 NMAC, Section 17 and 18-23 effective 3/1/2020.

**8.100.100.17 BENEFIT
ISSUANCE SYSTEM:**

A. Electronic benefit transfer (EBT): SNAP and cash benefits are issued through a direct deposit into an EBT account. The benefits are maintained in a central database and accessed by the household through an individual debit card issued to the household.

B. Initial issuance of EBT card: The EBT card is issued to the designated payee of the eligible household or to the designated authorized representative.

(1) The EBT card is mailed to the head of household or the designated authorized representative on the first working day after the application is registered. The applicant or recipient shall receive training on the use of the EBT card prior to activation of the EBT card.

(2) The EBT card shall be issued to the payee for an eligible household through the most effective means identified by HSD which may include issuance at the county office or by mail.

(3) The applicant or recipient must verify his or her identity.

(4) The payee for the eligible household may select the four-digit personal identification number that will allow access to the household's benefits.

C. Replacement of the EBT card: The recipient or designated authorized representative shall be instructed on the procedure for replacement of an EBT card that has been lost, stolen or destroyed.

(1) The recipient or designated authorized representative may report a lost, stolen or destroyed EBT card through the HSD EBT contractor customer service help desk, HSD EBT customer

service help desk or any ISD field office.

(2) The lost, stolen, or destroyed EBT card shall be deactivated prior to a replacement card being issued to the household.

(3) ISD shall make replacement EBT cards available for client to pick up or place the card in the mail within two business days following notice by the household to ISD that the card has been lost, stolen or damaged.

(4) ISD may impose a replacement fee by reducing the monthly allotment of the household receiving the replacement card, however, the fee may not exceed the cost to replace the card.

D. Excessive replacement cards: The HSD office of inspector general (HSD OIG) will generate a warning letter to SNAP recipients that have replaced their EBT card five or more times in a 12 month period. The letter is a notice of warning and will explain that as a result of the recipient's high number of replacement EBT cards, their EBT SNAP transactions will be closely monitored. The letter will become part of the recipient's case record. The letter will:

(1) be written in clear and simple language;

(2) meet the language requirements described at 7 CFR 272.4(b);

(3) specify the number of cards requested and over what period of time;

(4) explain that the next request, or the current request if the threshold has been exceeded, requires contact with ISD before another card is issued;

(5) provide all applicable information on how contact is to be made in order for the client to comply, such as whom to contact, a telephone number and address; and

(6) include a statement that explains what is considered a misuse or fraudulent use of benefits and the possibility of referral to the fraud investigation unit for suspicious activity.

E. Inactive EBT

accounts: EBT accounts which have not been accessed by the recipient in the last 90 days are considered a stale account. HSD may store stale benefits offline after notification to the household of this action.

(1) The notification to the household shall include the reason for the proposed action and the necessary steps required by the recipient to reactive the account.

(2) The recipient may request reinstatement of their EBT account anytime within 364 days after the date of the last benefit account activity.

F. EBT benefit

expungement: When benefits have had no activity:

(1) **SNAP:**
HSD may expunge benefits that have not been accessed by the household after a period of 365 days. HSD must attempt to notify the household prior to expungement. Expunged benefits are no longer available to the household. Requests for reactivation must be received prior to expungement and a determination shall be made by the director or designee of the income support division.

(2) **Cash:**
Cash assistance benefits which have had no activity for an excess of 180 days will be expunged. All benefits older than 180 days in the account will no longer be accessible to the household. The household loses all rights to all expunged benefits. The department shall attempt to notify the household no less than 45 days prior to the expungement of the cash assistance benefits.

[8.100.100.17 NMAC - N, 3/1/2020]

[8.100.100.17] 8.100.100.18 TRAINING:

A. General statement:
Effective staff development and training is an integral part of successful ISD program operations. ISD supports employee attendance at job-relevant training opportunities. Attendance at training sessions needs supervisory approval. Priorities for such approval are:

(1) training to improve skills needed in an employee's current position;
(2) training to add new skills useful in an employee's current position;
(3) training for an employee's career development.

B. Budget: ISD managers are encouraged to develop training plans and budgets for their administrative units. Such plans must be coordinated with the ISD training staff. ISD training staff members are available for consultation in developing these plans and budgets. [7/1/1997; 8.100.100.17 NMAC - Rn, 8 NMAC 3.ISD.060, 04/13/2001; Rn, 3/1/2020]

[8.100.100.18] 8.100.100.19 ADMINISTRATIVE TRAINING:

A. Personnel:
New employees: ISD encourages prompt attendance at new-employee orientation sessions and requires completion of these sessions as specified in the division's training plan(s).

B. Professional development: ISD supports attendance at training sessions for an employee's professional development needs and goals. Such attendance requires supervisory review and approval and must not interfere with timely performance of an employee's ongoing duties.

[7/1/1997; 8.100.100.18 NMAC - Rn, 8 NMAC 3.ISD.062, 04/13/2001; Rn, 3/1/2020]

[8.100.100.19] 8.100.100.20 PROGRAM TRAINING:

A. New employee training: The division maintains a new-employee training curriculum for all major programs administered by ISD. This program is accessible to all division and HSD employees who need training in food stamps, financial assistance [and/or] or medical assistance programs.

B. Training standards: ISD training programs conform to the following standards:

(1) Needs assessments: Training programs are developed based upon generally

accepted methods of training needs assessment, for example; formal analysis, training needs survey, performance statistics.

(2) Objectives and skills: Training developed and presented by ISD staff must be objective ~~and/or~~ or competency based.

(3) Agenda and prior notification: Training provided to ISD staff members by other HSD employees must, at a minimum:

(a) be planned in advance with enough notice to adjust work schedules;

(b) have a written agenda;

(c) be coordinated with the ISD training staff.

(4) Training event report: All individuals who provide individual training sessions to ISD staff must complete an ISD training event report and submit the form to the ISD training staff.
[7/1/1997; 8.100.100.19 NMAC - Rn, 8 NMAC 3.ISD.065, 04/13/2001; Rn, 3/1/2020]

~~[8.100.100.20]~~ 8.100.100.21

PROVIDER TRAINING: Provision of training sessions - The ISD training staff provides program training to providers on request as scheduling permits.

[7/1/1997, 04/01/98; 8.100.100.20 NMAC - Rn, 8 NMAC 3.ISD.066, 04/13/2001; Rn, 3/1/2020]

~~[8.100.100.21]~~ 8.100.100.22

SECURITY:

A. Physical property:

It is the responsibility of each ISD county director or bureau chief to develop and maintain plans for insuring the security office equipment, furniture and facilities according to department and other state and federal government guidelines.

B. Personnel security:

ISD staff are provided training in tools and techniques to reduce the incidence ~~and/or~~ or likelihood of violence or threats directed towards the ISD employee.

[7/1/1997; 8.100.100.21 NMAC - Rn, 8 NMAC 3.ISD.070, 04/13/2001; Rn, 3/1/2020]

~~[8.100.100.22]~~ 8.100.100.23

ITINERANT SERVICES:

A. ISD provides itinerant service to clients residing at a distance from local ISD offices. Income support specialists visit specified locations on a regularly scheduled basis and conduct required interviews.

B. Itinerant schedules are available through local ISD offices. An itinerant location may not be eliminated by ISD without public notice and adequate justification.

[7/1/1997; 8.100.100.22 NMAC - Rn, 8 NMAC 3.ISD.100, 04/13/2001; Rn, 3/1/2020]

**HUMAN SERVICES
DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.100.640 NMAC, Section 17 and 18 effective 3/1/2020.

8.100.640.17 EBT Adjustments:

EBT adjustment pertains to any EBT transaction resulting in a change to a client's cash or snap benefits. If a system error causes a customer to receive funds to which they were not entitled or causes their account to not be charged for an EBT transaction, an adjustment may be completed to reclaim the funds or settle the transaction.

A. Client-initiated

adjustments: The department must act on all requests for adjustments made by client households within 90 calendar days of the error transaction.

(1) For SNAP the department has 10 business days from the date the household notifies it of the error to investigate and reach a decision on an adjustment and move funds into the client account.

(2) For cash the department has 20 business days from the date the household notifies it

of the error to investigate and reach a decision on an adjustment and move funds into the client account.

(3) These timeframes also apply if the department or entity other than the household discovers a system error that requires a credit adjustment to the household. Business days are defined as calendar days other than Saturdays, Sundays, and federal holidays.

B. Retailer-initiated adjustments: The department must act upon all adjustments to debit a household's account no later than 10 business days from the date the error occurred, by placing a hold on the adjustment balance in the household's account. If there are insufficient benefits to cover the entire adjustment, a hold shall be placed on any remaining balance that exists, with the difference being subject to availability only in the next future month. The household shall be given adequate notice. The notice must be sent at the time the initial hold is attempted on the household's current month's remaining balance, clearly state the full adjustment amount, and advise the household that any amount still owed is subject to collection from the household's next future month's benefits.

(1) The household shall have 90 days from the date of the notice to request a fair hearing.

(2) Should the household dispute the adjustment and request a hearing within 10 days of the notice, a provisional credit must be made to the household's account by releasing the hold on the adjustment balance within 48 hours of the request by the household, pending resolution of the fair hearing. If no request for a hearing is made within 10 days of the notice, the hold is released on the adjustment balance, and this amount is credited to the retailer's account. If there are insufficient funds available in the current month to cover the full adjustment amount, the hold may be maintained and settled at one time after the next month's benefits become available.

[8.100.640.17 NMAC - N, 3/1/2020]

[8.100.640.17] 8.100.640.18**DORMANT BENEFIT**

ACCOUNTS: Stale benefit accounts are those SNAP and cash assistance accounts that have not been accessed for ~~ninety (90)~~ 90 days from the most recent date of withdrawal.

A. Offline accounts:

If EBT accounts are not accessed for 90 days, the department may store such benefits in an offline account.

(1)

Notification: The department shall notify the eligibility determination group of this action before storing benefits in an offline account and how to reactivate the account.

(2)

Reinstatement: An adult eligibility determination group member or authorized representative may contact the department or the EBT customer service help desk and request reinstatement of their EBT account.

(a)

SNAP: SNAP benefits may be restored within 364 days of the initial date of benefit activity. Initial date of benefit activity is the first deposit made to the account upon initial approval of the eligibility determination group's benefits.

(b)

Cash assistance: Cash assistance benefits may be restored within 364 days of the initial date of benefit activity. Initial date of benefit activity is the first deposit made to the account upon initial approval of the eligibility determination group's benefits.

B. Expungements:

SNAP and cash assistance benefits that have not been accessed in excess of the threshold for each program will be expunged. All benefits will no longer be available to the eligibility determination group. The eligibility determination group loses all rights to expunged benefits.

(1) Stale

benefit threshold:

(a)

SNAP: SNAP benefits will be expunged after no activity within 364 days of the initial date of benefit activity.

(b)

Cash assistance: Cash assistance benefits which have had no activity within 180 days of the initial date of benefit activity will be expunged.

(2)

Notification: The contractor shall notify the department no less than five days prior to expungement of the SNAP benefits. The department shall identify any SNAP claims against the eligibility determination group and shall apply upon expungement.

(a)

SNAP: The department shall notify the eligibility determination group no less than 30 days prior to the expungement of the SNAP benefits. Request from the participant to reinstate any benefit must be received prior to date of expungement.

(b)

Cash assistance: The department shall attempt to notify the eligibility determination group no less than 45 days prior to the expungement of the cash assistance benefits. A request from the participant to reinstate any benefit must be received prior to the date of expungement.

(3) Payments

of claims against the eligibility determination group. The contractor shall notify the department no less than five days prior to expungement of the SNAP or cash assistance benefits and any claims against the eligibility determination group shall be removed from the account and applied to the claims upon expungement.

[8.100.640.17 NMAC - N, 09/30/2013; A and Rn, 3/1/2020]

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.500 NMAC, Section 8 effective 3/1/2020.

8.102.500.8 GENERAL REQUIREMENTS:

A. Need

determination process: Eligibility for NMW, state funded qualified aliens and EWP cash assistance based

on need requires a finding that:

(1) the benefit

group's countable gross monthly income does not exceed the gross income limit for the size of the benefit group;

(2) the benefit

group's countable net income after all allowable deductions does not equal or exceed the standard of need for the size of the benefit group;

(3) the

countable resources owned by and available to the benefit group do not exceed the \$1,500 liquid and \$2,000 non-liquid resource limits;

(4) the benefit

group is eligible for a cash assistance payment after subtracting from the standard of need the benefit group's countable income, and any payment sanctions or recoupments.

B. Gross income

limits: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income

eligibility limits are revised and adjusted each year in October.

(2) The gross

income limit for the size of the benefit group is as follows:

(a)

one person [860] \$885

(b)

two persons [1,166] \$1,199

(c)

three persons [1,472] \$1,511

(d)

four persons [1,778] \$1,824

(e)

five persons [2,084] \$2,138

(f)

six persons [2,390] \$2,451

(g)

seven persons [2,696] \$2,763

(h)

eight persons [3,002] \$3,077

(i)

add [306] \$314 for each additional person.

C. Eligibility for

support services only: Subject to the availability of state and federal funds, a benefit group that is not receiving cash assistance but has countable

gross income that is less than one hundred percent of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services. The gross income guidelines for the size of the benefit group are as follows:

(1)	one person	[\$1,012] <u>\$1,041</u>
(2)	two persons	[\$1,372] <u>\$1,410</u>
(3)	three persons	[\$1,732] <u>\$1,778</u>
(4)	four persons	[\$2,092] <u>\$2,146</u>
(5)	five persons	[\$2,452] <u>\$2,515</u>
(6)	six persons	[\$2,812] <u>\$2,883</u>
(7)	seven persons	[\$3,172] <u>\$3,251</u>
(8)	eight persons	[\$3,532] <u>\$3,620</u>
(9)	add	[\$360] <u>\$369</u> for each additional person.

D. Standard of need:

(1) The standard of need is based on the number of participants included in the benefit group and allows for a financial standard and basic needs.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and the participant's share of benefit group supplies.

(3) The financial standard includes approximately \$91 per month for each participant in the benefit group.

(4) The standard of need for the NMW, state funded qualified aliens, and EWP cash assistance benefit group is:

(a)	one person	\$266
(b)	two persons	\$357
(c)	three persons	\$447
(d)	four persons	\$539
(e)	five persons	\$630
(f)	six persons	\$721
(g)	seven persons	\$812

(h) eight persons \$922

(i) add \$91 for each additional person.

E. Special needs:

(1) **Special clothing allowance:** A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(a) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.

(b) The clothing allowance shall be allowed for each school-age child who is included in the NMW, TBP, state funded qualified aliens, or EWP cash assistance benefit group, subject to the availability of state or federal funds.

(c) The clothing allowance is not allowed in determining eligibility for NMW, TBP, state funded qualified aliens, EWP cash assistance, or wage subsidy.

(2) **Layette:** A one-time layette allowance of \$25 is allowed upon the birth of a child who is included in the benefit group. The allowance shall be authorized by no later than the end of the month following the month in which the child is born.

(3) **Special circumstance:** Dependent upon the availability of funds and in accordance with the federal act, the HSD secretary, may establish a separate, non-recurring, cash assistance program that may waive certain New Mexico Works Act requirements due to a specific situation. This cash assistance program shall not exceed a four month time period, and is not intended to meet recurrent or ongoing needs.

F. Non-inclusion of legal guardian in benefit group:

Based on the availability of state and federal funds, the department may limit the eligibility of a benefit group due to the fact that a legal guardian is not included in the benefit group. [8.102.500.8 NMAC - Rp 8.102.500.8 NMAC, 07/01/2001; A, 10/01/2001; A, 10/01/2002; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 11/15/2007; A, 01/01/2008; A/E, 10/01/2008; A, 08/01/2009; A, 08/14/2009; A/E, 10/01/2009; A, 10/30/2009; A, 01/01/2011; A, 01/01/2011; A, 07/29/2011; A/E, 10/01/2011; A/E, 10/01/2012; A/E, 10/01/2013; A/E, 10/01/2014; A, 10/01/2015; A, 10/01/2016; A/E, 10/01/2017; A, 2/01/2018; A/E, 10/01/2018; A, 3/1/2019; A/E, 10/01/2019; A, 3/1/2020]

**HUMAN SERVICES
DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.102.610 NMAC, Section 9 effective 3/1/2020.

8.102.610.9 [State benefits-accounts:] ~~State benefit accounts are those cash assistance benefits-accounts that have not been accessed for 90 days from the date of most recent withdrawal.~~

A. Offline accounts: ~~EBT accounts which have not been accessed by the recipient in the last 90 days are considered a state account. HSD may store state benefits offline after notification to the household of this action.~~

(1) Notification: ~~The department shall notify the household of this action before storing benefits in an offline account and provide necessary steps to reactivate the account.~~

(2) Reinstatement: ~~The participant may contact the HSDEBT help desk, the contractor customer service help desk, or the caseworker and request reinstatement of their EBT account anytime within 180 days from the initial date of benefit activity. Initial date of benefit~~

activity is the first deposit made to the account upon initial approval of the household's benefits. Requests from the participant to reinstate any benefit must be received prior to the date of expungement

~~B. Expungements:~~

Cash assistance benefits which have had no activity for an excess of 180 days will be expunged. All benefits older than 180 days in the account will no longer be accessible to the household. The household loses all rights to all expunged benefits.

~~(1)~~ The department shall attempt to notify the household no less than 45 days prior to the expungement of the cash assistance benefits.

~~(2) Payments of claims against the household.~~ The contractor shall notify the department no less than five days prior to expungement of the cash assistance benefits and any cash assistance claims against the household shall be removed from the account and applied to the claims upon expungement.] [RESERVED]
[8.102.610.9 NMAC - Rp
8.102.610.9 NMAC, 07/01/2001;
8.102.610.9 NMAC - N, 02/28/2007;
Repealed 3/1/2020]

**HUMAN SERVICES
DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.106.500 NMAC, Section 8 effective 3/1/2020.

8.106.500.8 GA - GENERAL REQUIREMENTS:

A. Limited state funds may result in a suspension or reduction in general assistance benefits without eligibility and need considered.

B. Need determination process: Eligibility for the GA program based on need requires a finding that the:
(1) countable resources owned by and available to the benefit group do not exceed either the \$1,500 liquid or \$2,000 non-

liquid resource limit;

(2) benefit group's countable gross earned and unearned income does not equal or exceed eighty-five percent of the federal poverty guideline for the size of the benefit group; and

(3) benefit group's countable net income does not equal or exceed the standard of need for the size of the benefit group.

C. GA payment

determination: The benefit group's cash assistance payment is determined after subtracting from the standard of need the benefit group's countable income and any payment sanctions or recoupments.

D. Gross income test:

The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

	(a)
one person	[\$860] <u>\$885</u>
	(b)
two persons	[\$1,166] <u>\$1,199</u>
	(c)
three persons	[\$1,472] <u>\$1,511</u>
	(d)
four persons	[\$1,778] <u>\$1,824</u>
	(e)
five persons	[\$2,084] <u>\$2,138</u>
	(f)
six persons	[\$2,390] <u>\$2,451</u>
	(g)
seven persons	[\$2,696] <u>\$2,763</u>
	(h)
eight persons	[\$3,002] <u>\$3,077</u>
	(i)
add	[\$306] <u>\$314</u> for each additional person.

E. Standard of need:

(1) As published monthly by the department, the standard of need is an amount provided to each GA cash assistance benefit group on a monthly basis and is based on availability of state funds, the number of individuals included in the benefit group, number of cases, number of applications processed

and approved, application approval rate, number of case closures, IAR caseload number and expenditures, and number of pending applications.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and an individual benefit group member's share of supplies.

(3) Notice:

The department shall issue prior public notice identifying any change(s) to the standard of need amounts for the next quarter, as discussed at 8.106.630.11 NMAC.

F. Net income test:

The total countable earned and unearned income of the benefit group after all allowable deductions cannot equal or exceed the standard of need for the size of the GA benefit group. After the countable net income is determined it is rounded down prior to the comparison of the household's income to the standard of need to determine the households monthly benefit amount.

G. Special clothing allowance for school-age dependent children: A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(1) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age [if the child is six years of age or older and less than age 19 by the end of August.] as defined by PED.

(2) The clothing allowance shall be allowed for each school-age child who is included in the GA cash assistance benefit group, subject to the availability of state or federal funds.

(3) The clothing allowance is not counted in determining eligibility for GA cash assistance.

H. Supplemental issuance: A one-time supplemental issuance may be distributed to recipients of GA for disabled adults based on the sole discretion of the secretary of the human services

department and the availability of state funds.

(1) The one time supplemental issuance may be no more than the standard GA payment made during the month the GA payment was issued.

(2) To be eligible to receive the one time supplement, a GA application must be active and determined eligible no later than the last day of the month in the month the one time supplement is issued.

I. Minimum Benefit

Amount: Benefits less than ten dollars (\$10.00) will not be issued for the initial month or subsequent months. ISD shall certify household beginning the month of application. [8.106.500.8 NMAC - N, 07/01/2004; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 01/01/2008; A, 06/16/2008; A/E, 10/01/2008; A, 07/01/2009; A/E, 10/01/2009; A, 10/30/2009; A, 12/01/2009; A, 01/01/2011; A, 07/29/2011; A/E, 10/01/2011; A/E, 10/01/2012; A, 07/01/2013; A/E, 10/01/2013; A/E, 10/01/2014; A, 10/01/2015; A, 10/01/2016; A/E, 10/01/2017; A, 2/01/2018; A/E, 10/01/2018; A, 3/1/2019; A/E, 10/01/2019; A, 3/1/2020]

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.106.610 NMAC, Section 10 effective 3/1/2020.

8.106.610.10 [STALE BENEFIT ACCOUNTS:] Stale benefit accounts are those cash assistance benefit accounts that have not been accessed for 90 days from the most recent date of withdrawal.

A. Offline accounts: EBT accounts which have not been accessed by the recipient in the last 90 days are considered a stale account. HSD may store stale benefits offline after notification to the household of this action.

(1)

Notification: The department shall notify the household of this action before storing the benefits in an offline account and provide the necessary steps to reactivate the account.

(2)

Reinstatement: The participant may contact the department or the HSD EBT help desk, the contractor customer service help desk, or the caseworker and request reinstatement of their EBT account anytime within 180 days from the initial date of benefit activity. Requests from the participant to reinstate any benefit must be received prior to the date of expungement.

B. Expungement:

Cash assistance benefits which have had no activity for an excess of 180 days will be expunged. All benefits older than 180 days in the account will no longer be accessible to the household. The household loses all rights to all expunged benefits.

(1)

Notification: The department shall notify the household no less than 45 days prior to the expungement of the cash assistance benefits.

(2) Payment

of claims against household. The contractor shall notify the department no less than five days prior to expungement of the cash assistance benefits and any cash assistance claims against the household shall be removed from the account and applied to the claims upon expungement.]

[RESERVED]

[8.106.610.10 NMAC - Rp, 8.106.610.9 NMAC, 12/01/2009; Repealed, 3/1/2020]

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.139.110 NMAC, Section 12 effective 3/1/2020.

8.139.110.12 PROCESSING APPLICATIONS:

A. HSD is responsible for timely and accurate issuance

of benefits to eligible households. All applications for assistance will be processed as soon as possible. Applicants who complete the application process will have their eligibility determined and be given an opportunity to participate within the time limits mandated for expedited or normal application processing. ISD will explain the time limits to the applicant and inform them of the date by which the application will be processed. With the exception of those manual provisions that specify "working days," time limits begin on the first calendar day following the action that triggered the time limit.

B. Household

cooperation: To determine eligibility an application form must be completed and signed, a household or its authorized representative interviewed, and certain information on the application verified.

(1) At

application: If a household refuses to cooperate in completing the process, the application will be denied at the time of refusal. For a determination of refusal to be made, a household must be able to cooperate, but clearly demonstrates that it will not take action that it can take and that is required to complete the application process. If there is any question that a household has failed to cooperate as opposed to refused to cooperate, it will not be denied. Once denied for refusal to cooperate, a household may reapply but will not be determined eligible until it cooperates with ISD.

(2)

Subsequent reviews: A household will be determined ineligible if it refuses to cooperate in a subsequent review of eligibility. Such reviews include those because of reported changes and at application for recertification. Once terminated for refusal to cooperate, a household may reapply, but will not be determined eligible until it cooperates with ISD.

(3) Outside

sources: A household will not be determined ineligible when an individual outside the household fails to cooperate with a request for verification. Individuals identified

as ineligible household members in 8.139.400.12 NMAC will not be considered as individuals outside the household.

(4)

Cooperation with quality control (QC): A household will be determined ineligible if it fails or refuses to cooperate in a QC review of eligibility and benefit amount.

(a)

Period of ineligibility:

(i)

A household that refuses to cooperate with a state QC review will be determined ineligible effective the month following the month the adverse action notice time limit expires. Ineligibility will continue until [95] 125 days from the end of the annual QC review period [(January 5)] (February 4) during which non-cooperation is found. The annual QC review period begins October 1 and ends September 30.

(ii)

A household that refuses to cooperate with a federal QC review will be ineligible effective the month following the month the adverse action notice time limit expires. Ineligibility will continue until [seven] nine months from the end of the annual review period (May 1) during which non-cooperation is found. The annual QC review period begins October 1 and ends September 30.

(b)

Re-establishing eligibility:

(i)

A household may reapply during the period of ineligibility, but will not be determined eligible until it cooperates with the QC review, and is otherwise eligible.

(ii)

A household which reapplies at the end of the period of ineligibility will not be determined ineligible because of its failure or refusal to cooperate with a state or federal QC review. The household must provide verification necessary to determine eligibility at reapplication in accordance with Subsection H of 8.139.110.11 NMAC.

C. Verification

standards: Verification is use of third-party information or documentation to establish the accuracy of statements on the application, or information provided by the applicant or recipient.

(1)

Initial certification: Verification is mandatory for the following information prior to initial certification for both new and reopened cases.

(a)

Financial information:

(i)

gross nonexempt income, and resources.

(ii)

(b)

Any of the following if the expense would result in a deduction:

(i)

utility expenses;

(ii)

continuing shelter expenses;

(iii)

dependent care expenses;

(iv)

deductible medical expenses including the amount of reimbursements;

(v)

legally obligated child support expenses, and amount actually paid;

(vi)

if any of the above expenses will not result in a deduction, verification shall not be required (for example, less than \$35 in medical expenses, or shelter expenses that do not exceed fifty percent of income after all other deductions).

(c)

Nonfinancial information:

(i)

residence;

(ii)

citizenship, if questionable, and alien status of household members who are individually applying for benefits only;

(iii)

identity of the applicant and authorized representative, if designated;

(iv)

household size and composition;

(v)

disability, if necessary;

(vi)

social security numbers, except that eligibility or issuance of benefits shall not be delayed solely to verify the social security number of a household member, and

(vii)

any questionable information that must be verified to determine eligibility.

(2)

Verification subsequent to initial certification: Verification of the following is mandatory in accordance with the individual's reporting requirements found at 8.139.120.9 through 12 NMAC:

(a)

a change in income if the source has changed or the amount has changed by more than \$50;

(b)

a change in utility expenses if the source has changed;

(c)

previously unreported medical expenses, and total recurring medical expenses which have changed by more than \$25;

(d)

new social security numbers, for individuals who are applying for benefits, that shall be verified as detailed in 8.139.410.8 NMAC;

(e)

any other information which has changed or is questionable;

(f)

unchanged information shall not be re-verified unless it is incomplete, inaccurate, inconsistent, or outdated.

(g)

satisfactory compliance with time limits for individuals subject to the time limit in accordance with 8.139.410.14 NMAC.

(3) **Providing**

verification:

(a)

If electronic verification is not available, the household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information.

(b)

ISD shall assist a household in obtaining verification, provided the household is cooperating in the application process.

(c)

A household or their authorized representative may supply documentary evidence in person, by mail, fax, electronic device or through the YES NM web portal.

(d)

A household shall not be required to supply verification in person at the ISD office or to schedule an appointment to provide such verification.

(e)

ISD shall accept any reasonable documentary evidence provided by the household and must be primarily concerned with how adequately the verification proves the statements on the application.

(4)

Documentation: A case file shall be documented to support eligibility, ineligibility, and benefit amount determination. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination.

[2/1/1995, 6/1/1995, 6/15/1996;

8.139.110.12 NMAC - Rn, 8

NMAC 3.FSP.114, 05/15/2001; A,

03/01/2017; A, 3/1/2020]

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.139.610 NMAC, Section 8, effective 3/1/2020.

Throughout the rule, “and/or” was replaced with “or” to conform to correct legislative style.

8.139.610.8 [BENEFIT ISSUANCE SYSTEM

A. Electronic benefit transfer (EBT): SNAP benefits are issued through a direct deposit into an EBT account. The benefits are maintained in a central database and accessed by the household through

an individual debit card issued to the household:

B. Initial issuance of EBT card: The EBT card is issued to the designated payee of the eligible household or to the designated authorized representative:

(1) The EBT card is mailed to the head of household or the designated authorized representative on the first working day after the application is registered. The applicant or recipient shall receive training on the use of the EBT card prior to activation of the EBT card.

(2) The EBT card shall be issued to the payee for an eligible household through the most effective means identified by HSD which may include issuance at the county office or by mail.

(3) The applicant or recipient must verify his or her identity.

(4) The payee for the eligible household may select the four-digit personal identification number that will allow access to the household’s SNAP benefits.

C. Replacement of the EBT card: The recipient or designated authorized representative shall be instructed on the procedure for replacement of an EBT card that has been lost, stolen or destroyed.

(1) The recipient or designated authorized representative may report a lost, stolen or destroyed EBT card through the HSD EBT contractor customer service help desk, HSD EBT customer service help desk or any ISD field office:

(2) The lost, stolen, or destroyed EBT card shall be deactivated prior to a replacement card being issued to the household.

(3) ISD shall make replacement EBT cards available for client to pick up or place the card in the mail within two business days following notice by the household to ISD that the card has been lost, stolen or damaged.

(4) ISD may impose a replacement fee by reducing the monthly allotment of the

household receiving the replacement card, however, the fee may not exceed the cost to replace the card.

D. Inactive EBT accounts: EBT accounts which have not been accessed by the recipient in the last 90 days are considered a stale account. HSD may store stale benefits offline after notification to the household of this action:

(1) The notification to the household shall include the reason for the proposed action and the necessary steps required by the recipient to reactive the account.

(2) The recipient may request reinstatement of their EBT account anytime within 364 days after the date of the last benefit account activity.

E. Excessive replacement cards: The HSD office of inspector general (HSD OIG) will generate a warning letter to SNAP recipients that have replaced their EBT card five or more times in a 12-month period. The letter is a notice of warning and will explain that as a result of the recipient’s high number of replacement EBT cards, their EBT SNAP transactions will be closely monitored. The letter will become part of the recipient’s case record. The letter will:

(1) be written in clear and simple language;

(2) meet the language requirements described at 7 CFR 272.4(b);

(3) specify the number of cards requested and over what period of time;

(4) explain that the next request, or the current request if the threshold has been exceeded, requires contact with ISD before another card is issued;

(5) provide all applicable information on how contact is to be made in order for the client to comply, such as whom to contact, a telephone number and address; and

(6) include a statement that explains what is considered a misuse or fraudulent use of benefits and the possibility of

referral to the fraud investigation unit for suspicious activity.

F. EBT benefit expungement: HSD may expunge benefits that have not been accessed by the household after a period of 365 days. HSD must attempt to notify the household prior to expungement. Expunged benefits are no longer available to the household. Requests for reactivation must be received prior to expungement and a determination shall be made by the director or designee of the income support division. [RESERVED]
[2/1/1995; 8.139.610.8 NMAC - Rn, 8 NMAC 3.FSP.610, 05/15/2001; A, 02/28/2007; A, 07/15/2013; A, 07/24/2018; Repealed, 3/1/2020]

NURSING, BOARD OF

This is an amendment to 16.12.2 NMAC, Section 13 and 15, effective 3/26/2020.

Explanatory paragraph: In 16.12.2.13 NMAC, Subsections A through N were not published as there were no changes. In 16.12.2.15 NMAC, Subsections A through L were not published as there were no changes.

16.12.2.13 ADVANCED PRACTICE REGISTERED NURSE (APRN) CERTIFIED NURSE PRACTITIONER (CNP):

O. Supervision of psychologists in the prescribing of psychotropic medication by a certified nurse practitioner, pursuant to Section 61-3-23.5 NMSA 1978 and the Professional Psychologist Act (Section 61-9-1 et. seq. NMSA 1978).

(1) A CNP may provide supervision to a psychologists in the prescribing of psychotropic medication provided the CNP:

(a) holds a valid, unencumbered NM license as a CNP;

(b) holds a national certification as a psychiatric-mental health nurse

practitioner. An individual who holds a certification as a CNP conferred by a national nursing certification organization that is not an approved certification listed above may petition the board and request approval of the certification. The board shall review the petition and determine whether the certification and the petitioner's clinical practice experience sufficiently substantiate adequate education, didactic and clinical preparedness, and other factors that establish competency. The decision of the board is discretionary and shall not be subject to review or binding on any future petition.

(c) has a minimum of two years of experience prescribing as a psychiatric-mental health nurse practitioner;

(d) is not currently participating in any board of nursing's alternative to discipline program, diversion program;

(e) is able to meet all requirements to serve as an independently licensed prescribing clinician as laid out in the Professional Psychologist Act (Section 61-9 NMSA 1978) and 16.22 NMAC; and

(f) performing the supervision is within the scope of practice of the CNP.

(2) Reporting obligations to the New Mexico board of nursing by a CNP providing supervision to a psychologist in the prescribing of psychotropic medication:

(a) within 15 days of entering into the supervising relationship with each psychologist being supervised. The notification shall consist of:

(i) the name and license number of the psychologist;

(ii) the date of entry into the supervising relationship;

(iii) the anticipated end of the supervising relationship;

(b) within 15 days of severing the

supervisory relationship with a psychologist. The notification shall consist of:

(i) the name and license number of the psychologist;

(ii) the date of the end of the supervising relationship.

(3) A CNP who provides supervision to a psychologist in the prescribing of psychotropic medication must follow the Professional Psychologist Act (Section 61-9 NMSA 1978) and rules promulgated by the New Mexico board of psychologist examiners. [16.12.2.13 NMAC - Rp, 16.12.2.13 NMAC, 10/1/2016; A, 9/12/2017; A, 5/3/2018; A, 3/26/2020]

16.12.2.15 ADVANCED PRACTICE REGISTERED NURSE (APRN) CLINICAL NURSE SPECIALIST (CNS):

M. Supervision of psychologists in the prescribing of psychotropic medication by a clinical nurse specialist, pursuant to Section 61-3-23.5 NMSA 1978 and the Professional Psychologist Act (Section 61-9-1 et. seq. NMSA 1978).

(1) A CNS may provide supervision to a psychologists in the prescribing of psychotropic medication provided the CNS:

(a) holds a valid, unencumbered NM license as a CNS;

(b) holds a national certification as a psychiatric-mental health clinical nurse specialist. An individual who holds a certification as a CNS conferred by a national nursing certification organization that is not an approved certification listed above may petition the board and request approval of the certification. The board shall review the petition and determine whether the certification and the petitioner's clinical practice experience sufficiently substantiate adequate education, didactic and clinical preparedness, and other factors that establish competency. The decision of the board is discretionary

and shall not be subject to review or binding on any future petition.

(c)

has a minimum of two years of experience prescribing as a psychiatric-mental health clinical nurse specialist;

(d)

is not currently participating in any board of nursing's alternative to discipline program, diversion program;

(e)

is able to meet all requirements to serve as an independently licensed prescribing clinician as laid out in the Professional Psychologist Act (Section 61-9 NMSA 1978) and 16.22 NMAC; and

(f)

performing the supervision is within the scope of practice of the CNS.

(2) Reporting

obligations to the New Mexico board of nursing by a CNS providing supervision to a psychologist in the prescribing of psychotropic medication:

(a)

within 15 days of entering into the supervising relationship with each psychologist being supervised. The notification shall consist of:

(i)

the name and license number of the psychologist;

(ii)

the date of entry into the supervising relationship;

(iii)

the anticipated end of the supervising relationship.

(b)

within 15 days of severing the supervisory relationship with a psychologist. The notification shall consist of:

(i)

the name and license number of the psychologist;

(ii)

the date of the end of the supervising relationship.

(3) A CNS

who provides supervision to a psychologist in the prescribing of psychotropic medication must follow the Professional Psychologist Act (Section 61-9 NMSA 1978) and rules

promulgated by the New Mexico board of psychologist examiners.

[M.] N. Advanced practice committee.

(1) The board

may appoint a minimum of a six member advisory committee to assist the board in regulating the advanced practice of nursing.

(2) The

committee shall assist and advise the board in the review of issues related to the advanced practice of nursing.

(3) The

committee shall be composed of representatives from each advanced practice area regulated by the board. [16.12.2.15 NMAC - Rp, 16.12.2.15 NMAC, 10/1/2016; A, 5/3/2018; A, 3/26/2020]

RACING COMMISSION

This is an amendment to 15.2.1 NMAC, Section 8, effective February 25, 2020.

Explanatory paragraph: In 15.2.1.8 NMAC, Subsections A through G and renumbered Subsections I and J were not published as there were no changes.

15.2.1.8 COMMISSION:

H. Organization's financial requirements:

(1) The New

Mexico horse breeders' association shall establish interest-bearing accounts, designated as gaming funds for purses.

(2) The New

Mexico horse breeders' association shall ensure all accounting of funds deposited with and paid out or distributed by the New Mexico horse breeders' association pursuant to the Horse Racing Act is in accordance with or exceeds generally accepted accounting principles.

(3) The New

Mexico horse breeders' association shall provide at a minimum the following insurance policies:

(a)

\$1,000,000 cyber liability

(b)

\$1,000,000 directors, officers, and employment practices

(c)

\$1,000,000 employee theft

(4) The New

Mexico horse breeders' association will provide the New Mexico racing commission with a copy of their yearly independent audits, and proof of insurance.

(5) The New

Mexico horsemen's association and the New Mexico horse breeders' association with regard to gaming monies shall keep accurate, complete, and legible records with reports to the commission to include:

(a)

monthly reconciliation of amounts collected to account statements;

(b)

copy of account authorizing signatures;

(c)

any changes in authorizing signatures; and

(d)

detail of disbursements from the accounts.

[15.2.1.8 NMAC - Rp, 15 NMAC 2.1.8, 3/15/2001; A, 8/30/2001; A, 1/31/2008; A, 4/30/2012; A, 6/1/2016; A, 2/25/2020]

RACING COMMISSION

This is an amendment to 15.2.5 NMAC, Sections 10 and 11, effective February 25, 2020.

15.2.5.10 WEIGHTS:**A. Allowances:**

(1) Weight allowance including apprentice allowances must be claimed at time of entry and shall not be waived after the posting of entries, except by consent of the stewards.

(2) A horse shall start with only the allowance of weight to which it is entitled at time of starting, regardless of its allowance at time of entry.

(3) Horses not entitled to the first weight allowance in a race shall not be entitled to any subsequent allowance specified in the conditions.

(4) Claim of weight allowance to which a horse is not entitled shall not disqualify it unless protest is made in writing and lodged with the stewards at least one hour before post time for that race.

(5) A horse shall not be given a weight allowance for failure to finish second or back in any race.

(6) No horse shall receive allowance of weight nor be relieved extra weight for having been beaten in one or more races, but this rule shall not prohibit maiden allowances or allowances to horses that have not won a race within a specified period or a race of a specified value.

(7) Except in handicap, quarter horse races and races which expressly provide otherwise, two-year-old fillies shall be allowed three pounds, and fillies and mares, three-years-old and upward, shall be allowed five pounds before September 1 and three pounds thereafter in races where competing against male horses.

(8) A three pound weight allowance shall be allowed a registered New Mexico bred horse in all open races and in stakes races when included in the

condition of the race. This allowance must be claimed at time of entry.

B. Penalties:

(1) Weight penalties are obligatory.

(2) Horses incurring weight penalties for a race shall not be entitled to any weight allowance for that race.

(3) No horse shall incur a weight penalty or be barred from any race for having been placed second or lower in any race.

(4) Penalties incurred and allowances due in steeplechase or hurdle races shall not apply to races on the flat, and vice versa.

(5) The reports, records and statistics as published by Daily Racing Form, Equibase or other recognized publications shall be considered official in determining eligibility, allowances and penalties, but may be corrected.

(6) When a race [is] in dispute involves the winner of the race, both the horse that finished first and any horse claiming the [race,] win shall be liable to all penalties attaching to the winner of that race, until the matter is decided. In case of a positive test of the winner of a race, no horse other than the winner shall be liable to penalty of weight or condition until the case has been adjudicated; the ruling disqualifying the horse with the positive test issued; and all appeals exhausted.

C. Weight

conversions: For the purpose of determining weight assignments and allowances for imported horses, the following weight conversions shall be used:

(1) one kilogram equals two and one-fourth pounds, and
(2) one stone equals 14 pounds.

D. Scale of Weights:

(1) With the exception of apprentice allowances, handicaps, three years old horses entered to run in races against horses four year olds and upwards, and the

allowance provided in Paragraph (2) of this subsection, no jockey shall be assigned a weight of less than 118 pounds. For three years old horses entered to run in races against horses four year olds and upwards from January 1 through August 31, no jockey shall be assigned a weight of less than 116 pounds.

(2) Except in handicaps, fillies two years old shall be allowed three pounds, and fillies and mares three years old and upward shall be allowed five pounds before September 1, and three pounds thereafter in races where competing against horses of the opposite sex.

(3) Quarter horses, minimum scale weights shall be 124 pounds for two years old, 126 pounds for three years old and 128 pounds for four year olds and older with the exception of handicap races.

(4) A notice shall be included in the daily program that all jockeys will carry approximately three pounds more than the published weight to account for safety equipment (vest and helmet) that is not included in required weighing out procedures. Additionally, upon stewards' approval, jockeys may weigh in with an additional three pounds for inclement weather gear.

E. Distance

conversions: For the purpose of determining eligibility, weight assignments and allowances for imported horses, the racing secretary shall convert metric distances to English measures by reference to the following scale:

Continued Next Page

Comparative table of distances

200 Meters	Equals	1 Furlong
1,000 Meters	Equals	5 Furlongs
1,200 Meters	Equals	6 Furlongs
1,400 Meters	Equals	7 Furlongs
1,600 meters	Equals	1 Mile
1,700 Meters	Equals	1 1/16 Miles
1,800 Meters	Equals	1 1/8 Miles
2,000 Meters	Equals	1 ¼ Miles
2,200 Meters	Equals	1 3/8 Miles
2,400 Meters	Equals	1 ½ Miles
2,600 Meters	Equals	1 5/8 Miles
3,000 Meters	Equals	1 7/8 Miles
3,200 Meters	Equals	2 Miles
3,600 Meters	Equals	2 ¼ Miles
4,800 Meters	Equals	3 Miles

[15.2.5.10 NMAC - Rp, 15 NMAC 2.5.10, 3/15/2001; A, 1/1/2013; A, 6/1/2016; A, 5/1/2019; A, 5/1/2019; A, 02/25/2020]

15.2.5.11 WORKOUTS:**A. Requirements:**

(1) A non-starter must have had within 60 days prior to time of 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 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 entry. Horses that have not started within six months of entry must have at least two approved workouts within the 60 days prior to time of entry. Any horse which has started, but not within 60 days, must have at least one workout within 60 days prior to time of 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 entry, at least

one workout at 660 yards or farther.

(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 or its digital 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, 3/15/2001; A, 3/30/2007; A, 6/15/2009; A, 7/5/2010; A, 1/1/2013; A, 3/15/2016; A, 12/16/16; A, 8/26/2017; A, 3/14/2018; A, 12/19/2019; A, 02/25/2020]

RACING COMMISSION

This is an amendment to 16.47.1 NMAC, Sections 6, 8 and 10, effective February 25, 2020.

Explanatory paragraph: In

16.47.1.8 NMAC, Subsections B through V were not published as there were no changes. In 16.47.1.9 NMAC, Subsection A, and Subsections C through F were not published as there were no changes. In 16.47.1.10 NMAC Subsections B through C and E through F were not published as there were no changes.

16.47.1.6 OBJECTIVE:

[~~The objective of Part 1 of Chapter 47 is~~] To establish licensing requirements for horse racing participants; and establish and describe the requirements, standards and criteria for human substance abuse testing for occupational licensees licensed by the commission.

[16.47.1.6 NMAC - Rp, 16 NMAC 47.1.6, 03/15/2001; A, 02/25/2020]

16.47.1.8 GENERAL PROVISIONS:**A. Licenses required:**

A person as defined by [~~Paragraph (7) of Subsection P of~~] 15.2.1.7 NMAC shall not participate in pari mutuel racing under the jurisdiction of the commission, or be employed by an association who is a gaming operator, without a valid license issued by the commission.

(1) License categories shall include the following and others as may be established by the commission: **Group A** - racing participants eligible for an optional annual or triennial year license to include owners, trainers,

veterinarians, jockeys, and stable name registrations. **Group B** - associations, racing professionals, concession operators, contractors, and managerial racing officials. **Group C** - supervisory racing officials. **Group D** - persons employed by the association, or employed by a person or concern contracting with the association, to provide a service or commodity, which requires their presence in a restricted area, or anywhere on association grounds while pari mutuel wagering is being conducted. **Group E** - racetrack employees and authorized agents.

(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.

Announcer	\$ 75.00
Assistant general manager	\$100.00
Assistant racing secretary	\$ 20.00
Association	\$100.00
Auditor, official	\$ 75.00
Authorized agent	\$ 10.00
Clerk of scales	\$ 20.00
Clocker	\$ 20.00
Club, racetrack	\$100.00
Concession employee	\$ 10.00
Concession operator	\$100.00
Custodian of jockey room	\$ 20.00
Director or corporate officer	\$100.00
Director of operations	\$ 75.00
Director of racing	\$ 75.00
Exercise person	\$ 20.00
General manager	\$100.00
Groom	\$ 10.00
Horseman's bookkeeper	\$ 20.00
Identifier (horse)	\$ 20.00
Janitor	\$ 10.00
Jockey (3 year)	\$200.00
Jockey (1 year)	\$100.00
Jockey (apprentice) (3 year)	\$200.00
Jockey (apprentice) (1 year)	\$100.00
Jockey agent	\$ 75.00
Jockey valet	\$ 10.00
Laborer	\$ 10.00
Office personnel (specify position)	\$ 10.00
Official veterinarian (3 year)	\$200.00
Official veterinarian (1 year)	\$100.00
Outrider	\$ 20.00
Owner (3 year)	\$200.00
Owner (1 year)	\$100.00
Paddock judge	\$ 20.00
Pari mutuel employee	\$ 10.00
Pari mutuel manager	\$ 75.00
Placing judge	\$ 20.00
Photo employee	\$ 10.00
Plater	\$100.00
Pony person	\$ 10.00
Private barns	\$100.00
Racing secretary-handicapper	\$ 75.00
Security chief	\$ 75.00
Security staff	\$ 10.00

Simulcast company employee	\$ 10.00
Simulcast coordinator	\$ 75.00
Simulcast operator	\$100.00
Special event, 1 or 2 day	\$200.00
Stable name (3 year)	\$200.00
Stable name (1 year)	\$100.00
Stable superintendent	\$ 75.00
Starter	\$ 75.00
Starter assistant	\$ 20.00
Ticket seller (admissions)	\$ 10.00
Timer	\$ 20.00
Totalisator employee	\$ 10.00
Totalisator operator	\$100.00
Track maintenance, employee	\$ 10.00
Track physician	\$100.00
Track superintendent	\$ 75.00
Trainer (3 year)	\$200.00
Trainer (1 year)	\$100.00
Trainer assistant	\$ 20.00
Veterinarian assistant	\$ 20.00
Veterinarian, practicing (3 year)	\$200.00
Veterinarian, practicing (1 year)	\$100.00
Veterinarian, racing (3 year)	\$200.00
Veterinarian, racing (1 year)	\$100.00
Watchman	\$ 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.

(4) License

applicants for groom, watchman, exercise and pony persons must submit to a drug (controlled substances) and alcohol-screening test when making application for license.

(5) As a

participant of the national racing compact licensing program and as an alternative to the licensure requirements set forth in Paragraphs (2) through (4) of Subsection A of 16.47.1.8 NMAC, the commission may authorize applicants to utilize the national racing compact licensing program to obtain a New Mexico racing license subject to the applicable licensure fees set forth in Paragraph (2) of Subsection A of 16.47.1.8 NMAC.

[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; A, 03/14/2018; A, 02/25/2020]

16.47.1.9 OWNERS:

B. Licensing requirements for multiple owners:

(1) If the

legal owner of any horse is a partnership, corporation, limited liability company, syndicate or

other association or entity, each shareholder, member or partner shall be licensed as required in [Paragraph (1) of Subsection A of] 16.47.1.8 NMAC.

(2) Each

partnership, corporation, limited liability company, syndicate or other association or entity shall disclose to the commission all owners holding a five percent or greater beneficial interest, unless otherwise required by the commission.

(3) Each

partnership, corporation, limited liability company, syndicate or other association or entity which includes an owner with less than a five percent ownership or beneficial interest shall file with the commission an affidavit which attests that, to the best of their knowledge, every owner, regardless of their ownership or beneficial interest, is not presently ineligible for licensing or suspended in any racing jurisdiction.

(4) To obtain

an owner's license, an owner with less than a five percent ownership or beneficial interest in a horse must establish a bona fide need for the license and the issuance of such license must be approved by the stewards.

(5)

Application for joint ownership shall include a designation of a managing owner and a business address. Receipt of any correspondence, notice, or order at such address shall constitute official notice to all persons involved in the ownership of such horse.

(6) The

written appointment of a managing owner or authorized agent shall be filed with the commission.

[16.47.1.9 NMAC - Rp, 16 NMAC 47.1.9, 03/15/2001; A, 02/14/2002; A, 07/15/2003; A, 02/25/2020]

16.47.1.10 TRAINERS:**A. Eligibility:****(1) An**

applicant for a license as trainer or assistant trainer must be at least 18 years of age.

(2) Applicants not previously licensed or applying for a renewal license as a trainer shall be qualified, as determined by the stewards or other commission designee, by reason of:

(a) ~~[At least two years' experience as a licensed assistant trainer, or comparable experience in other equine disciplines, or college-level education in equine science or horsemanship or both.]~~ At least two years' experience as a licensed groom, jockey, exercise rider, pony person, plater or owner who is actively participating in the stable area. An owners' license will only be accepted if licensee can prove they are a "hands-on" owner actively working as a groom at the racetrack on their own horses under the supervision of a licensed trainer.

(b) Shall be required to pass a written examination, with a minimum score of 80 percent in each category, oral interviews with stewards and a regulatory veterinarian; and demonstrate practical skills.

(c) Must submit two written statements from trainers currently licensed in New Mexico as to the character and qualifications of the applicant and one written statement from a currently licensed owner stating intent to place one or more horses with the applicant, when licensed.

(d) Applicants failing the first written/oral examination must wait 30 days before retaking the trainer's test.

(e) Applicants failing the second written/oral examination must wait 60 days before retaking the trainer's test.

(f) Applicants failing the third written/oral examination must wait one year before retaking the trainer's test.

(3) A trainer licensed and in good standing in New Mexico applying for a renewal license or a trainer from another jurisdiction, and the license having been issued within a 24 month period, ~~[and having no record of a class 1 or 2 violation, or has less than three class 3, 4, 5-~~

~~violations in the preceding 24 month period in any jurisdiction]~~ may be accepted if evidence of experience and qualifications are provided. In addition, the licensee must have no record of a class 1 or 2 violation, in the preceding 24 month period in any jurisdiction for it to be accepted. Evidence of qualifications shall require passing one or more of the following:

(a) a written test;
(b) a demonstration of practical skills;
(c) an interview with the stewards.

(4) Upon timely request to the steward's or commission designee due to disability or other factors affecting the applicant's ability to effectively complete the trainer's test (such as illiteracy or language barriers), reasonable accommodations shall be made for the applicant including, but not limited to, oral administration of the examination, use of a pre-approved translator, and aid from pre-approved assistant where deemed appropriate by the stewards or commission designee administering the examination.

(5) Beginning no later than June 1, 2016, in order to maintain a current license, trainers must complete at least four hours per calendar year of continuing education courses approved by the association of racing commissioners international, incorporated or the New Mexico racing commission.

(6) Failure to start a minimum of one horse very six months while holding a trainers' license will subject licensee to retest or interview before the board of stewards.

D. Assistant trainers:

(1) A trainer may employ an assistant trainer, who shall be equally responsible with the employing trainer for the condition of the horses in their care. The name of the assistant trainer shall be shown on the official program along with that of the employing trainer.

(2) Qualifications for obtaining an assistant trainer's license shall be prescribed by the stewards and the commission may include those requirements prescribed in Paragraph (1) of Subsection A of 16.47.1.10 NMAC.

(3) An assistant trainer must be licensed for a minimum of two years as an assistant trainer before being eligible to obtain a trainer's license.

(4) If an assistant trainer passed the written examination with a minimum score of eighty percent in each category within the previous 48 months, the licensee is not required to retake the test in order to obtain their trainer's license.

(5) An assistant trainer shall assume the same duties and responsibilities as imposed on the licensed trainer.

~~[(4)]~~ (6) The trainer shall be jointly responsible for the assistant trainer's compliance with the rules governing racing.

~~[(5)]~~ (7) A trainer that is involved in, or notified of, or under suspension for 30 days or more of a drug or rule violation, shall not transfer their horses to his or her assistant trainer or an employee of the trainer.

[16.47.1.10 NMAC - Rp, 16 NMAC 47.1.10, 03/15/2001; A, 11/15/2001; A, 03/30/2007; A, 08/30/2007; A, 06/30/2009; A, 09/15/2009; A, 07/05/2010; A, 05/16/2014; A, 09/15/2014; A, 03/15/2016; A, 06/01/2016; A, 12/16/16; A, 03/14/2018; A, 02/25/2020]

SECRETARY OF STATE, OFFICE OF

The Office of the New Mexico Secretary of State repealed rule 1.10.7 NMAC - Determination of Ballot Position for United States Representative Special Elections, filed 3/15/1997; Recompiled 11/30/2001, and replaced it with 1.10.7 NMAC - Randomization Of Candidate Names On Ballots, adopted on 2/12/2020 and effective on 2/25/2020.

SECRETARY OF STATE, OFFICE OF

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS PART 7 RANDOMIZATION OF CANDIDATE NAMES ON BALLOTS

1.10.7.1 ISSUING

AGENCY: Office of the New Mexico Secretary of State
[1.10.7.1 NMAC – Rp, 1.10.7.1 NMAC, 2/25/2020]

1.10.7.2 SCOPE: This rule applies to the printing of names on ballots for all elections conducted pursuant to the Election Code.
[1.10.7.2 NMAC – Rp, 1.10.7.2 NMAC, 2/25/2020]

1.10.7.3 STATUTORY AUTHORITY: This rule is authorized by Sections 1-8-21.1, 1-10-8.1, and 1-22-3.1 NMSA 1978 of the Election Code.
[1.10.7.3 NMAC – Rp, 1.10.7.3 NMAC, 2/25/2020]

1.10.7.4 DURATION: Permanent.
[1.10.7.4 NMAC – Rp, 1.10.7.4 NMAC, 2/25/2020]

1.10.7.5 EFFECTIVE DATE: February 25, 2020, unless a later date is cited at the end of a section.

[1.10.7.5 NMAC – Rp, 1.10.7.5 NMAC, 2/25/2020]

1.10.7.6 OBJECTIVE:
The purpose of this rule is to provide a uniform system of randomization of candidate names for the same office on the ballot in all elections conducted pursuant to the Election Code.
[1.10.7.6 NMAC – Rp, 1.10.7.6 NMAC, 2/25/2020]

1.10.7.7 DEFINITIONS:
A. “Alphabet” means the 26 Roman typeface letters of the standard alphabet used in the United States, without differentiation between upper case and lower case version of each letter.
B. “Auditor” means an auditor qualified by the state auditor to audit state agencies.
C. “Candidate name” and **“candidate’s name”** means the name listed on the candidate’s certificate of registration in conformance with the requirements of Subsection (A) of Section 1-10-8 NMSA 1978 and disregarding any punctuation forming a part of a candidate’s name; provided that in the case of a ticket for the offices of president and vice president or of governor and lieutenant governor in a general election, only the name of the presidential or gubernatorial candidate is considered and the name of the vice presidential or lieutenant gubernatorial candidate is disregarded.

D. “Election cycle” the biennial time period described in Subsection (A), of Section 1-1-3.1, NMSA 1978.

E. “First name” means a candidate’s given name or forename as listed on the candidate’s certificate of voter registration.

F. “Letter” means each of the 26 graphemes of the contemporary alphabet used in the United States: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, and Z; provided that in the case of any of the letters specified in this definition to which a diacritic is applied, the diacritic is disregarded;

and provided further that in the case of a digraph, each grapheme forming the digraph is considered a separate letter.

G. “Last name” means a candidate’s surname or family name as listed on the candidate’s certificate of registration in conformance with the requirements of Paragraph (1), of Subsection (A), of Section 1-10-6 NMSA 1978; the term includes a mononym in the case of a person with a single name.

H. “Middle name” means the initial, initials, name or names as listed on a candidate’s certificate of registration in addition to a candidate’s first and last names; the term includes a nickname or pseudonym, but does not include honorific, academic or elected titles.

I. “New Mexico election alphabet” means a version of the alphabet in which all letters have been randomized pursuant to this rule.

J. “Secretary” means the secretary of state.
[1.10.7.7 NMAC – Rp, 1.10.7.7 NMAC, 2/25/2020]

1.10.7.8 CREATION OF THE NEW MEXICO ELECTION ALPHABET:

A. Between the day of a general election and the last day of that calendar year, the auditor shall publicly create a randomization of the alphabet utilizing a method in which each letter not yet selected has a statistically equal chance of being the next letter selected.

B. The secretary shall post notice on the secretary’s website at least one week in advance, providing the day, time and place of the randomization of the alphabet.

C. The randomized alphabet created by the auditor shall be the New Mexico election alphabet for the next election cycle.

D. By January 10th of each odd-numbered year, the secretary shall post the New Mexico election alphabet. The agency website shall contain the current New Mexico election alphabet and an archive of all previous New Mexico election alphabets.

[1.10.7.8 NMAC – Rp, 1.10.7.8 NMAC, 2/25/2020]

1.10.7.9 ORDER OF CANDIDATE NAMES:

A. The names of candidates for the same office shall be ordered based upon the first letter in each candidate's last name according to the order of letters in the New Mexico election alphabet.

B. When two or more candidates for the same office share the same first letter in each candidate's last name, the order of candidate names is resolved by applying the New Mexico election alphabet to each subsequent letter in each candidate's last name until a discernment can be ascertained between candidate names.

C. When two or more candidates for the same office share the same last name, the order of candidate names is resolved by applying the New Mexico election alphabet to each letter in each candidate's first name until a discernment can be ascertained between candidate names.

D. When two or more candidates for the same office share the same last and first names, the order of candidate names is resolved by applying the New Mexico election alphabet to each letter in each candidate's middle name, if any, until a discernment can be ascertained between candidate names.

E. When two or more candidates for the same office share the same candidate names, the order of candidate names is resolved in favor of the candidate with the higher card drawn on a day, time and location selected by the secretary and administered by the proper filing officer for the office for which the candidates have filed declarations of candidacy. The drawing of cards shall utilize a 52 card deck with jokers, face cards, and aces removed. With regard to the remaining 36 numbered cards, cards are ranked numerically from 2 low to 10 high, and if two cards with the same number are selected, suits are ranked with clubs

lowest, diamonds low, hearts high and spades highest.

[1.10.7.9 NMAC – N, 2/25/2020]

1.10.7.10 OFFICES WITH CANDIDATES DESIGNATED BY CONVENTION:

A. Notwithstanding the New Mexico election alphabet, the names of candidates designated and certified by state convention pursuant to Section 1-8-21.1 NMSA 1978 shall be placed on the respective political party primary ballot in descending order of the vote received at the applicable state convention.

B. In the case of two or more candidates designated and certified by state convention who receive an equal number of votes, the order of names for those candidates on the respective political party primary ballot shall be determined using the New Mexico election alphabet and the order provided in 1.10.7.9 NMAC.

C. Names of candidates not designated or certified by state convention pursuant to Section 1-8-21.1 NMSA 1978 shall appear after all convention designated and certified candidates and shall be in the order provided in 1.10.7.9 NMAC.

[1.10.7.10 NMAC – N, 2/25/2020]

1.10.7.11 SELECTION OF AUDITOR:

A. At least 90 days prior to each general election, the secretary of state shall select an auditor to create the New Mexico election alphabet for the subsequent election cycle.

B. The auditor may be the same auditor contracted by the secretary pursuant to Section 1-14-13.2 NMSA 1978.

[1.10.7.11 NMAC – N, 2/25/2020]

1.10.7.12 INITIAL NEW MEXICO ELECTION ALPHABET:

A. Within 31 days following adoption of this rule, the secretary shall select an auditor to create the initial New Mexico election alphabet.

B. The auditor shall publicly create a randomization of the alphabet utilizing a method in which each letter not yet selected has a statistically equal chance of being the next letter selected.

C. The randomized alphabet created by the auditor shall be the New Mexico election alphabet for the remainder of the current election cycle.

D. Once created, the secretary shall post the initial New Mexico election alphabet as soon as practicable on its website.

[1.10.7.12 NMAC – N, 2/25/2020]

History of 1.10.7 NMAC:

1.10.7 NMAC - Determination of Ballot Position for United States Representative Special Elections, filed 3/15/1997; Recompiled 11/30/2001, was repealed and replaced by 1.10.7 NMAC - Randomization Of Candidate Names On Ballots, effective 2/25/2020

SUPERINTENDENT OF INSURANCE, OFFICE OF

TITLE 13 INSURANCE CHAPTER 19 NON-ADMITTED OR SURPLUS LINES INSURANCE PART 4 MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

13.19.4.1 ISSUING AGENCY: Office of Superintendent of Insurance ("OSI").

[13.19.4.1 NMAC – N, 2/25/2020]

13.19.4.2. SCOPE:

A. Applicability. These rules apply to any group establishing or maintaining a multiple employer welfare arrangement ("MEWA") providing health benefits in accordance with Section 59A-15-16 NMSA 1978 for its participants or their beneficiaries. An unregistered MEWA shall not:

(1) advertise in the state as a benefit of membership

for any group health insurance policy available to its members or beneficiaries;

(2) issue a certificate for delivery in New Mexico to any resident of the state; or

(3) solicit membership in the state on the basis of the existence or availability of such health insurance coverage.

B. Exclusions.

Notwithstanding Subsection A of this section, these rules do not apply to any multiple employer welfare arrangement that:

(1) establishes or maintains a multiple employer welfare arrangement plan pursuant to one or more agreements that the United States secretary of labor finds to be a collective bargaining agreement;

(2) is a rural electric cooperative or a rural telephone cooperative association as those terms are defined in ERISA; or

(3) has satisfactorily demonstrated to the superintendent that it is subject to the jurisdiction of another agency of this state or the federal government in accordance with Section 59A-15-17 NMSA 1978.

[13.19.4.2 NMAC – N, 2/25/2020]

13.9.4.3 STATUTORY AUTHORITY: Sections 59A-1-8, 59A-1-18, 59A-2-9, 59A-4-14, 59A-10-3, 59A-15-17, 59A-15-20, 59A-16-1, 59A-16-27, 59A-18-13.2, 59A-18-13.3, 59A-18-13.5, 59A-23-3, 59A-23C-3 NMSA 1978.

[13.19.4.3 NMAC – N, 2/25/2020]

13.19.4.4 DURATION: Permanent.

[13.19.4.4 NMAC – N, 2/25/2020]

13.19.4.5 EFFECTIVE DATE: February 25, 2020, unless a later date is cited at the end of a section.

[13.19.4.5 NMAC – N, 2/25/2020]

13.19.4.6 OBJECTIVE: The purpose of this rule is to establish eligibility requirements, registration, reporting, oversight and transparency

requirements for multiple employer welfare arrangements. This rule also applies state and federal statutes protecting consumers' access to care to MEWAs.

[13.19.4.6 NMAC – N, 2/25/2020]

13.19.4.7 DEFINITIONS:

For definitions of terms contained in this rule, refer to 13.10.29 NMAC, unless otherwise noted below.

A. "Association health plan or association or AHP" means any foreign or domestic association that provides a health benefits plan that covers the employees of multiple employers or union members. All association health plans are multiple employer welfare arrangements.

B. "By laws" means the statements adopted by a MEWA that prescribe its purpose, government and administration.

C. "Discretionary group" means a group that does not meet the standard, eligible group requirements under state or federal law, but have otherwise obtained insurance by the discretion of the superintendent to operate.

D. "Employer" means:

(1) a person who is an employer as that term is defined in Section 3(5) of the federal Employee Retirement Income Security Act of 1974, and who employs two or more employees; and

(2) a partnership in relation to a partner pursuant to Section 59A-23E-17 NMSA 1978.

E. "ERISA" refers to the Employee Retirement Income Security Act of 1974 (29 United States Code Section 1002(4)), and ERISA's implementing regulations, as currently enacted or subsequently amended;

(1) these rules incorporate the definitions in 29 U.S.C.A., § 1002, and in its implementing regulations, as currently enacted or subsequently amended.

(2) unless inconsistent with the definitions in 29 U.S.C.A., § 1002, or in its

implementing regulations, these rules incorporate the definitions in the New Mexico Insurance Code.

F. "Fully-insured multiple employer welfare arrangement" means that an authorized insurer is obligated to provide all of the benefits and services owed to a participant in, or beneficiary of, a MEWA and is directly liable to each participant or beneficiary for those services or benefits.

G. "Insurance code" refers to the New Mexico Insurance Code and its implementing rules, as currently enacted or subsequently amended.

H. "M-1 filing" means a Form M-1 report that the federal department of labor requires a MEWA to file annually.

I. "Multiple employer welfare arrangement" or "MEWA" refers to any foreign or domestic entity that administers a multiple employer welfare arrangement pursuant to 29 U.S.C.A., § 1002(40)(A) and these rules.

J. "NAIC" means the national association of insurance commissioners.

K. "Plan administrator or third-party administrator" means a person or entity engaged by a self-funded MEWA, to carry out the policies established by the trustees and to otherwise administer and provide day-to-day management of the health benefits plan;

L. "Self-funded multiple employer welfare arrangement" refers to a MEWA that is not fully-insured. A fully-insured MEWA shall be deemed a self-funded MEWA, subject to all of the laws and regulations pertaining thereto, if, at any time, any of the obligations owed by the MEWA to a participant or beneficiary will not be provided by an authorized insurer.

M. "Self-insure" means to assume primary liability or responsibility for certain risks or benefits, rather than transferring liability or responsibility to some other entity.

N. “SERFF” means the system for electronic rates and forms filings.
[13.19.4.7 NMAC – N, 2/25/2020]

13.19.4.8 ELIGIBILITY TO OPERATE:

A. Eligibility to operate as or offer coverage through a MEWA.

(1) Self-funded MEWA. A self-funded MEWA shall be eligible to offer health benefits plans only after meeting the requirements outlined in this section

(2) Fully-insured MEWA. A fully-insured MEWA shall confirm that its offered coverage conforms with the requirements of this section prior to the sale or delivery of any health benefits plan to MEWA members.

B. Eligibility for status as MEWA. A MEWA shall prove that it:

(1) is a bona fide association, which means that the association:

(a) has membership consisting solely of employers or union members;

(b) has been actively in existence for at least five continuous years;

(c) is engaged in substantial activities for its members, other than the sponsorship of an employee welfare benefit plan, and provides business or professional assistance and benefits to its members who share a common business interest and are primarily engaged in the same trade or business;

(d) does not condition membership in the association on any health status-related factor relating to an individual (including an employee of an employer or a dependent of an employee) and clearly so states in all membership and application materials;

(e) has within its membership the employers who participate in and fund the arrangement;

(f) makes health benefits plan coverage offered through the MEWA available to all members regardless of any health status-related factor relating to such members (or individuals eligible for coverage through a member) and clearly so states in all marketing and application materials;

(g) does not make health benefits plan coverage offered through the MEWA available other than in connection with a member of the MEWA and clearly so states in all marketing and application materials;

(h) provides and annually updates information necessary for the superintendent to determine whether or not the MEWA meets the definition of a MEWA before qualifying as a bona fide association for the purposes of this rule; and

(i) meets at least one of the following conditions:

(i) is a New Mexico entity;

(ii) includes a member that is a New Mexico entity or who conducts business in New Mexico; or

(iii) has a participant who resides in New Mexico;

(2) shares a commonality of interests, which means that the employers or union members are in the same trade, industry, line of business, or profession; and

(3) does not charge employers or union members membership fees solely to participate in the MEWA and no membership fees are included in the premiums charged for health benefits plans.

C. Limitations of membership. A MEWA may only provide benefits to active or retired owners, officers, directors, or employees (and the domestic partners and family members of any of them) of participating employers or union members, except as may otherwise be limited by provisions of ERISA.

D. MEWAs formed for the purposes of selling insurance, prohibited. No MEWA, shall be formed solely for the purpose of selling insurance.

E. Limitations on large group plans. A health benefits plan offered by a MEWA shall not be considered a large group plan exempt from state and federal laws governing individual or small group coverage solely because the aggregate number of lives covered by the MEWA meets the definition of a large group plan.

F. Size of MEWA. A self-funded MEWA proposing to provide a health benefits plan to fewer than 100 covered lives does not meet the criteria for eligibility under this rule, shall not be registered as an authorized MEWA and shall not offer a health benefits plan to any employees or union members.
[13.19.4.8 NMAC – N, 2/25/2020]

13.19.4.9 MULTIPLE EMPLOYER WELFARE ARRANGEMENT OR ASSOCIATION HEALTH PLAN NAME:

A. Name. No MEWA formed pursuant to this rule shall take any name that is the same as or closely resembles the name of any other MEWA possessing registration and doing business in this state. A MEWA must complete its application for registration to transact business under its own name and shall not adopt any assumed name, except that a MEWA by amending its articles may change its name or take a new name with the approval of the superintendent. A MEWA shall clearly state this name on all advertising materials.

B. Legal proceedings. Whenever it shall be necessary in any legal proceeding to prove the existence of a MEWA, a certified copy of the MEWA registration in this state shall be prima facie evidence of the existence of the MEWA.
[13.19.4.9 NMAC – N, 2/25/2020]

**13.19.4.10 DUTIES
AND COMPENSATION OF
TRUSTEES, OFFICERS OR
DIRECTORS:**

**A. Responsibilities
of trustees, officers or directors.**

The trustees, officers or directors of a MEWA shall give the attention and exercise the vigilance, diligence, care and skill that prudent persons use in like or similar circumstances.

**B. Authority of
trustees, officers or directors.**

The board of trustees, officers or directors shall select such directors as designated in the articles or bylaws or trust agreement and may appoint agents as deemed necessary for the transaction of the business of the MEWA. All directors and agents shall respectively have such authority and perform such duties in the management of the property and affairs of the MEWA as may be delegated by the board of trustees, officers or directors. Any director or agent may be removed by the board of trustees, officers or directors whenever in their judgment the business interests of the MEWA will be served by the removal. The board of trustees, officers or directors shall secure by bond or otherwise the fidelity of any or all such directors or agents who handle the funds of the MEWA.

**C. Duties of the
trustees, officers or directors.**

The trustees, officers or directors of a MEWA are responsible for the operations of the MEWA. The directors shall have, at minimum, the following duties:

- (1) fiduciary responsibility for the MEWA operation and financial condition;
- (2) selection, supervision, and evaluation of the service company, financial administrator, accountant, insurer, and any other contractors;
- (3) on the basis of the plan's overall financial condition, authorizing changes in premium, reserve, or investment practices; and declaring assessments or dividends as appropriate;
- (4) approving all reports concerning the

plan's operations and status to the superintendent and the members;

(5) monitoring delinquent premiums, loss experience, and the financial condition of individual members; and authorizing disciplinary action or expulsion as appropriate;

(6) authorizing acceptance or rejection of applications for membership;

(7) as permitted by the bylaws, making or recommending changes to the bylaws for the improvement of the plan's operation and financial integrity; and

(8) monitoring the plan's compliance with all statutes and rules governing its operation.

D. Compensation.

The compensation of any commissioned sales agent shall not exceed five percent of the premium attributable to that agent.

E. Membership.

Members of the MEWA's board of trustees, officers or directors shall include individuals receiving benefits from the MEWA's health plan.
[13.19.4.10 NMAC – N, 2/25/2020]

**13.19.4.11 APPLICATION
PROCESS FOR MEWAS:**

**A. Application
requirements for registration
generally.** All MEWAs shall submit an application for registration and receive approval from the superintendent before sale of any plans or products. All application materials shall be provided in the format specified by the superintendent on the office of superintendent of insurance website.

**B. Contents
of application, generally.** An application for registration shall include the MEWA's most current M-1 filing with the United States department of labor. Unless the information in the documents requested below is provided in the M-1 filing, the MEWA must also file:

- (1) a certified copy of the formative documents that establish the MEWA entity name and type under which the MEWA will operate, the MEWA's federal employer identification number

(FEIN) and filings which demonstrate that the MEWA is authorized to do business in New Mexico;

(2) copies of all bylaws, operating agreements or similar documents that govern the control of the MEWA;

(3) the name, address, and telephone number for the contact for each association, group, trust, employer or member participating in the MEWA;

(4) the name, address, and telephone number of each officer, director, partner or trustee of the MEWA;

(5) a description of all sources of financing and revenue of the MEWA;

(6) the MEWA's current financial statements including audit reports, a balance sheet, income statement, cash flow statement and detailed listing of assets and debts, each developed according to generally accepted accounting principles;

(7) an affidavit from an officer, director, fiduciary or trustee of the MEWA attesting that, based on the affiant's informed belief, the MEWA is in compliance with all applicable provisions of ERISA;

(8) an affidavit from an officer, director, fiduciary or trustee of the MEWA attesting that, based on the affiant's informed belief, the MEWA is in compliance with all applicable provisions of the Insurance Code and applicable portions of the Affordable Care Act. Such affidavit does not absolve the MEWA from any rate or form filing requirements under 13.19.4.23 NMAC;

(9) an affidavit from an officer, director or trustee of the MEWA certifying that all association members and their employees shall be eligible for participation in the MEWA;

(10) a copy of any document executed by an employer or trust to become a member of the MEWA, including application for membership;

(11) a description of all membership requirements;

(12) the names and license numbers of any third-party benefit administrators administering health benefits offered by the MEWA;

(13) a copy of a binder or policy of stop loss coverage required by 13.19.4.19; and

(14) any additional information requested by the superintendent, including but not limited to any documents required by 13.19.4.23 to establish compliance with 13.19.4.11 NMAC

C. Additional specifications for fully-insured MEWAs. An application for a registration to operate as a fully-insured MEWA shall also include:

(1) the NAIC number of each insurer who will provide benefits on behalf of the MEWA; and

(2) all contracts between the MEWA and each insurer identified in Paragraph (1) of this subsection.

D. Additional specifications for self-insured MEWAs. An application for registration to operate as a self-insured MEWA shall also include:

(1) an actuarial opinion prepared, signed and dated by a person who is a member of the American Academy of Actuaries stating that appropriate loss and loss adjustment reserves have been established and that adequate premiums are being charged;

(2) a copy of an indemnity agreement that jointly and severally binds the MEWA and each member thereof to meet the obligations of the MEWA;

(3) a copy of a document that binds and obligates the board members of the MEWA to replace any funding shortfall relating to the MEWA operations in this state. Such document shall provide for the payment of one hundred percent of any claims covered by the plan in the event the MEWA operates in states other than New Mexico;

(4) a copy of all stop-loss or reinsurance commitments, binders or policies

insuring the MEWA or its members for benefits owed under the plan;

(5) any applicable documents required to be filed pursuant to 13.2.7 NMAC; and

(6) all documents necessary to demonstrate its solvency to the superintendent's satisfaction, as set forth in 13.19.4.15 NMAC.

E. Application filing fee. The application filing fee for registration to operate as a MEWA in New Mexico shall be the same as those described under Section 59A-6-1, NMSA 1978.
[13.19.4.11 NMAC – N, 2/25/2020]

13.19.4.12 APPLICATION REVIEW AND APPROVAL PROCESS FOR MEWAS:

A. Application completion requirements. An application is not complete until the MEWA has met all the requirements of this section to the satisfaction of the superintendent. The superintendent shall examine the application and supporting documents submitted by the applicant and shall conduct any investigation that the superintendent deems necessary. Incomplete applications shall be denied.

B. Application review. The superintendent shall register the MEWA upon finding that:

(1) the persons responsible for the conduct of the MEWA are competent, financially responsible and of good moral character;

(2) the applicant MEWA satisfies the requirements of 13.19.4.14 - 13.19.4.19 NMAC; and

(3) the applicant MEWA satisfies the requirements of 13.19.4.23 NMAC.

C. Material changes. A MEWA that has made an application under this rule shall amend such application within 30 days of the date the MEWA becomes aware, or through the exercise of due diligence should have become aware, of any material change to the information required to be filed.

The amended application filing shall accurately reflect material changes to the information originally filed. Any changes made subsequent to the immediately preceding M-1 filing shall be specifically identified.

D. Rate and form filing requirements. A MEWA shall comply with the rate and form and filing requirements described in Chapter 59A, Article 18, NMSA 1978 and its implementing rules, as currently enacted or subsequently amended. All forms, rates and advertisements shall be filed through SERFF prior to use.
[13.19.4.12 NMAC – N, 2/25/2020]

13.19.4.13 REVOCATION: The superintendent may revoke a MEWA's registration upon determining that the MEWA is no longer in compliance with any applicable provision of federal law, the Insurance Code or these rules, even if the non-compliance pre-dated registration.
[13.19.4.13 NMAC – N, 2/25/2020]

13.19.4.14 SELF-FUNDED MEWA DEPOSIT REQUIREMENTS:

A. Deposit requirement. Every self-funded MEWA shall make and maintain deposits in trust of for the benefit and protection of all of its participants and their beneficiaries as specified by the superintendent in the certificate of registration. The deposit shall consist of assets eligible under Section 59A-10-3 NMSA 1978, and shall be deposited with or through the superintendent or in a commercial depository located in the state of New Mexico approved by the superintendent subject to Section 59A-10-1 *et seq.*, NMSA 1978.

B. Deposit release conditions. Any such deposit shall be released only in the following instances:

(1) upon extinguishment of all fixed and contingent liabilities of the MEWA secured by the deposit;

(2) upon the assumption by an authorized insurer

of the MEWA's fixed and contingent liabilities secured by the deposit; or
(3) upon order

of a court of competent jurisdiction, the reserve deposit may be released to the receiver, conservator, rehabilitator or liquidator of the MEWA for whose account the deposit is held.

[13.19.4.14 NMAC – N, 2/25/2020]

13.19.4.15 SELF-FUNDED MEWA MINIMUM SOLVENCY REQUIREMENTS:

A. Net worth requirements. Every self-funded MEWA shall maintain an unallocated reserve level of not less than the greater of twenty percent of the total premiums in the preceding plan year or twenty percent of the total estimated premiums for the current plan year. The superintendent may require a self-funded MEWA to maintain a minimum net worth in an amount lesser or greater than otherwise required in this rule.

B. Reserve accounting principles. Every self-funded MEWA shall establish and maintain loss and loss adjustment reserves determined by sound actuarial principles in a format consistent with that required by the national association of insurance commissioners for commercial health insurers. These principles shall give proper actuarial regard for known claims, paid and outstanding, a history of incurred but not reported claims, claims handling expenses, unearned premium, an estimate for bad debts, a trend factor and a margin for error.

C. Reserve requirements. Reserves shall be maintained in liquid admitted assets.
[13.19.4.15 NMAC – N, 2/25/2020]

13.19.4.16 ACCOUNTING STANDARDS AND REPORTING REQUIREMENTS:

A. Annual statement required. Each self-funded MEWA transacting business in this state shall file annually with the superintendent statements and reports in compliance with 13.2.5 NMAC. Additionally, each annual statement shall be filed:

(1) by June 1st of each year, financial statements

audited by a certified public accountant; and

(2) by March 1st of each year, an actuarial opinion prepared and certified by an actuary who is not an employee of the self-funded MEWA and who is a fellow of the society of actuaries, a member of the American academy of actuaries, or an enrolled actuary under the Employee Retirement Income Security Act of 1974 (29 United States Code §§ 1241 and 1242). The actuarial opinion shall include:

(a) a description of the actuarial soundness of the self-funded MEWA, including any recommended actions that the self-funded MEWA should take to improve its actuarial soundness;

(b) the recommended amount of cash reserves the self-funded MEWA should maintain, which shall not be less than the greater of twenty percent of the total contributions in the preceding plan year or twenty percent of the total estimated contributions for the current plan year;

(c) a calculation of cash reserves with proper actuarial regard for known claims, paid and outstanding, a history of incurred but not reported claims, claims handling expenses, unearned premiums, an estimate for bad debts, a trend factor, and a margin for error; and

(d) the recommended level of specific and aggregate stop-loss insurance the MEWA arrangement should maintain.

B. Renewal contingent upon compliance. The superintendent shall review the statements and reports required by Subsection A of this section. Renewal of a self-funded MEWA registration is contingent upon the superintendent finding that the self-funded MEWA meets the requirements of Subsection B of 13.19.4.12 NMAC.

C. Order for actuarial review. On a finding of good cause, the superintendent may order an actuarial review of a self-funded MEWA in addition to the actuarial opinion required by this section. The

cost of any such additional actuarial review shall be paid by the self-funded MEWA.

D. Quarterly reports. A self-funded MEWA shall file quarterly financial reports. Quarterly reports shall contain statements for each health benefits plan offered by the self-funded MEWA pursuant to NAIC standards set forth in Model Law 430 Section 25 and Section 26.

E. Examination timeline. The superintendent shall examine the affairs and conduct of a self-funded MEWA at least once every three years in the same manner that applies to domestic and foreign insurers with a certificate of authority to transact insurance in New Mexico. Expenses of examination shall be paid by each MEWA, or its insurers, pursuant to Section 59A-4-14 NMSA 1978.

[13.19.4.16 NMAC – N, 2/25/2020]

13.19.4.17 INVESTMENT REQUIREMENTS OF SELF-FUNDED MEWAS: Every self-funded MEWA shall comply fully with the investment requirements of Section 59A-9-2 NMSA 1978. In addition, a MEWA must not invest in securities or debt of a member employer, or a member employer's parent, subsidiary, or affiliate; or any person or entity under contract with the MEWA.

[13.19.4.17 NMAC – N, 2/25/2020]

13.19.4.18 FINANCIAL INTEGRITY OF SELF FUNDED-MEWAS:

A. Fidelity bond. All persons who handle MEWA funds or who will have authority to gain access to MEWA funds, including trustees, officers or directors must be covered by a fidelity bond. The bond must cover losses from dishonesty, robbery, forgery or alteration, misplacement, and mysterious and unexplainable disappearance. The amount of coverage for each occurrence must be at least \$300,000. The MEWA must submit a fidelity bond covering the required persons, or submit proof of coverage for all required individuals not covered under the MEWAs bond.

B. Integrity of assets.

A MEWA's assets:

(1) must not be commingled with the assets of any employer member;

(2) must not be loaned to anyone for any purpose, or used as security for a loan, except as permitted under subsection C of this section for investments.

(3) must be employed solely for the purposes stated in the bylaws, and in compliance with this chapter and related statutes; and

(4) must not be considered the property or right of any member, covered employee, or other covered person, except:

(a) for benefits under the coverage documents;

(b) for dividends declared in accordance with Section 59A-37-22 NMSA 1978.

(c) for a portion of the assets remaining after the plan's dissolution.

C. Sources and uses of funds. A MEWA may expend funds for payment of losses and expenses, and for other costs customarily borne by insurers under conventional insurance policies in New Mexico. A MEWA must not borrow money or issue debt instruments, except to maintain cash flow through a stop-loss policy requiring an insurer to advance funds to the MEWA under conditions approved by the superintendent. A MEWA may bring legal suits to collect legal debts. A MEWA may receive funds only from:

(1) its members as premiums, assessments or penalties;

(2) its insurers or indemnitors pursuant to insurance or indemnification agreements;

(3) dividends, interest, or the proceeds of sale of investments;

(4) refunds of excess payments;

(5) coordination of benefits with automobile coverage, workers' compensation coverage, and other

employee health benefit coverage;

(6) collection of money owed to the MEWA; or

(7) subrogation.

D. Separate accounts.

A MEWA may establish separate accounts for the payment of claims or certain types of expenses. These accounts must be used only by the MEWA's third-party administrators, its authorized subcontractors or financial administrators as appropriate to the account's purpose. The amount in these special accounts must not exceed the amount reasonably sufficient to pay the claims or expenses for which it is established. All monetary and investment assets not in these accounts must be under the control of the financial administrator.

E. Monitoring financial condition. The trustees, officers or directors must review the MEWA's revenues, expenses, and loss development, and evaluate its current and expected financial condition quarterly. The trustees, officers or directors must attempt in good faith to maintain or restore the MEWA's sound financial condition, using any means at its disposal. These means include but are not limited to adjusting premium rates, underwriting standards, dividend rates, expulsion standards, and other powers granted in this rule and the bylaws. If the superintendent judges that the trustees', officers' or director's actions are inadequate to maintain or restore the plan's sound financial condition, the superintendent shall, as appropriate: order an increase in the premium rates; revoke the MEWA's registration; or order that an assessment be levied against the members.

[13.19.4.18 NMAC – N, 2/25/2020]

13.19.4.19 SELF-FUNDED MEWA STOP-LOSS COVERAGE REQUIREMENTS:

A. Purchase and alteration. A MEWA must inform the superintendent at least 180 days prior to expiration of any required stop-loss insurance policy whether it intends to renew the policy, and whether

the insurer is willing to renew the policy. Alteration of a required stop-loss insurance policy midterm with the effect of reducing coverage, and cancellation by the plan midterm, is prohibited. If more than one stop-loss insurance policy is obtained in fulfillment of this part's requirements, their expiration dates must be the same.

B. Individual excess.

A MEWA shall have and maintain individual excess stop-loss insurance, that provides for the insurer to assume all liability in excess of the per person limit per year under all coverages the plan offers. The reporting period under this coverage shall be no less than one year after the fund year's conclusion.

C. Aggregate excess.

A MEWA must have and maintain aggregate excess stop-loss insurance that provides for the insurer to assume all liability in excess of a specified amount of claim losses for each fund year. The aggregate excess coverage may be in the form of incurred basis stop-loss insurance or paid basis stop-loss insurance. MEWAs using paid basis stop-loss insurance shall have and maintain extended or runoff aggregate excess stop-loss insurance on an incurred basis. The extended or runoff coverage shall provide for the insurer to assume all liability in excess of a specified amount of claim losses incurred while the paid basis stop-loss insurance was in force, but paid after its termination or nonrenewal. The reporting period under paid basis insurance shall be no less than three months after the fund year's conclusion. The reporting period under incurred basis insurance, including extended or runoff insurance shall be no less than one year after the fund year's conclusion.

D. Contractual Requirements. A MEWA shall have and maintain the following language in its required aggregate excess stop-loss insurance policy, unless the superintendent determines that a policy with that language is not available in the market for stop-loss coverage, in which case, the

superintendent may determine the requirements needed to obtain stop-loss coverage and meet solvency requirements: "The insurer shall, at the superintendent's request, assume direct responsibility for the MEWA's coverage and all other responsibilities under this chapter and related statutes, if the MEWA becomes insolvent, ceases operations without authorization, or otherwise fails to fulfill its responsibilities under this chapter and related statutes. The insurer may attempt to collect reimbursement from the MEWA or an employer member on whose behalf the insurer is called upon to pay premium, pay claims, or incur other extraordinary expenses. However, the insurer shall fulfill its responsibilities under this section while any collection attempts are pending. The insurer's responsibilities extend to all matters arising during or attributable to the policy period, and do not terminate with the end of the policy period."

[13.19.4.19 NMAC – N, 2/25/2020]

13.19.4.20 ENDING SELF-FUNDED, RUNOFF PERIOD, AND PLAN DISSOLUTION:

A. Ending self-funded registration. A MEWA may decide to end its self-funded registration and cease to provide coverage, effective at the end of a fund year. The MEWA shall notify the superintendent within 14 days of such a decision. A MEWA may not elect to end its self-funded registration less than 45 days prior to the end of the fund year in question. Voluntary ending of self-funded registration does not constitute MEWA dissolution under Subsection D of this section.

B. Revocation of self-funded registration. The superintendent shall, by order, revoke the registration of a MEWA to self-insure upon ten days' written notice if any of the following events occur or conditions develop, and if the superintendent judges them to be material:

(1) failure of the MEWA to comply with this rule and all applicable statutes under the Insurance Code;

(2) failure of the MEWA to comply with any lawful order of the superintendent;

(3) commission by the MEWA of an unfair or deceptive practice or fraud as defined in Chapter 59A, Articles 16, 16b, or 16c of the Insurance Code or in related rules; or

(4) a deterioration of the MEWA's financial integrity to the extent that its present or future ability to meet obligations promptly and in full is or will be significantly impaired.

C. Runoff period.

A health benefits plan offered by a MEWA shall continue to exist as a runoff plan after its self-funded registration has ended, for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the plan provided coverage. A runoff plan shall continue to comply with all appropriate provisions of this rule, and with all other applicable New Mexico statutes and rules. Authority to exist as a runoff plan is open-ended, and does not require renewal of registration.

D. Dissolution. A MEWA, including a runoff health benefits plan offered by a MEWA, which desires to cease existence shall apply to the superintendent for authorization to dissolve. Applications shall be approved or disapproved within 60 days of receipt. Dissolution without authorization is prohibited and void, and does not absolve a MEWA or runoff plan from fulfilling its continuing obligations, and does not absolve its members from assessment under premium tax law. The MEWA's assets at the time of dissolution shall be distributed to the members and covered employees as provided in the bylaws. The superintendent shall grant authorization to dissolve if either of the following conditions are met:

(1) the MEWA demonstrates that it has no outstanding liabilities, including incurred but not reported liabilities; or

(2) the MEWA has obtained an

irrevocable commitment from a licensed insurer that provides for payment of all outstanding liabilities, and for providing all related services, including payment of claims, preparation of reports, and administration of transactions associated with the period when the plan provided coverage.

[13.19.4.20 NMAC – N, 2/25/2020]

13.19.4.21 EFFECT OF REGISTRATION:

A. Deemed to be an insurer. Upon approval of the application for registration, a self-funded MEWA is deemed to be an "insurer" under Subsection A of Section 59A-1-8 NMSA 1978.

B. Deemed to be an authorized issuer. Upon approval of the application for registration, a self-funded MEWA is deemed to be an authorized insurer for purposes of compliance with state and federal law.

C. Plan deemed to be a contract. The health benefits plan of a registered self-funded MEWA is deemed to be a health benefits plan under state and federal law.

[13.19.4.21 NMAC – N, 2/25/2020]

13.19.4.22 RENEWAL OF REGISTRATION:

A. Renewal requirements. A MEWA's registration shall continue in force as long as the MEWA complies with these rules and all other applicable state and federal laws, unless suspended or revoked by the superintendent or terminated at the MEWA's request, subject to continuance of the registration by the MEWA each year by:

(1) payment on or before March 1 of a \$200.00 continuation fee;

(2) filing on or before March 1, by the MEWA or its authorized insurer(s), of an audited financial statement for the preceding year;

(3) timely payment by the MEWA, or its authorized insurer(s), of premium taxes for the preceding calendar year;

(4) reporting on demographic information, on a

form approved by the superintendent, providing MEWA, and any third party administrator, intermediary, regulatory compliance, and insurer contacts that comply with the following requirements:

(a) the MEWA contact shall be the person responsible for filing all applicable forms and changes in information with the superintendent; and

(b) the regulatory contact shall be the person responsible for receiving notice of laws, rules, bulletins and the like that may affect the plan;

(5) notice of any changes in information previously filed with the superintendent, which shall include, but is not limited to, the following items:

(a) biographical affidavits of any new trustees, officers, directors, or other members of the association's or MEWA's governing body;

(b) the names, addresses, and qualifications of any new individuals responsible for the conduct of the plan's affairs, including third-party administrators;

(c) any new policy or amendment;

(d) any new trust agreement, plan document, plan summary, or bylaws;

(e) any new advertising and marketing material;

(f) any new members of the MEWA; and

(g) any other new agreements.

B. Expiration of registration and cure. A MEWA's registration shall expire under the same conditions and be cured by the same processes as described in Section 59A-5-23, NMSA 1978. [13.19.4.22 NMAC – N, 2/25/2020]

13.19.4.23 RATE AND FORM FILING REQUIREMENTS:

A. Rate and form filing requirements. A MEWA selling health benefits plans to New

Mexico residents or employers, or an insurance company offering coverage through a MEWA, shall set premiums in accordance with sound actuarial methods and the standards outlined below:

(1) All forms of contracts evidencing benefits provided and all premium rates proposed, including any and all amendments, endorsements, riders, certificates or other modifications to contracts or premiums, shall conform to the filing and approval requirements contained in Sections 59A-18-13.2, 59A-18-13.3 and 59A-18-13.5 NMSA 1978, and any other applicable state or federal law.

(2) All MEWAs covering New Mexico residents shall charge premium rates in compliance with state and federal law, consistent with the market in which employer member is part; that is, a self-employed individual will have an individual policy, a small business will have a small group policy, and a large employer will have a large group policy.

(3) All MEWAs covering New Mexico residents shall file forms and rates in compliance with state and federal law, consistent with the market in which employer member is part, that is, a self-employed individual will have an individual policy, a small business will have a small group policy, a large employer will have a large group policy.

(4) All MEWAs covering New Mexico residents shall cover consumer protections in compliance with state and federal law, consistent with the market in which employer member is part, that is, a self-employed individual will have an individual policy, a small business will have a small group policy, a large employer will have a large group policy.

B. Existing group rates use. A fully-insured MEWA offering small or large group coverage may use its existing small or large group rates, as applicable, without making a MEWA-specific rate filing, so long as such group rates

have been filed with and approved by the superintendent and meet the requirements of this section.

C. Rate guarantee requirement. A self-insured or fully-insured MEWA offering benefits plans to individuals through sole proprietorship businesses shall guarantee the rates on all such plans for a minimum of 12 months.

D. Medical loss ratio requirements. A self-insured or fully-insured MEWA offering a health benefit plan with covered lives in New Mexico shall comply with respect to those covered lives, with the medical loss ratio and rebating requirements of New Mexico law.

E. Commissions and medical loss ratios. Any fees associated with broker services shall not be incorporated into the medical loss ratio under Subsection D of this section, but shall be incorporated into the administrative expense portion of a self-insured or fully-insured MEWA's rate filing.

F. Commission reimbursement. A self-insured or fully-insured MEWA shall not pay commissions or fees higher than the commissions allowed for the same coverage offered as a qualified health plan in the individual or small group market, as applicable.

G. Third party administrator contracts. Prior to sale of any health benefits plan, a self-insured or fully-insured MEWA shall file in SERFF as informational filings all copies of all contracts or agreements between the MEWA and any other entity that govern the management or administration of the MEWA, including any third-party benefit administrators;

H. Approval. No health benefits plan or certificate of coverage shall be delivered or issued for delivery in this state until a copy of the form and of the rules for the classification of risks has been filed with and approved by the superintendent in accordance with state law.

[13.19.4.23 NMAC - N, 2/25/2020]

13.19.4.24 MANAGED HEALTH CARE COMPLIANCE PLAN AND BENEFITS

REQUIREMENTS: A healthcare plan offered by a MEWA, or by an insurer offering coverage through a MEWA, shall comply with all state and federal laws that mandate benefits, that mandate consumer protections and that mandate managed health care requirements.

[13.19.4.24 NMAC – N, 2/25/2020]

13.19.4.25 NOTICE REQUIREMENTS:

A. Notice language.

The following notice shall be provided by a MEWA or third-party administrator within the policy documents to employers and employees who obtain coverage from a MEWA:

“Notice

The [Insert the name of the MULTIPLE EMPLOYER WELFARE ARRANGEMENT in all capital letters] IS NOT AN INSURANCE COMPANY. FOR ADDITIONAL INFORMATION ABOUT THE [Insert the name of the MULTIPLE EMPLOYER WELFARE ARRANGEMENT in all capital letters] YOU SHOULD ASK QUESTIONS OF THE ADMINISTRATOR OF THE [Insert the name of the MULTIPLE EMPLOYER WELFARE ARRANGEMENT in all capital letters], OR YOU MAY CONTACT THE NEW MEXICO OFFICE OF THE SUPERINTENDENT OF INSURANCE USING THE CONTACT INFORMATION PROVIDED ON THE OSI WEBSITE.”

B. Contact for superintendent. Each MEWA related notice shall include the superintendent’s current consumer service telephone number and website in this notice.

C. Notice to individual and small group prospective enrollees. Any MEWA, third-party administrator or agent or producer acting on behalf of a MEWA shall provide the following

information to prospective purchasers of an individual or small group health benefits plan:

(1) A

statement that the individual or small group has the option of purchasing insurance on the New Mexico Health Insurance Exchange;

(2) Contact

information for the New Mexico health insurance marketplace, including website and phone number;

(3) A

statement that purchasing a health benefits plan through the MEWA may result in preventing the employer or individual from accessing premium subsidies, cost sharing reductions, or other financial assistance that may otherwise be available through the New Mexico health insurance exchange; and

(4) A table

showing current income eligibility guidelines for Medicaid and individual and family marketplace coverage through the New Mexico health insurance exchange.

[13.19.4.25 NMAC – N, 2/25/2020]

13.19.4.26 ENROLLMENT PERIODS:

A self-funded or fully-insured MEWA shall offer open and special enrollment periods consistent with state and federal law and consistent with the market in which the employer member is a part; that is, a self-employed individual will have an individual policy, a small business will have a small group policy, and a large employer will have a large group policy.

[13.19.4.26 NMAC – N, 2/25/2020]

13.19.4.27 RECORD

RETENTION: A MEWA doing business in New Mexico shall maintain its books and records for a minimum period of seven years. Records shall be made available to the superintendent for review upon request.

[13.19.4.27 NMAC – N, 2/25/2020]

13.19.4.28 ENFORCEMENT:

A. Enforcement action for failure to comply with rule. The superintendent may revoke,

suspend or refuse to continue the registration of a MEWA that fails to comply with this rule and may impose such other applicable administrative penalties authorized under the Insurance Code.

B. Cease and desist.

When the superintendent believes that a MEWA or any other person is operating in this state without a registration or has violated the law or a rule or order of the superintendent, the superintendent may issue an order to cease and desist such violation or take any other action set forth in Section 59A-16-27 NMSA 1978.

C. Penalty.

Any person or entity who violates any provision of this rule is subject to the penalties provided in Section 59A-1-18 NMSA 1978.

[13.19.4.28 NMAC – N, 2/25/2020]

13.19.4.29 FRAUD REPORTING REQUIREMENT:

Any regulated entity who knowingly aids, assists or abets violations of these rules is subject to the same penalties as the MEWA.

[13.19.4.29 NMAC – N, 2/25/2020]

13.19.4.30 INSURANCE

AGENTS AND BROKERS: Any person, including a licensed agent, broker or other individual, soliciting, offering or selling a health benefit plan on behalf of a MEWA to a New Mexico employer or a New Mexico resident shall comply with the following requirements:

A. Prior to completing a sale of individual or small group coverage, disclose to the employer or resident that:

(1) the agent or broker is being compensated for the sale of the health benefit plan;

(2) that the small employer or individual has the option of purchasing insurance on the New Mexico health insurance marketplace;

(3) the eligibility guidelines for Medicaid coverage and financial assistance for coverage through the New Mexico health insurance exchange;

(4) contact information for the New Mexico health insurance exchange; and

(5) a comparison table showing the similarities and differences in coverages between a MEWA with qualified health plans sold in the individual and small group market; and

B. Prior to engaging in or assisting any person to engage in selling health benefits plans through a MEWA, shall document appropriate due diligence to establish, at a minimum; the following:

(1) that the MEWA's insurer or third-party administrator is licensed in the state;

(2) that the MEWA has registered, permitting it to operate in the state;

(3) that the disclosures listed in Paragraph (1) are in the policy document; and

(4) that the advertising and marketing materials that the agent or broker is using have been approved by the superintendent.
[13.19.4.30 NMAC – N, 2/25/2020]

13.19.4.31 SHORT TERM LIMITED DURATION AND EXCEPTED BENEFIT PLANS:

Only a fully-insured MEWA shall offer a short-term or excepted benefits plan. A MEWA offering short-term or excepted benefits plans shall comply with all sections of this rule pertaining to fully-insured MEWA plan.

[13.19.4.31 NMAC – N, 2/25/2020]

13.19.4.32 VACCINE PURCHASING ACT

COMPLIANCE: A MEWA offering a major medical health benefits plan shall comply with the reporting requirements under the Vaccine Purchasing Act at 24-5a-1 et seq. NMSA 1978.

[13.19.4.32 NMAC – N, 2/25/2020]

13.19.4.33 PHARMACY

BENEFIT MANAGERS: Any self-funded or fully-insured MEWA offering drug coverage through a pharmacy benefit manager shall comply with Section 59A-61-1 et seq. NMSA 1978.

[13.19.4.33 NMAC – N, 2/25/2020]

13.19.4.34 COMPLIANCE FOR EXISTING MEWAS OR DISCRETIONARY GROUPS:

A MEWA subject to this rule on its effective date shall comply with the provisions of this rule no later than 45 days following its effective date.

[13.19.4.35 NMAC – N, 2/25/2020]

13.19.4.35 DEADLINES: The superintendent, for good cause, may shorten or extend any deadline set by this rule or under the Insurance Code.

[13.19.4.36 NMAC – N, 2/25/2020]

13.19.4.36 RULE

NONCOMPLIANCE: Failure to comply with any provision of these rules is a violation of the Insurance Code and punishable pursuant to Section 59A-5-30 NMSA 1978.

[13.19.4.37 NMAC – N, 2/25/2020]

13.19.4.37 HEARING

RIGHTS: Any person aggrieved by any action, threatened action, or failure to act by the superintendent shall have the same right to a hearing before the superintendent with respect thereto as provided for in general under Chapter 59A, Article 4 NMSA 1978 and the implementing rules.

[13.19.4.38 NMAC – N, 2/25/2020]

13.19.4.38 SEVERABILITY:

If any provision of this rule, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this rule that can be given effect without the invalid provision or application, and to that end the provisions of this rule are severable.

[13.19.4.38 NMAC – N, 2/25/2020]

HISTORY OF 13.19.4 NMAC:

13.19.4 NMAC - Multiple Employer Welfare Arrangements filed 5/1/2002 was repealed and replaced by 13.19.4 NMAC - Multiple Employer Welfare Arrangements, as an emergency rule, effective 8/27/2019. Emergency rule expired 2/24/2020, refiled as a permanent rule, effective 2/25/2020.

Other Material Related to Administrative Law

**CHILDREN, YOUTH AND
FAMILIES DEPARTMENT
PROTECTIVE SERVICES
DIVISION**
**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Children, Youth and Families Department gives Notice of a Minor, Nonsubstantive Correction to its repeal statement to and new rule for 8.26.4 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

8.26.4 NMAC Repeal

The erroneous filing date for previous rule “1/24/2020” was corrected to “5/29/2009”.

8.26.4.15 NMAC

Paragraph (1) of Subsection E was deleted (due to lack of a paragraph (2)) and the subsection was properly re-formatted.

A copy of this Notification will be filed with the official version of each of the above rules.

**ENVIRONMENT
DEPARTMENT**
**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The New Mexico Environment Department gives Notice of a Minor, Nonsubstantive Correction to 20.40.2 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

Paragraph (1) of Subsection M of 20.4.2.7 NMAC was deleted (due to lack of a Paragraph (2)) and the subsection was properly re-formatted.

A copy of this Notification will be filed with the official version of each of the above rules.

**HEALTH, DEPARTMENT
OF**
**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Department of Health gives Notice of a Minor, Nonsubstantive Correction to its amendment to 8.26.4 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

For all official rule and agency copies of the above rule, the transmittal form and amendment incorrectly identified the new section number as “28”. The section number has been corrected as “30” in all places where the section number is located.

A copy of this Notification will be filed with the official version of each of the above rules.

**End of Other Material
Related to Administrative
Law**

2020 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXI, Issues 1-24

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

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

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