

NEW MEXICO 
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New Mexico Register

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

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The New Mexico Register

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New Mexico Register

Volume XXXI, Issue 19

October 13, 2020

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Notices of Rulemaking and Proposed Rules

PUBLIC RECORDS, COMMISSION OF

NOTICE OF RESCHEDULED PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN

that the State Records Administrator (“Administrator”), or a delegated hearing officer, will hold a rulemaking hearing on November 13 at 10:00 AM. The meeting will be held virtually via Zoom. Members of the public may attend the Zoom meeting on a computer, mobile device, or telephone. The videoconference’s Meeting ID and Password, videoconference link, and telephone numbers are as follows:

State Records Administrator
Rulemaking Hearing Invitation for
November 13, 2020 at 10:00 AM.
Waiting room opens at 9:30AM, feel
free to join the meeting early.

Topic: SRA Rule Hearing
Time: Nov 13, 2020 10:00 AM
Mountain Time (US and Canada)

Join Zoom Meeting
<https://us02web.zoom.us/j/87551608838>

Meeting ID: 875 5160 8838
One tap mobile
+13462487799,,87551608838# US
(Houston)
+16699009128,,87551608838# US
(San Jose)

Dial by your location
+1 346 248 7799 US (Houston)
+1 669 900 9128 US (San Jose)
+1 253 215 8782 US (Tacoma)
+1 312 626 6799 US (Chicago)
+1 646 558 8656 US (New York)
+1 301 715 8592 US

(Germantown)
Meeting ID: 875 5160 8838
Find your local number: <https://us02web.zoom.us/j/87551608838>

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 contact Rick Hendricks at 505 476-7955 by November 2, 2020, or as soon as possible.

The SRA will consider the following item of rulemaking at the hearing:

Amend:

1.24.10 NMAC, New Mexico Administrative Code.

Synopsis:

Due to the governor’s declaration of a public health emergency, the SRA issued an emergency amendment on April 29, 2020 to section 15 allowing for transmittal form filing with a digital signature. By operation of law, this emergency amendment expires on October 30, 2020. This amendment allows for a digital signature on a transmittal form. This permanent amendment differs from the emergency amendment as it does not include any predicate requirement of an emergency for an agency to submit a digital signature. If this amendment becomes permanent, an agency would have the option of submitting a transmittal form with an original signature, in black ink, or with a valid digital signature.

Purpose:

The purpose of the proposed amendment of 1.24.10.15 NMAC is to allow and to accept an original signature or digital signature on the transmittal form for any rule filing.

1.24.10.15 NMAC TRANSMITTAL FORM:

F. Each rule filing shall bear the original signature of the issuing authority or authorized designee in black ink on the paper copy of the NMAC transmittal form or with a valid digital signature. If authority is delegated, the box shall be checked. Any rule filing may be accepted, with a valid digital signature, and will be filed by the administrative law division on the

appropriate New Mexico register submittal deadline; unless agency needs a rule to be filed on a different date, pursuant to Subsection D of Section 14-4-5 or Section 14-4-5.6 NMSA 1978, then alternate arrangements will be made on a case by case basis.

G. Those portions of the transmittal form that are completed by the issuing agency under the concise explanatory statement heading shall be considered sufficient compliance with State Rules Act and shall be provided to the public at the time the issuing agency adopts any rule making.

[1.24.10.15 NMAC - Rp, 1 NMAC 3.3.10.11, 2/29/2000; A, 6/30/2004; A, 9/15/2014; A, 11/30/2015; A, 7/1/2017; A/E, 4/29/2020; A, 11/24/2020]

At the virtual hearing the Administrator will take oral comments related to the rulemaking actions listed below and will consider approving these rule making actions. The State Records Administrator may take action on those rules at the close of the public rulemaking hearing. Oral comments will be taken virtually, subject to time limitations, and written comments will be received at the main entrance of the State Records Center and Archives, 1209 Camino Carlos Rey, Santa Fe, NM between 8:30 a.m. and 9:30 a.m..

Interested persons may submit written comments via email at rmd.cpr@state.nm.us. Written comments must be received no later than 5:00 p.m. on November 12, 2020. If submitting written comments by e-mail, please indicate in the subject line the number of each rule(s) for which you are providing comments.

A copy of the agenda and proposed rule for the state records administrator rule hearing is also available on the commission website and at the office of the State Records Administrator located at the State Records Center and Archives at 1209 Camino Carlos Rey, Santa Fe, NM. The agenda is

subject to change up to 72 hours prior to the meeting. Legal authority for this rulemaking can be found in the State Rules Act, Section 14-4-1, et seq. NMSA 1978.

ENVIRONMENT DEPARTMENT

NEW MEXICO ENVIRONMENT IMPROVEMENT BOARD NOTICE OF SCHEDULED PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 11.5.1.16 NMAC EIB 20-55

The Environmental Improvement Board (“EIB”) will hold a public hearing December 18, 2020 beginning at 9:00 a.m. via internet (Cisco WebEx, Microsoft Lync, and Microsoft Skype for Business), via telephone, and, comments will also be received via email through the conclusion of the hearing.

The WebEx Meeting number (access code) is: 133 444 1276; and the WebEx Meeting password is: ZjsZPmdT358; or, join the WebEx meeting link: <https://nmed-oit.webex.com/nmed-oit/j.php?MTID=mae8a7ecbe62daeedb9e755ac4ef09166>.

To join by phone or mobile device: +1-415-655-0001 US Toll; Access Code 133 444 1276.

To join from a video system or application, Dial: 1334441276@nmed-oit.webex.com; You may also dial 173.243.2.68 and enter the Meeting number: 133 444 1276.

To join using Microsoft Lync or Microsoft Skype for Business, Dial: 1334441276.nmed-oit@lync.webex.com.

To comment via email, send correspondence to: Public.Facilitation@state.nm.us.

The hearing is being held via internet, email and telephonic means due to

the concerns surrounding the Novel Coronavirus 2019 (“COVID-19”) and in accord with Governor Michelle Lujan Grisham’s Declaration of a Public Health Emergency in Executive Order 2020-004, and subsequent executive orders; various the Public Health Emergency Orders limiting mass gatherings due to COVID-19; and the Office of the Attorney General’s Open Government Division’s Guidance to Public Entities Regarding the Open Meetings Act and Inspection of Public Records Act Compliance During COVID-19 State of Emergency.

At the public hearing the EIB will consider proposed amendments to the Recording and Reporting Occupational Injuries, Illness and Fatalities, 11.5.1.16 NMAC, as proposed in the Petition to Amend 11.5.1.16 NMAC of (the) Occupational Health and Safety Regulations and Request for Hearing (“Petition”), EIB Docket Number 20-55, September 4, 2020. The Petition has been filed by the Occupational Health and Safety Bureau (“Bureau”) of the New Mexico Environment Department (“Department”). The Bureau has proposed the amendment in response to COVID-19, which presents a grave danger to the public health and workplace safety. The amendment’s purpose is to require employers to report an employee’s positive novel coronavirus test to the Bureau within 4 hours of notice. This 4-hour reporting requirement allows the Bureau to rapidly respond and allocate resources in order to limit the transmission of the novel coronavirus in the workplace. The full text of the proposed amendment is attached hereto. To obtain a physical or electronic copy of the proposed amendments contact:

Pamela Jones, Board Administrator, at the New Mexico State Capitol Building, 409 Old Santa Fe Trail, Santa Fe, New Mexico; Public.Facilitation@state.nm.us; (505) 660-4305.

In your correspondence reference docket number EIB 20-55. In

addition, copies of the proposed amendments are posted on the NMED website at <https://www.env.nm.gov/environmental-improvement/eib-20-55-r/>

The Department undertakes this rulemaking pursuant to its duty to protect the health and safety of employees arising out of and in the course of employment. NMSA 1978, § 50-9-8(A) (1993). The proposed amendment is consistent with the Department’s further obligations “to assure every employee safe and healthful working conditions by providing for appropriate job-related accident and illness reporting procedures that will help achieve the objectives of the Occupational Health and Safety Act (“OHS”). NMSA 1978, § Section 50-9-2(D) (1993), *see also*, § 50-9-19 (1993) (OHS requires every employer to “submit reports of occupational injuries and illnesses as prescribed by the Department.”). In order to carry out the purpose and the statutorily imposed duties of the OHS, the EIB must promulgate and the Department must enforce occupational health and safety regulations. § 50-9-2(A), (B). The EIB has previous issued regulations regarding recording and reporting occupational injuries, illnesses, and fatalities. 11.5.1.16 NMAC. Finally, the EIB has the authority to mend the Occupational Health and Safety Regulations under NMSA 1978, Section 59-9-12 (1993).

The hearing will be conducted in accordance with EIB’s Rulemaking Procedures found at 20.1.1.1 – 501 NMAC, the Occupational Health and Safety Regulations under NMSA 1978, Section 59-9-12 (1993), and other applicable procedures and procedural orders. Written comments regarding the proposed revisions may be obtained from Pamela Jones, Board Administrator, at the contact information listed above.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in

writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of hearing.

Persons wishing to present technical testimony must file with the EIB a written notice of intent to do so. The requirements for a notice of intent can be found in 20.1.1.302 NMAC. Notices of intent for the hearing must be received by the EIB by 5:00 pm on November 27, 2020, and should reference the name of the regulation (Recordkeeping and Reporting Occupational Injuries, Illnesses and Fatalities), the date of the hearing (December 18, 2020), and docket number EIB 20-55.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g., sign language interpreter, to participate in any aspect of this process, please contact the Department's Humans Resources Bureau by November 27, 2020. The Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502-5469, and (505) 827-9769. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

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

STATEMENT OF NON-DISCRIMINATION

If any person requires assistance, an interpreter or auxiliary aid to access documents, please contact 505.476.8700 (Relay users please access the number via the New Mexico Relay Network) or nmenv-osha@state.nm.us.

NMED does not discriminate on the basis of race, color, national

origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations.

NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of N MED's non-discrimination programs, If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact:

Kristine Yurdin, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us.

If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.

This is an amendment to 11.5.1. NMAC, Section 16, effective XX/XX/2020.

11.5.1.16 RECORDKEEPING AND REPORTING OCCUPATIONAL INJURIES, ILLNESSES AND FATALITIES:

A. General: Except as otherwise provided in Subsection B of this section, the provisions of 29 CFR Part 1904, Recording and Reporting

Occupational Injuries and Illnesses (internet: www.osha.gov), are hereby incorporated into this section.

B. Exception: Work-related injuries, illnesses and fatalities which are required to be reported by 29 CFR Part 1904.39 shall be reported, by email, telephone or facsimile machine, to the bureau in lieu of the location specified in 29 CFR Part 1904.39. The bureau's address, email, and telephone/facsimile numbers are: occupational health and safety bureau, New Mexico environment department, P.O. Box 5469, Santa Fe, NM 87502, email: nmenv-osha@state.nm.us, Tel: (505) 476-8700, Fax: (505) 476-8734.

C. Reporting novel coronavirus: Within four hours of notice that an employee tested positive for the novel coronavirus, each employer shall report the positive test to the bureau as specified in Subsection B of this section or as otherwise directed by the bureau. [10/9/1975, 9/3/1978, 3/21/1979, 5/10/1981, 11/17/1983, 7/19/1994, 1/1/1996, 8/15/1998; 11.5.1.16 NMAC - Rn & A, 11 NMAC 5.1.16, 10/30/2008; A, 7/16/2015; A/E, 8/5/2020; A, XX/XX/2020] [11.5.1.16 NMAC - N, 12/04/2020] (The department has provided the Rapid Response Submission portal that may be used to satisfy the reporting requirements of Subsection (C). The Rapid Response Submission portal is available on the bureau's website at <https://nmgov.force.com/rapidresponse/s/>.)

JUNTA DE MEJORA DEL MEDIO AMBIENTE DE NUEVO MÉXICO AVISO DE AUDIENCIA PÚBLICA PROGRAMADA PARA CONSIDERAR ENMIENDAS PROPUESTAS A 11.5.1.16 NMAC EIB 20-55

La Junta de Mejora del Medio Ambiente ("EIB" por sus siglas en inglés) celebrará una audiencia pública el 18 de diciembre de 2020 a partir de las 9:00 de la mañana por Internet (Cisco WebEx/Microsoft Lync, y Microsoft Skype para

empresas) y por teléfono, y también se recibirán comentarios por correo electrónico hasta la conclusión de la audiencia.

El número de la reunión de WebEx (código de acceso) es: 133 144 1276; y la contraseña de la reunión de WebEx es: ZjsZPmdT358;

A unirse de WebEx: <https://nmed-oit.webex.com/nmed-oit/j.php?MTID=mae8a7ecbe62daeedb9e755ac4ef09166>;

A unirse de Microsoft Lync or Microsoft Skype para empresas, marca: 1334441276.nmed-oit@lync.webex.com;

A unirse de una sistema de vídeo o aplicación, marca: 1334441276@nmed-oit.webex.com; o puede marca 173.243.2.68; código de acceso: 133 444 1276; o

A unirse de teléfono o dispositivo móvil: +1-415-655-0001; código de acceso: 133 444 1276.

Para comentario por correo electrónico, enviar correspondencia a: Public.Facilitation@state.nm.us.

La audiencia se celebrará a través de Internet, correo electrónico y medios telefónicos debido a las preocupaciones en torno al nuevo coronavirus 2019 (“COVID-19”) y de acuerdo con la declaración de emergencia de salud pública de la gobernadora Michelle Lujan Grisham en la Orden Ejecutiva 2020-004, y órdenes ejecutivas posteriores; órdenes de emergencia de salud pública que limitan las reuniones masivas debido a la COVID-19; y Guía para las Entidades Públicas sobre el Cumplimiento de la Ley de Reuniones Abiertas y la Ley de Inspección de Registros Públicos durante el Estado de Emergencia por COVID-19 de la División de Gobierno Abierto de la Procuraduría general (“Guía OGD”).

En la audiencia pública, la EIB considerará las enmiendas propuestas para el Registro y Presentación de Informes de Lesiones, Enfermedades

y Muertes Ocupacionales, 11.5.1.16 NMAC, como se propone en la Petición de Enmienda 11.5.1.16 NMAC de (los) Reglamentos de Seguridad y Salud Ocupacional y la Solicitud de Audiencia (“Petición”), Número de Expediente EIB 20-55, 4 de septiembre de 2020. La Petición ha sido presentada por la Oficina de Seguridad y Salud Ocupacional (“Oficina”) del Departamento de Medio Ambiente de Nuevo México (“Departamento”). La Oficina ha propuesto la enmienda en respuesta a la COVID-19, que presenta un grave peligro para la salud pública y la seguridad en el lugar de trabajo. El propósito de la enmienda es requerir que los empleadores reporten a la Oficina cada resultado positivo de las pruebas del nuevo coronavirus de los empleados dentro de las 4 horas siguientes a la notificación. Este requisito de reporte de 4 horas permite a la Oficina responder rápidamente y asignar recursos para limitar la transmisión del nuevo coronavirus en el lugar de trabajo. El texto completo de la enmienda propuesta se adjunta al presente aviso. Para obtener una copia impresa o electrónica de las enmiendas propuestas comuníquese con:

Pamela Jones, administradora de la junta, New Mexico State Capitol Building, 409 Old Santa Fe Trail, Santa Fe, NM; Public.Facilitation@state.nm.us; (505) 660-4305.

En su correspondencia, haga referencia al número de expediente EIB 20-55. Además, se han publicado copias de las enmiendas propuestas en el sitio web del NMED en <https://www.env.nm.gov/environmental-improvement/eib-20-55-r/>.

El Departamento se encarga de esta reglamentación en cumplimiento de su deber de proteger la salud y la seguridad de los empleados que surjan de y en el curso del empleo. NMSA 1978, § 50-9-8(A) (1993). La enmienda propuesta es coherente con las obligaciones adicionales del Departamento de “garantizar a todos los empleados condiciones de trabajo

seguras y saludables mediante el establecimiento de procedimientos adecuados de notificación de accidentes y enfermedades relacionados con el trabajo que ayuden a lograr los objetivos de la Ley de Seguridad y Salud Ocupacional (“OHSA” por sus siglas en inglés)”. NMSA 1978, § Sección 50-9-2(D) (1993), véase también § 50-9-19 (1993) (la OHSA exige que todo empleador “presente informes sobre lesiones y enfermedades laborales según lo prescrito por el Departamento”. A fin de cumplir el propósito y los deberes impuestos por la OHSA, la EIB debe promulgar y el Departamento debe hacer cumplir los reglamentos de seguridad y salud en el trabajo. § 50-9-2 (A), (B). La EIB ha publicado anteriormente reglamentos relativos al registro y presentación de informes de lesiones, enfermedades y muertes en el trabajo. 11.5.1.16 NMAC. Por último, la EIB está facultada para enmendar el Reglamento de Seguridad y Salud en el Trabajo en virtud de NMSA 1978, Sección 59-9-12 (1993).

La audiencia se llevará a cabo de conformidad con los procedimientos de elaboración de normas de la EIB que se encuentran en 20.1.1.1 - 501 NMAC, el Reglamento de Seguridad y Salud Ocupacional bajo NMSA 1978, Sección 59-9-12 (1993), y otros procedimientos y órdenes de procedimiento aplicables. Los comentarios por escrito sobre las revisiones propuestas pueden obtenerse de Pamela Jones, administradora de la junta, en la información de contacto que figura más arriba.

En la audiencia se dará a todas las personas interesadas una oportunidad razonable de presentar evidencias, datos, opiniones y argumentos pertinentes, oralmente o por escrito, presentar documentos u objetos de pruebas e interrogar a los testigos. Toda persona que desee presentar una declaración por escrito de carácter no técnico para que conste en acta en lugar de un testimonio oral deberá

presentar dicha declaración antes del cierre de la audiencia.

Las personas que deseen presentar un testimonio de carácter técnico deberán presentar a la EIB un aviso por escrito de su intención de hacerlo. Los requisitos para un aviso de intención se encuentran en 20.1.1.302 NMAC. Los avisos de intención para la audiencia deberán ser recibidos por la EIB antes de las 5:00 de la tarde del 27 de noviembre de 2020, y deberán hacer referencia al nombre del reglamento (Registro y Presentación de Informes de Lesiones, Enfermedades y Muertes Laborales), la fecha de la audiencia (18 de diciembre de 2020), y el número de expediente EIB 20-55.

Si usted tiene una discapacidad y necesita asistencia o ayuda auxiliar, por ejemplo, un intérprete de lenguaje de señas, para participar en cualquier aspecto de este proceso, póngase en contacto con la Oficina de Recursos Humanos del Departamento a más tardar hasta el 27 de noviembre de 2020. La Oficina se encuentra en Departamento de Medio Ambiente de Nuevo México, 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502-5469, teléfono (505) 827-9769. Los usuarios de TDD o TDY pueden acceder a este número a través de la Red de Retransmisión de Nuevo México (los usuarios de TDD de Albuquerque: (505) 275-7333; fuera de Albuquerque: 1-800-659-1779).

La EIB puede tomar una decisión sobre los cambios reglamentarios propuestos al concluir la audiencia o puede convocar una reunión después de la audiencia para considerar una acción sobre la propuesta.

DECLARACIÓN DE NO DISCRIMINACIÓN

Si alguna persona necesita asistencia, un intérprete o ayuda auxiliar para acceder a los documentos llame al 505.476.8700 (los usuarios del servicio de retransmisión pueden acceder al número a través de la Red

de Retransmisión de Nuevo México) o nmenv-osha@state.nm.us.

El NMED no discrimina por motivos de raza, color, origen nacional, discapacidad, edad o sexo en la administración de sus programas o actividades, según lo exigen las leyes y regulaciones aplicables. NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de consultas sobre los requisitos de no discriminación implementados por 40 C.F.R. Partes 5 y 7, incluido el Título VI de la Ley de Derechos Civiles de 1964, según enmendada; Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, el Título IX de las Enmiendas de Educación de 1972 y la Sección 13 de las Enmiendas de la Ley de Control de la Contaminación del Agua de 1972. Si tiene alguna pregunta sobre este aviso o alguno de los programas, políticas o procedimientos de no discriminación de NMED o si cree que ha sido discriminado con respecto a un programa o actividad de NMED, puede comunicarse con:

Kristine Yurđin, coordinadora de no discriminación, NMED, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, teléfono (505) 827-2855, correo electrónico nd.coordinator@state.nm.us.

Si cree que ha sido discriminado con respecto a un programa o actividad de NMED, puede comunicarse con la coordinadora de no discriminación identificada anteriormente o visitar nuestro sitio web en <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> para aprender cómo y dónde presentar una denuncia por discriminación.

Esta es una enmienda a 11.5.1 NMAC, Sección 16, efectiva el XX/XX/2020.

11.5.1.16 REGISTRO Y PRESENTACIÓN DE INFORMES DE LESIONES, ENFERMEDADES Y MUERTES LABORALES:

A. General: Salvo que se disponga otra cosa en la subsección B de esta sección, se incorporan a la presente sección las disposiciones del 29 CFR, parte 1904, Registro y Presentación de Lesiones y Enfermedades Laborales (Internet: www.osha.gov).

B. Excepción: Las lesiones, enfermedades y muertes relacionadas con el trabajo que deben notificarse en virtud del artículo 29 CFR, parte 1904.39 se comunicarán, por correo electrónico, teléfono o fax, a la oficina en lugar del lugar especificado en el artículo 29 CFR, parte 1904.39. La dirección de la oficina, el correo electrónico y los números de teléfono y fax son: Oficina de Seguridad y Salud Ocupacional, Departamento de Medio Ambiente de Nuevo México, P.O. Box 5469, Santa Fe, NM 87502, correo electrónico: nmenv-osha@state.nm.us, Tel: (505) 476-8700, Fax: (505) 476-8734.

C. Notificación del nuevo coronavirus: Dentro de las cuatro horas siguientes a la notificación de que un empleado ha dado positivo en la prueba del nuevo coronavirus, cada empleador deberá informar de la prueba positiva a la oficina según lo especificado en la subsección B de esta sección o según lo indicado por la oficina. [10/9/1975, 9/3/1978, 3/21/1979, 5/10/1981, 11/17/1983, 7/19/1994, 1/1/1996, 8/15/1998; 11.5.1.16 NMAC - Rn & A, 11 NMAC 5.1.16, 10/30/2008; A, 7/16/2015; A/E, 8/5/2020; A, XX/XX/2020] (11.5.1.16 NMAC - N, 12/04/2020) [El Departamento ha proporcionado el portal de Presentación de Respuesta Rápida que puede utilizarse para satisfacer los requisitos de presentación de informes de la Subsección (C). El portal de Presentación de Respuesta Rápida se puede consultar en el sitio web de la Oficina en <https://nmgov.force.com/rapidresponse/s/>.)

**REGULATION AND
LICENSING DEPARTMENT
SIGNED LANGUAGE
INTERPRETING PRACTICES
BOARD**

**PUBLIC RULE HEARING AND
REGULAR BOARD MEETING**

The New Mexico Signed Language Interpreting Practices Board (“Board”) will hold a rule hearing on Monday, November 23, 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 via Cisco WebEx Meetings.

The purpose of the rule hearing is to consider proposed amendment/ repeal/ replace to the following rules:

- 16.28.1 NMAC - General Provisions
- 16.28.2 NMAC - Education and Continuing Education Requirements
- 16.28.3 NMAC - Application and Licensure Requirements
- 16.28.4 NMAC - Statutory Authority
- 16.28.5 NMAC - Code of Professional Conduct
- 16.28.7 NMAC - Licensure for Military Service Members, Spouses and Veterans

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/signed_language_interpreting_practices.aspx or contact the New Mexico Signed Language Interpreting Practices Board at (505)476-4622 or by email at signlanguage.board@state.nm.us.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Theresa Montoya, Board Administrator, via electronic mail at signlanguage.board@state.nm.us or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Monday, November 23, 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/signed_language_interpreting_practices.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 signed language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Theresa Montoya, Board Administrator at (505) 476-4622.

Statutory Authority: The Signed Language Interpreting Practices Act, Sections 61-34-8 NMSA 1978, among other provisions, specifically authorizes the Board to “promulgate rules pursuant to the State Rules Act Chapter 14, Article 4, 1978 to effectively carry out and enforce provisions of the Signed Language Interpreting Practices Act.”

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

16.28.1.7 NMAC - Definitions:

The amendments to this section add a new definition for the term BEI that will increase an applicant’s opportunity for licensure.

16.28.2.8 NMAC - Education Requirements:

The amendments to this section will create flexibility for applicants to submit documentation that they have fulfilled the educational requirements for licensure.

16.28.2.9 NMAC - Continuing Education Requirements:

The amendments to this section are to provide clarity regarding compliance with the Board’s continuing education requirements and the submission of documents necessary to prove compliance with this section.

16.28.3.11 NMAC - Application for Licensure:

The amendments to this section will create greater opportunity and provide clarity for those applicants who hold a BEI certification to apply for licensure, which is consistent with the Board’s requirements for licensure under Sections 61-34-9 NMSA 1978.

16.28.3.12 NMAC - Requirements for a License for a Community Signed Language Interpreter:

The amendments to this section will create greater opportunity and provide clarity for those applicants who hold a BEI certification to apply for licensure, which is consistent with the Board’s requirements for licensure under Subparagraph (d) of Paragraph (2) of Subsection A of Section 61-34-9 NMSA 1978.

16.28.3.13 NMAC - Requirements for a License for an Educational Signed Language Interpreter:

The amendments to this section are to clarify that the requirements for an educational signed language interpreter license are consistent with the requirements outlined in Subsection D of 16.28.3.11 NMAC.

16.28.3.14 NMAC - Requirements for a One-time, Five-Year Provisional License to a Person Not Meeting the Community Signed Language Interpreter or Educational Signed Language Interpreter Requirements for Licensure:

The amendments to this section will create greater opportunity and provide clarity for those applicants who have completed a substantially equivalent interpreter education program or interpreter preparation program to apply for licensure, which is consistent with the Board’s requirements for licensure under Subparagraph (c) of Paragraph (1) of Section 61-34-9 NMSA 1978.

16.28.3.16 NMAC - License Expiration:

The amendments to this section clarifies the expiration date for provisional signed language interpreter licenses.

16.28.3.17 NMAC - License**Renewal:**

The amendments to this section clarifies the requirements for reinstatement for each class of license issued pursuant to the Signed Language Interpreter's Practices Act.

16.28.3.19 NMAC - Exemptions:

The amendments to this section are strictly for reformatting purposes so the section is more fluid and easily comprehensible.

16.28.3.20 NMAC - License Denial, Suspension, or Revocation:

The amendments to this section provide clarity regarding the revocation or relinquishment of licenses where a licensee has failed to maintain proper certification. The amendments also provide clarification regarding whether a licensee who has allowed their license to lapse is eligible for a provisional license.

16.28.4.7 NMAC - Definitions:

The amendments to this section correct minor grammatical and/or typographical errors.

16.28.4.11 - Standards of Practice Committee:

The amendments to this section correct minor grammatical and/or typographical errors.

16.28.5.8 - Standards of Practice:

The amendments to this section correct minor grammatical and/or typographical errors.

16.28.7.10 - Renewal Requirements:

The amendments to this section will create greater opportunity and provide clarity for those applicants who are military service members, a spouse or a veteran and who hold a BEI certification to apply for licensure which is consistent with the Board's requirements for licensure under Subparagraph (d) of Paragraph (2) of Subsection A of Section 61-34-9 NMSA 1978. Additionally, this section also provides clarity for those applicants who have completed a substantially equivalent interpreter education program or interpreter

preparation program to apply for licensure which is consistent with the Board's requirements for licensure under Subparagraph (c) of Paragraph (1) of Section 61-34-9 NMSA 1978.

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

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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.

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

This is an emergency amendment to 8.15.2 NMAC Sections 7, 9, 10, 11, 12, 13, 16, and 19, effective September 18, 2020.

8.15.2.7 DEFINITIONS:

A. “Attending a job training or educational program” means actively participating in a job training or educational program.

B. “At-risk child care” means a program for families at-risk of child protective services involvement as determined by the department.

C. “CACFP” means the child and adult care food program, administered by the children, youth and families department.

D. “Child with a disability or special needs” means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, or other specialized services and supports; or children without identified conditions, but requiring specialized services, supports, or monitoring.

E. “Child support enforcement division” means the child support enforcement program administered by New Mexico’s human services department, which collects child support from non-custodial parents.

F. “Closure” means the child care case is closed.

G. “Co-payment” means the portion of the approved and agreed upon monthly child care cost for clients receiving child care assistance that the client is required to pay to the child care provider. The department’s payment to the provider is reduced by the co-payment amount.

H. “Demonstration of incapacity” means written documentation that an individual is unable to fulfill an eligibility requirement, such as work, school, or the ability to provide child care, and should otherwise be excluded, in whole or in part, from the determination of eligibility. Written documentation of incapacity includes, but is not limited to, the following: statements or letters on a physician’s/ medical professional’s/treatment provider’s letterhead stationary; statements, records or letters from a federal government agency that issues or provides disability benefits; statements, records or letters from a state vocational rehabilitation agency counselor; certification from a private vocational rehabilitation or other counselor that issues or provides disability benefits.

[H:] I. “Department” means the New Mexico children, youth and families department (CYFD).

[H:] J. “Earned income” means income received as wages from employment or as profit from self-employment.

K. “Fluctuation of earnings” means a family with inconsistent or variable income throughout the year. To calculate fluctuation of earning the department may:

(1) average family earnings over a period of time (e.g., 12 months); or

(2) choose to discount temporary increases in income provided that a family demonstrates an isolated increase in pay (e.g., short-term overtime pay, temporary increase to pay, etc.) and is not indicative of a permanent increase in income.

[J:] L. “Homeless children and youth” means

individuals who lack a fixed, regular, and adequate nighttime residence, which includes:

(1) Children and youth who are temporarily sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(2) children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(3) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(4) migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in Paragraphs (1) through (3) of this subsection.

[K:] M. “Incidental money” means earnings of a minor child for occasional work performed such as baby-sitting, cutting lawns, and other similar activities.

[H:] N. “Infant, toddler, preschool, school age” means the age categories used for assigning child care provider reimbursement rates, defined as follows:

(1) infant: zero - 23 months;

(2) toddler: 24 - 35 months;

(3) preschool: three to five year olds; and

(4) school age: six year olds and older.

[M:] Q. “Job training and educational program” means participation in a short or long term educational or training program, including online programs which provides specific job skills which allow the participant to enter the workforce and directly relates to enhancing job skills, including but not limited to the acquisition of a general equivalency diploma (GED), English as a second language, literacy training, vocational education training, secondary education including adult basic education and accredited high school programs, and post-secondary institutions.

P. “Monthly gross earned and unearned income” means the monthly average, taking into account the frequency of payment per type of income.

[N:] Q. “National accreditation status” means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD. CYFD determines the program criteria and standards to evaluate and approve accrediting bodies.

(1) The following are the only national accrediting bodies that are approved by CYFD:

- (a) the association of Christian schools international (ACSI);
- (b) the council on accreditation (COA) for early childhood education and after school programs;
- (c) the international Christian accrediting association (ICAA);
- (d) the national accreditation commission for early care and education programs (NAC);
- (e) the national association for the education of young children (NAEYC) academy for early childhood program accreditation;
- (f) the national association of family child care (NAFCC); or

(g) the national early childhood program accreditation (NECPA).

(2) Effective July 15, 2014 accrediting bodies that have been previously approved by CYFD that are not on the above list will no longer be CYFD approved national accrediting bodies.

[O:] R. “Non-temporary change in activity” means the family has experienced a change in activity that does not meet the definition of a “temporary change in activity” as defined in Section CC below.

[P:] S. “Non-traditional hours of care” means care provided between the afterhours of 7:00 p.m. and 7:00 a.m. Monday through Friday or care provided during weekend hours between 12:00 a.m. Saturday morning and 12:00 a.m. Monday morning.

[Q:] T. “Open case” means a case that has not been closed as a result of a failure to recertify, or that has not been closed due to becoming otherwise ineligible for child care assistance benefits.

[R:] U. “Overpayment” means a payment of child care assistance benefits received by a client or provider for which they are ineligible based on incomplete or inaccurate information provided by either the client or the provider, or agency error.

[S:] V. “Child Protective services (CPS) child care” means child care services for children placed in the custody of the child protective services of the department.

[T:] W. “Provider types” means the characteristics of child care providers, which determine their approved reimbursement rate, capacity, staffing levels etc. as follows:

(1) **“In-home”** care means care provided in the child’s own home.

(2) **“Registered home”** means child care provided in the home of a provider who is registered with the department to care for up to four children. All registered homes receiving child care assistance subsidies must be enrolled

and participate in the child and adult care food program (CACFP), unless they are exempt.

(3) **“Licensed family child care home”** means child care provided in the home of a provider who is licensed by the department to care for up to six children.

(4) **“Licensed group child care home”** means child care provided in the home of a provider who is licensed by the department to care for up to 12 children.

(5) **“Licensed center”** means child care provided in a non-residential setting, which is licensed by the department to provide such care.

(6) **“Out-of-school time care”** means child care provided to a kindergartner or school age child up to age 13 immediately before or immediately after a regularly scheduled school day or when regular school is not in session.

[U:] X. “Recertification” means the process by which a client’s eligibility to continue to receive child care assistance benefits are determined.

[V:] Y. “Registration/educational fee” means a fee charged to private pay and families receiving child care assistance for materials and supplies.

[W:] Z. “SNAP” means the supplemental nutrition assistance program administered by the U.S. department of agriculture, which helps low-income families purchase healthy food. SNAP was previously referred to as food stamps employment and training program.

[X:] AA. “Star level” means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality.

[Y:] BB. “Suspension” means that the child care case remains eligible, but benefits are not paid to the provider.

[Z:] CC. “TANF” means the temporary assistance to needy families program administered by the U.S. department of health and human

services. TANF is the successor to the aid to families with dependent children (AFDC) program and provides cash assistance to qualified low-income families with dependent children.

~~[AA:]~~ **DD.** “**Teen parent**” means a biological parent under the age of 20 who is attending high school, working towards a general equivalency diploma (GED) or attending any other job skills training or educational programs directly related to enhancing employment opportunities.

~~[BB:]~~ **EE.** “**Termination**” means the child care case will be closed due to cause.

~~[CC:]~~ **FF.** “**Temporary change of activity**” means one of the following events that does not exceed three months:

(1) limited absence from work for employed parents for periods of family leave (including parental leave) or sick leave;

(2) interruption in work for a seasonal worker who is not working between regular industry work seasons;

(3) student holiday or break for a parent participating in training or education;

(4) reduction in work, training or education hours, as long as the parent is still working or attending training or education; and

(5) cessation of work or attendance at a training or education program less than 90 days.

~~[DD:]~~ **GG.** “**Underpayment**” means a payment made by the department for services provided which did not fully reimburse the client or provider.

~~[EE:]~~ **HH.** “**Unearned income**” means income in the form of benefits such as TANF, workmen’s compensation, social security, supplemental security income; child support, pensions, contributions, gifts, loans, and grants which does not meet the definition of earned income.

~~[FF:]~~ **II.** “**Working**” means employment of any type, including self-employment and teleworking.

For TANF recipients, this includes work experience or community service or any other activity that meets the TANF work activity requirements.

[8.15.2.7 NMAC - Rp, 8.15.2.7 NMAC 10/1/2016, A, 2/1/2017; A, 10/1/2019; A/E, 9/18/2020]

8.15.2.9 PRIORITIES

FOR ASSISTANCE: Any funds received by the department under the child care development fund and other sources are expended for child care assistance pursuant to the following priorities:

A. Priority one: Clients receiving temporary assistance to needy families (TANF) benefits are considered priority one clients.

(1) Participation exemption: The human services department grants participation exemptions to TANF clients who cannot locate child care. The children, youth and families department is responsible for the verification of the TANF participant’s inability to locate child care. Reasons for a participation exemption due to lack of child care are as follows:

(a) the unavailability of appropriate child care within a reasonable distance from the individual’s home or work site;

(b) the unavailability or unsuitability of informal child care by a relative or under other arrangements; or

(c) the unavailability of appropriate and affordable formal child care by a relative or under other arrangements.

(2) A person who applies for participation exemption for any or all of the above reasons is referred to the children, youth & families department child care resource and referral. The child care resource and referral assists the client with location of child care.

The final validation/verification of a client’s inability to locate child care is determined by the child care services bureau supervisor in conjunction with his/her supervisor. A client who receives a participation exemption due to lack of child care is required to

re-apply for the exemption every six months. If a person disagrees with the determination of their eligibility for a participation exemption, they may apply for a fair hearing with the human services department (HSD). HSD is responsible for providing notice of the approval or denial of a participation exemption.

B. Priority one A: **[RESERVED]**

C. Priority one B: Child care assistance for income eligible families whose income is at or below one hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. The department prioritizes child care services within priority one B for children with special needs, disabilities, homeless families, and for teen parents.

D. Priority two: Families transitioning off TANF and clients who have received a TANF diversionary payment. Clients must have received TANF for at least one month, or a diversionary payment, in the past 12 months in order to qualify for priority two. Only clients transitioning off TANF whose TANF cases are closed at least in part due to increased earnings or loss of earned income deductions are eligible for priority two. Priority two clients do not have to meet income eligibility requirements during their 12 consecutive month period of eligibility for priority two child care.

E. Priority three: **[RESERVED]**

F. Priority four: Child care assistance for families whose income is above one hundred percent of the federal poverty level but at or below two hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. These families are certified for a 12 month block of time and will remain eligible at or below two hundred fifty percent of the federal poverty level. Exceptions to the 12 month certification period are included in 8.15.2.11 NMAC. The department prioritizes child care services within priority four for children with special needs,

disabilities, homeless families, and for teen parents.

G. Child protective services (CPS) child care: The department pays for CPS child care as determined by the protective services of the department. Income requirements and copayments are waived for clients in this priority.

H. At-risk child care: In addition to these priorities, the department pays for at-risk protective services child care as approved by the department. Child care benefits are provided for a minimum of six months to support the family. Income requirements and copayments are waived for clients in this priority. [8.15.2.9 NMAC - Rp, 8.15.2.9 NMAC, 10/1/2016; A; 10/1/2019; A/E, 9/18/2020]

8.15.2.10 APPLICATION PROCESS:

A. Clients apply for child care assistance benefits by presenting the following documents to establish eligibility in person at the local child care office [~~Upon a need or request by the client, the department may approve a client to submit their initial application by fax, email, or mail. Clients shall have 14 calendar days after initial submission of an application to submit all other required forms. Under documented extenuating circumstances and with approval from the early childhood services director, clients may be given longer than 14 days but no more than 30 days to submit required documentation~~]:

- (1) a completed signed application form;
- (2) current proof of earned income or participation in the temporary assistance to needy families (TANF) program; social security numbers or assigned TANF identification numbers may be used to verify TANF participation or receipt of child care support;
- (3) school schedule or verification of educational activity, if applicable;
- (4) demonstration of incapacity for

second parent or legal guardian, if applicable:

- [~~(4)~~] (5) verification of birth for all applicant's household children;
- [~~(5)~~] (6) proof of unearned income;
- [~~(6)~~] (7) proof of New Mexico home address; and
- [~~(7)~~] (8) CYFD approved provider.

B. Upon a need or request by the client, the department may approve a client to submit their initial application by fax, email, or mail. Clients shall have 14 calendar days after initial submission of an application to submit all other required forms. Under documented extenuating circumstances and with approval from the early childhood services director, clients may be given longer than 14 days but no more than 30 days to submit required documentation.

[~~B:~~] **C.** Assistance is provided effective the first day of the month of application if all of the following apply:

- (1) the client is utilizing child care services;
- (2) the client is employed, attending school or a training program. In the case of a public health emergency, the department secretary may waive the requirement for employment, attending school or a training program; and
- (3) the eligible provider to be paid was providing care from the first day of the month forward.

[8.15.2.10 NMAC - Rp, 8.15.2.10 NMAC, 10/1/2016; A/E, 03/16/2020; A, 8/11/2020; A/E, 9/18/2020]

8.15.2.11 ELIGIBILITY REQUIREMENTS: Clients are eligible for child care assistance benefits upon meeting the requirements for eligibility as determined by the department and federal regulation.

A. Child care staff will initiate communication at the initial eligibility determination of their eligibility period to provide

outreach and consumer education with a case management approach and coordination of services to support families.

B. Eligibility period: Based upon the client meeting all eligibility requirements, a 12-month certification period will be granted.

(1) Eligibility may be granted for less than 12 months at the parent or guardian's request.

(2) Eligibility for CPS and at-risk child care may be granted for less than 12 months as determined by the department.

(3) Eligibility may be granted for up to three months for seeking employment.

[~~(3)~~] (4) The client will remain eligible if a temporary change of activity occurs.

[~~(4)~~] (5) If a client experiences a non-temporary change in activity, the client will no longer be eligible to receive assistance if another activity is not obtained within the three-month grace period.

C. Income eligibility determination:

(1) The household: The household includes biological parents, stepparents, and legal guardians living in the household, thereby constituting an economic unit, and any dependents of the aforementioned who are under 18 years of age. Grandparents will be considered household members only if they are legal guardians of the children, are providing for the physical and emotional needs of the children, and are applying for child care benefits on behalf of the children.

(2) Allowed exclusions from the household for co-payment calculation only: Excluded from the household for co-payment calculation purposes only are grandparents or legal guardians who have taken custody/ guardianship of children due to circumstances such as but not limited to death of biological parents or other documented circumstances such as mental or physical incapacity of biological parents to care for the child or children. Grandparents or legal

guardians in this situation are required to qualify for child care assistance as per Paragraph (4) below and, upon qualification, have the required co-payment waived.

(3) Adult dependent children: 18 year old dependent children must be attending school to be counted in the household. Incidental money earned by dependent children is not to be counted as household income.

(4) Household income: Income eligibility for benefits is determined by the number of members in the household and the total countable gross monthly earned and unearned income. Eligibility determinations will take into account irregular fluctuations of earnings to income based on the client's individual circumstances.

(5) Family assets: A family's assets may not exceed one million dollars.

(6) Countable earned and unearned income: The following sources of income are counted when computing a family's eligibility for assistance and for determining the co-payment (if applicable): income from employment by working for others or from self-employment; child support payments; alimony payments; veterans administration (VA) payments except VA payments for educational purposes and disability; union payments; unemployment or workman's compensation; railroad retirement benefits; pensions; TANF benefits, including diversion payments; royalties; income from rental property; social security benefits; work study income; overtime shall be counted at CYFD's discretion if CYFD determines that the applicant is paid overtime on a regular basis.

(7) Exempt income: The types of income not counted when computing eligibility or co-payments include but are not limited to: earnings of a dependent child who is under 18 and in school; SNAP; military food and housing allowances; an increase in military salary or allowances due to "temporary national emergency

status beginning September 11, 2001"; third party payments; energy assistance benefits; foster care payments; adoption subsidies; VA payments for educational purposes and disability; loans; child or adult nutrition programs; income tax refunds; payments for educational purposes; compensation under the Domestic Volunteer Services Act and the volunteers in service to America (VISTA) program or Americorp; Work Investment Act (WIA) payments made to dependent children; relocation payments; department of vocational rehabilitation (DVR) training payments; in-kind gifts; cash gifts; employer reimbursements; overtime, unless CYFD determines that the applicant is paid overtime on a regular basis; payments from special funds such as the agent orange settlement fund or radiation exposure compensation settlement fund; lump sum payments such as those resulting from insurance settlements and court judgments; or other resources such as savings, individual retirement accounts (IRAs), vehicles, certificates of deposits (CDs) or checking accounts. In the case of a public health emergency, the department secretary may disregard certain temporary income, such as federal stimulus payments; unemployment benefits, or hazard pay.

(8) Verification of income: Clients applying for child care assistance benefits are required to verify income by providing current proof of income for all members of the household who receive income. Self-employed clients must show proof of business expenses in order for the countable self-employment income to be determined. A self-employed individual who does not show a profit that is equal to federal minimum wage times the amount of hours needed per week within 24 months from the start date of receiving child care assistance will be evaluated by the child care assistance supervisor, at which point services may be discontinued.

D. Residency requirement: An applicant of child care assistance and a child care

provider must be a resident of the state of New Mexico. Proof of residency is required.

E. Citizenship: Any child receiving child care assistance must be a citizen or legal resident of the United States. [~~or a qualified alien as determined by applicable federal laws. If a child is determined to be a citizen of the United States or a qualified alien, as approved by the New Mexico human services department, the child will be eligible provided all other eligibility requirements are met regardless of the citizenship or alien status of the child's parent or parents.~~]

F. Age requirement: Child care benefits are paid for children between the ages of six weeks up to the day in which the child turns 13 years old. Eligibility determinations made prior to a child turning 13 years old may be granted a 12-month eligibility period or a lesser period of time as determined by the department for CPS or at-risk child care.

G. Failure to use authorized child care: If authorized child care has not been used for five consecutive scheduled days without a reason such as illness, sudden death, or family medical emergency, payment may discontinue to the provider and the client will remain eligible for the remainder of their eligibility period. The provider or the client shall notify the department within three business days after the fifth day of non-attendance. Upon receiving notice from the provider or the client within the prescribed timeframe, the department shall issue a notice to the client stating when the client's placement will be closed and shall simultaneously issue a notice to the provider stating when the last date of payment will be made. Providers shall be paid through the 14th day following the first day of nonattendance provided that the department was notified within the timeframe prescribed above. If the department is not notified within the prescribed timeframe, the provider shall be paid through the last date of attendance.

H. Change in Provider:

If the parent or guardian changes providers, the provider shall be paid through the 14th day following the first day of nonattendance provided that the department was notified within the timeframe prescribed. If the department is not notified within the prescribed timeframe, the provider shall be paid through the last date of attendance.

I. Work/education

requirement: Child care benefits are paid only for families who are working, attending school or participating in a job training or educational program and who demonstrate a need for care during one or more of these activities. Clients who are receiving TANF are required to participate in a TANF-approved activity unless they are exempt by TANF. Clients and caseworkers shall negotiate a reasonable amount of study and travel time during the application or recertification process. [~~Child care will not be paid during the hours in which a parent or guardian is attending graduate or post-graduate courses.~~] Child care benefits for clients who are preparing for the acquisition of a GED shall be limited to one year. The department may, in its discretion, exempt a client or applicant from any eligibility requirement upon submission of a demonstration of incapacity.

J. Periods of absences:

A household member may be absent from the home and will be considered as living in the home and be counted in the household composition as long as the absent household member plans to return to the home. Any parent or guardian who remains in the home must be working, attending school, or participating in a job training or educational program. Temporary absence may include, but are not limited to, attending school, working, training, or military service.

K. Special supervision:

Child care benefits may be provided to children between the ages of 13 and 18 who are under the supervision of a court of law, or who are determined by a medical professional

to require supervision because of a diagnosis of a physical, emotional, or neurobiological impairment, or who are physically or mentally incapable of caring for themselves. Children with special needs are prioritized relative to budget availability.

L. Children enrolled in head start, kindergarten, school or other programs: Child care benefits are not paid during the hours that children are attending head start, kindergarten, New Mexico pre-K, school or other programs.

[8.15.2.11 NMAC - Rp, 8.15.2.11 NMAC, 10/1/2016; A/E, 9/18/2020]

8.15.2.12 RECERTIFICATION:

Clients must recertify for services at the end of their eligibility period by complying with all requirements of initial certification. Clients who recertify will qualify at or below two hundred fifty percent of the federal poverty level. If recertification is not completed in a timely manner, the case may be closed on the last day of the month for which assistance is provided under the previous placement agreement. At time of recertification, clients must provide proof of income, or proof of school enrollment. Changes in income, household size, employment, training or educational status are noted in the client's record. Co-payment, if applicable, is re-determined at the time of recertification. Recertification period is based upon the client meeting all eligibility requirements. A 12-month certification period will be granted unless one of the following apply:

A. Eligibility may be granted for less than 12 months at the parent or guardian's request.

B. Eligibility for CPS and at-risk child care may be granted for less than 12 months as determined by the department.

C. The client will remain eligible if a temporary change of activity occurs.

D. If a client experiences a non-temporary change in activity, the client will no longer be eligible to receive assistance if

another activity is not obtained within the three-month grace period.

[8.15.2.12 NMAC - Rp, 8.15.2.12 NMAC, 10/1/2016; A, 10/1/2019; A/E, 9/18/2020]

8.15.2.13 CLIENT

RESPONSIBILITIES: Clients must abide by the regulations set forth by the department and utilize child care assistance benefits only while they are working, attending school or participating in a training or educational program.

A. Co-payments:

Co-payments are paid by all clients receiving child care assistance benefits, except for CPS child care, at-risk child care, and qualified grandparents or legal guardians as defined in Paragraph (2) of Subsection C of 8.15.2.11 NMAC. In the case of a public health emergency, the department secretary may waive co-payments for families receiving child care. The department will pay providers the client's approved rate, to include required co-payments, during the time of the public health emergency. Co-payments are determined by income and household size. The co-payment schedule is published yearly at [~~https://cyfd.org/child-care-services~~] <https://www.nmececd.org/child-care-assistance/>.

B. Co-payments

described in Subsection A of 8.15.2.13 NMAC, are used for determining the base co-payment for the first eligible child. The formula for calculating the co-payment for the first full time child is (low end of the monthly income bracket on the co-payment schedule ÷ 200 percent of annual federal poverty level for household size) X (low end of the monthly income bracket on the co-payment schedule) X 1.1 = monthly copayment for first full time child. Base co-payments for each additional child are determined at one half of the co-payment for the previous child.

(1) The first child is identified as the child requiring the most hours of child care.

(2) Each additional child will be ranked based

on the most number of hours needed for child care to the least number of hours needed for child care.

C. Each child's co-payment will be adjusted based on the units of services described in Subsection E of 8.15.2.17 NMAC, as follows:

- (1) full time care will be based on one hundred percent of the base co-payment;
- (2) part time 1 care will be based on seventy-five percent of the base co-payment;
- (3) part time 2 care will be based on fifty percent of the base co-payment; and
- (4) part time 3 care will be based on twenty-five percent of the base co-payment.

D. Clients pay co-payments directly to their child care provider and must remain current in their payments. A client who does not pay co-payments may be subject to sanctions.

E. The co-payment for a child shall not exceed the monthly provider reimbursement rate. If this situation arises, the co-payment may be reduced in the amount by which it exceeds the monthly provider reimbursement rate.

F. In-home providers: Parents who choose to use an in-home provider become the employer of the child care provider and must comply with all federal and state requirements related to employers, such as the payment of all federal and state employment taxes and the provision of wage information. Any parent who chooses to employ an in-home provider releases and holds the department harmless from any and all actions resulting from their status as an employer. Payments for in-home provider care are made directly to the parent.

G. Notification of changes: Clients must ~~[notify the department of changes]~~ provide written notification of changes that affect the need for care to their local child care assistance office. ~~[which]~~ Changes include, but are not limited to, any non-temporary change in activity, or changes to

household ~~[members moving in or out,]~~ composition. Notification must be provided within ~~[five]~~ 10 business days of the change. Clients who do not comply with this requirement may be sanctioned.

H. Required application with New Mexico human services department's child support enforcement division (CSED):

(1) When one or both of the child's parents are absent from the home, the client shall apply for child support through CSED within 12 months of initial application with the child care assistance program.

(2) The following exceptions include but are not limited to: the client is receiving TANF; the client is already receiving child support; the client is receiving financial support, including but not limited to housing, clothing, food, transportation and funds, from the non-resident parent; there is a joint custody agreement and neither parent is ordered to pay support; parental rights have been terminated; the parent is a foster parent to the child; the parent is an adoptive parent and provides proof of a single parent adoption; at-risk child care; a parent is temporarily out of the home and is still considered part of the household; the client is a teen parent; the client is a grandparent; guardian; parent is deceased or when good cause exists.

(3) Good cause for refusal to apply may be granted when such application is not in the best interest of the child or parent, including but not limited to the following circumstances:

- (a) there is possible physical or emotional harm to the child, parent or guardian;
- (b) the child was conceived as a result of incest or rape;
- (c) legal proceedings for adoption of the child are pending before a court; or
- (d) the client is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption.

(4) The applicant or recipient who makes a claim for good cause shall supply written documentation to establish the claim. The caseworker shall not deny, delay, or discontinue subsidized child care benefits pending a determination of good cause if the applicant or recipient has complied with the requirements to furnish information.

(5) If the client is not exempted from applying with CSED and has not applied within the required timeframe, the client's case will be closed.

[8.15.2.13 NMAC - Rp, 8.15.2.13 NMAC, 10/1/2016; A, 10/1/2019; A/E, 03/16/2020; A, 8/11/2020; A/E, 9/18/2020]

8.15.2.16 DEPARTMENT RESPONSIBILITIES:

~~[A.]~~ ~~The department will initiate mid-certification communication with the client to provide outreach and consumer education with a case management approach and coordination of services to support families.]~~

~~[B:]~~ A. The department pays child care providers who provide child care services to department clients in a timely manner.

~~[C:]~~ B. Child care assistance workers perform all casework functions in a timely manner, including the processing of payments and notifications of case actions.

~~[D:]~~ C. Child care assistance workers will perform all eligibility and recertification determinations within 10 working days upon receipt of all required documentation from the client.

~~[E:]~~ D. Child care assistance workers notify clients and providers in writing of all actions, which affect services, benefits, or provider payments or status, citing the applicable policy.

~~[F:]~~ E. Child care assistance workers determine eligibility for all child care assistance programs except for TANF. Eligibility for TANF is determined by the New Mexico human services department.

[G:] E. Child care assistance workers must inform parents of their right to choose their child care providers and provide information on how to look for quality child care in a provider.

[H:] G. The department and other organizations approved by the department provide information and orientation programs regarding child care assistance benefits, quality child care issues, and the impact of child care on the child's physical, mental, social and emotional development to parents and providers.

[H:] H. The department and other organizations approved by the department offers provider education programs consisting of training on program participation requirements, parent and provider responsibilities, licensing and registration requirements, payment issuance and background check processing, the competency areas for child care providers as outlined by the office of child development, or the department, the importance of providing quality child care, and other topics of interest to parents and providers. These education programs count toward the continuing education hours required of providers by registration and licensing regulations.

[8.15.2.16 NMAC - Rp, 8.15.2.16 NMAC, 10/1/2016; A/E, 9/18/2020]

8.15.2.19 OVER PAYMENT AND RECOUPMENT: If a provider receives payment for services for which he/she is not entitled, or a client receives benefits on behalf of their child for which he/she is not entitled, and this results in an overpayment, the child care worker will initiate recoupment procedures unless the early childhood services director deems otherwise in exceptional circumstances. Recoupments will only be sought from providers. The department will not seek a recoupment from a client unless substantiated fraud by that client has been determined. The client or provider must repay the amount of the overpayment to the department within 30 calendar days of notification, unless the department determines that

the amount is so large that it cannot be paid in one lump sum. In this case, the department may allow the client or provider to repay the amount over a payment period, negotiated between the client and the department, usually not to exceed four months. Failure to pay the overpayment within 30 days of the notice or failure to make regular payments under an agreed upon payment schedule may result in sanctions including termination of benefits or referral of the account to a collection agency or legal action.

[8.15.2.19 NMAC - Rp, 8.15.2.19 NMAC, 10/1/2016; A/E, 9/18/2020]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION DIVISION

This is an amendment to 19.15.2 NMAC, amending Section 7 effective 10/13/2020.

Explanatory statement: This is a short form amendment to 19.15.2 NMAC, Section 7. Subsections A through O and Q through W are not shown as no changes were made to these subsections.

P. Definitions beginning with the letter "P".

(1) "Penalized unit" means a proration unit to which, because of an excessive gas-oil ratio, the division assigns an allowable that is less than top proration unit allowable for the pool in which it is located and also less than the ability of the well or wells on the unit to produce.

(2) "Person" means an individual or entity including partnerships, corporations, associations, responsible business or association agents or officers, the state or a political subdivision of the state or an agency, department or instrumentality of the United States and of its officers, agents or employees.

(3) "Pit" means a surface or sub-surface

impoundment, man-made or natural depression or diked area on the surface. Excluded from this definition are berms constructed around tanks or other facilities solely for safety, secondary containment and storm water or run-on control.

(4) "Playa lake" means a level or nearly level area that occupies the lowest part of a completely closed basin and that is covered with water at irregular intervals, forming a temporary lake.

(5) "Pool" means an underground reservoir containing a common accumulation of oil or gas. Each zone of a general structure, which zone is completely separated from other zones in the structure, is covered by the word pool as used in 19.15.2 NMAC through 19.15.39 NMAC. "Pool" is synonymous with "common source of supply" and with "common reservoir".

(6) "Potential" means a well's properly determined capacity to produce oil or gas under division-prescribed conditions.

(7) "Ppm" means parts per million by volume.

(8) "PQL" means practical quantitation limit.

(9) "Pressure maintenance" means the injection of gas or other fluid into a reservoir, either to maintain the reservoir's existing pressure or to retard the reservoir pressure's natural decline.

(10) "Produced water" means [water] a fluid that is an incidental byproduct from drilling for or the production of oil and gas.

(11) "Producer" means the owner of a well or wells capable of producing oil or gas or both in paying quantities.

(12) "Product" means a commodity or thing made or manufactured from oil or gas, and derivatives of oil or gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline,

kerosene, benzene, wash oil, lubricating oil and blends or mixtures of oil or gas or a derivative thereof.

(13) **“Proration day”** consists of 24 consecutive hours that begin at 7:00 a.m. and end at 7:00 a.m. on the following day.

(14) **“Proration month”** means the calendar month that begins at 7:00 a.m. on the first day of the month and ends at 7:00 a.m. on the first day of the next succeeding month.

(15) **“Proration period”** means for oil the proration month and for gas the 12-month period that begins at 7:00 a.m. on January 1 of each year and ends at 7:00 a.m. on January 1 of the succeeding year or other period designated by general or special order of the division.

(16) **“Proration schedule”** means the division orders authorizing the production, purchase and transportation of oil, casinghead gas and gas from the various units of oil or of gas in allocated pools.

(17) **“Proration unit”** means the area in a pool that can be effectively and efficiently drained by one well as determined by the division or commission (see Subsection B of Section 70-2-17 NMSA 1978) as well as the area assigned to an individual well for the purposes of allocating allowable production pursuant to a prorationing order for the pool.

(18) **“Prospective spacing unit”** means a hypothetical spacing unit that does not yet have a producing well.

(19) **“PVC”** means poly vinyl chloride.

(20) **“Psi”** means pounds per square inch.

[19.15.2.7 NMAC - Rp, 19.15.1.7 NMAC, 12/1/2008; A, 3/31/2015; A, 6/30/2016; A, 6/26/2018; A, 1/15/2019; A, 10/13/2020]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION DIVISION

This is an amendment to 19.15.16 NMAC, adding Section 21 effective 10/13/ 2020.

19.15.16.21 WATER USE REPORT:

A. For a hydraulically fractured well, an operator shall report, on form C-103 or C-105, the amount of water reported on the disclosure required by Subsection B of 19.15.16.19 NMAC and the breakdown of that amount by:

- (1) produced water;
(2) water other than produced water that has 10,000 or more mg/l TDS;
(3) water other than produced water that has more than 1,000 mg/l TDS but less than 10,000 mg/l TDS; and
(4) water other than produced water that has 1,000 mg/l TDS or less.

B. All such reports shall be compiled and reported monthly on the division section of the department website.

[19.15.16.21 NMAC – N, 10/13/2020]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION DIVISION

This is an amendment to 19.15.34 NMAC, Sections 2, 3, 6 through 9, 13, 14, and 18, effective 10/13/ 2020.

19.15.34.2 SCOPE: 19.15.34 NMAC applies to the transportation, disposal, recycling, re-use or the direct surface or subsurface disposition [by use] of produced water [produced or used] in connection with the development or production of oil or gas or both [; in road construction or maintenance, or other construction; in the generation of electricity or in other industrial processes].

19.15.34 NMAC also applies to the transportation of drilling fluids and liquid oil field waste. 19.15.34 NMAC does not authorize any transportation, disposal, recycling, re-use or disposition of produced water that is not directly within the jurisdiction of the division.

[19.15.34.2 NMAC - Rp, 19.15.34.2 NMAC, 3/31/2015; A, 10/13/2020]

19.15.34.3 STATUTORY AUTHORITY: 19.15.34 NMAC is adopted pursuant to the Oil and Gas Act, Paragraph (15) of Subsection B of Section [70-2-12(B)] 70-2-12 NMSA 1978, which authorizes the division to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for re-use in, the exploration, drilling, production, treatment or refinement of oil or gas in a manner that protects public health, the environment and fresh water resources [of water produced or used in connection with the drilling for or producing of oil and gas or both] and Paragraph (21) of Subsection B of Section [70-2-12(B)] 70-2-12 NMSA 1978 which authorizes the regulation of the disposition of nondomestic wastes from the exploration, development, production or storage of crude oil or natural gas.

[19.15.34.3 NMAC - Rp, 19.15.34.3 NMAC, 3/31/2015; A, 10/13/2020]

19.15.34.6 OBJECTIVE: To encourage the recycling [;] or re-use [or disposition] of produced water [by use] in a manner that [will afford reasonable protection against contamination of fresh water] protects public health, the environment and fresh water resources and establish procedures by which persons may transport, recycle, reuse and dispose [of] produced water, drilling fluids and other liquid oil field waste in activities within the jurisdiction of the division.

[19.15.34.6 NMAC - Rp, 19.15.34.6 NMAC, 3/31/2015; A, 10/13/2020]

19.15.34.7 DEFINITIONS: These definitions apply to 19.15.34.2

NMAC through 19.15.34.21 NMAC. See 19.15.2.7 NMAC for additional definitions.

A. “Recycling facility” is a stationary or portable facility used exclusively for the treatment, re-use or recycling of produced water [~~intended for disposition by use~~]. A recycling facility does not include oilfield equipment such as separators, heater treaters and scrubbers in which produced water may be used.

B. “Recycling containment” is a storage containment which incorporates a synthetic liner as the primary and secondary containment device and is used solely in conjunction with a recycling facility for the storage, treatment or recycling of produced water only for the purpose of drilling, completion, production or plugging of wells used in connection with the development of oil or gas or both.

C. “Treatment” refers to the reconditioning of produced water to a reusable form and may include mechanical and chemical processes. [19.15.34.7 NMAC - N, 3/31/2015; A, 10/13/2020]

19.15.34.8 REQUIREMENTS FOR ~~[DISPOSITION BY USE] RE-USE, RECYCLING [FACILITIES] OR DISPOSAL OF PRODUCED WATER:~~

A. Recycling or [~~disposition by use~~] re-use of produced water.

(1) No permit or registration is required from the division for the [~~disposition by use~~] re-use of produced water for drilling, completion, [~~producing, secondary~~] production, pressure maintenance, secondary recovery or enhanced recovery [~~, pressure maintenance~~] of oil or natural gas or plugging of wells pursuant to 19.15.34 NMAC.

(2) Any other [~~disposition by use~~] re-use of produced water within the jurisdiction of the division requires prior approval by the [~~appropriate division district office~~] division on form C-147. Approval requirements will be

determined by the [~~district office~~] division based upon the proposed use.

(3) Research using produced water is to be encouraged through pilot projects approved by the [~~appropriate division district office~~] division.

(4) All produced water for recycling or [~~disposition by use~~] re-use shall be handled and stored in a manner that [~~will afford reasonable protection against contamination of fresh water~~] protects public health, the environment and fresh water resources.

(5) All operations in which produced water is used shall be conducted in a manner consistent with hydrogen sulfide gas provisions in 19.15.11 NMAC or NORM provisions in 19.15.35 NMAC, as applicable.

(6) All releases from the recycling and re-use of produced water within the jurisdiction of the division shall be handled in accordance with 19.15.29 NMAC. If the release is detrimental to ground or surface waters, the responsible party must send a copy of the form C-141 to the New Mexico environment department, as applicable, in accordance with 19.15.29 NMAC.

(7) Any release, discharge, handling, transport, storage, recycling or treatment for the disposition of treated produced water, including disposition in road construction maintenance, roadway ice or dust control or other construction, or in the application of treated produced water to land, for activities unrelated to the exploration, drilling, production, treatment or refinement of oil or gas is subject to rules adopted by the water quality control commission.

(8) Surface application of produced water or recycled produced water is prohibited on any facility within the jurisdiction of the division.

B. Disposal of produced water. Persons disposing of produced water shall use one of the following disposition methods:

(1) [~~disposition in a manner that does not constitute a hazard to fresh water, public health, or the environment;~~] delivery to a [permitted salt] produced water disposal well [or facility] permitted pursuant to 19.15.26

NMAC, a surface waste management facility permitted pursuant to 19.15.36 NMAC or a permanent pit permitted pursuant to 19.15.17 NMAC; [or to a drill site for use in drilling fluid; or]

(2) [~~use~~] recycling or re-use in accordance with 19.15.34 NMAC; or [other authorization from the division.]

(3) for uses regulated by the water quality control commission pursuant to the Water Quality Act, a person shall obtain a permit from the New Mexico environment department before using the produced water, recycled or treated water or treated product or any byproduct of the produced water. [19.15.34.8 NMAC - Rp, 19.15.34.12 NMAC, 3/31/2015; A, 10/13/2020]

19.15.34.9 RECYCLING FACILITIES:

A. Except where recycling facilities are part of a permitted operation for the drilling, completing, producing or plugging of oil and gas wells, all recycling facilities shall be permitted or registered with the division district office. Division form C-147 shall be used for registration, financial assurance or for a permit if not associated with the drilling, completing, producing and plugging of oil and gas wells. All operators or owners of the facility shall be named in the form C-147.

B. In addition to the other applicable rule requirements, registration of a recycling facility is required in the following circumstances:

(1) when the recycling facility is an addition to a surface waste management facility permitted under 19.15.36 NMAC;

(2) when the recycling facility is an addition to the secondary recovery of oil and gas, enhanced oil recovery of oil and

gas or pressure maintenance projects permitted under 19.15.26 NMAC;

(3) when the recycling facility is an addition to a [salt] produced water disposal well permitted under 19.15.26 NMAC;

(4) when the recycling facility is an addition to pits permitted or below-grade tanks registered in accordance with 19.15.17 NMAC;

(5) when the recycling facility is used with a closed loop system that only delivers fluid for drilling or completion purposes;

(6) when the recycling facility is used with dedicated above ground, unlined, hard-sided tanks used in accordance with the manufacturer's standards that are externally visually inspected weekly when holding fluids and a log is kept of the inspections made available to the division upon request; or

(7) when the recycling facility is used with a recycling containment registered in accordance with 19.15.34 NMAC.

C. Recycling facilities not identified in Subsection B of 19.15.34.9 NMAC are required to be permitted. The appropriate division district office will determine approval requirements based upon the proposed use.

D. Recycling facilities may be located either onsite or offsite of a well drilling location and may serve a number of wells.

E. The operator of a recycling facility shall keep accurate records and shall report monthly to the division the total volume of water received for recycling, with the amount of fresh water received listed separately, and the total volume of water leaving the facility for disposition by use on form C-148.

F. The operator of a recycling facility shall maintain accurate records that identify the sources and disposition of all recycled water that shall be made available for review by the division upon request.

G. Recycling facilities may not be used for the disposal of produced water.

H. The operator shall remove all fluids within 60 days from the date the operator ceases operations. The division district office may grant an extension for the removal of all fluids not to exceed two months.

[19.15.34.9 NMAC - N, 3/31/2015; A, 10/13/2020]

19.15.34.13 OPERATIONAL REQUIREMENTS FOR RECYCLING CONTAINMENTS:

A. The operator shall inspect the recycling containment and associated leak detection systems weekly while it contains fluids. The operator shall maintain a current log of such inspections and make the log available for review by the division upon request.

B. The operator shall maintain and operate a recycling containment in accordance with the following requirements.

(1) The operator shall remove any visible layer of oil from the surface of the recycling containment.

(2) The operator shall maintain at least three feet of freeboard at each containment.

(3) The injection or withdrawal of fluids from the containment shall be accomplished through a header, diverter or other hardware that prevents damage to the liner by erosion, fluid jets or impact from installation and removal of hoses or pipes.

(4) If the containment's primary liner is compromised above the fluid's surface, the operator shall repair the damage or initiate replacement of the primary liner within 48 hours of discovery or seek an extension of time from the division district office.

(5) If the primary liner is compromised below the fluid's surface, the operator shall remove all fluid above the damage or leak within 48 hours of discovery, notify the division district office and repair the damage or replace the primary liner.

(6) The containment shall be operated to prevent the collection of surface water run-on.

(7) The operator shall install, or maintain on site, an oil absorbent boom or other device to contain an unanticipated release.

C. A recycling containment shall be deemed to have ceased operations if less than [20%] twenty percent of the total fluid capacity is used every six months following the first withdrawal of produced water for use. The operator must report cessation of operations to the [~~appropriate division district office~~] division. The [~~appropriate division district office~~] division may grant an extension to this determination of cessation of operations not to exceed six months. [19.15.34.13 NMAC - N, 3/31/2015; A, 10/13/2020]

19.15.34.14 CLOSURE AND SITE RECLAMATION REQUIREMENTS FOR RECYCLING CONTAINMENTS:

A. Once the operator has ceased operations, the operator shall remove all fluids within 60 days and close the containment within six months from the date the operator ceases operations from the containment for use. The division district office may grant an extension for the removal of all fluids not to exceed two months. The division district office may grant an extension to close the containment not to exceed six months. If the operator wants to use the containment for a purpose other than recycling then the operator must have that use approved or permitted by the division in accordance with the appropriate rules.

B. The operator shall close a recycling containment by first removing all fluids, contents and synthetic liners and transferring these materials to a division approved facility.

C. The operator shall test the soils beneath the containment for contamination with a five-point composite sample which includes

stained or wet soils, if any, and that sample shall be analyzed for the constituents listed in Table I below.

(1) If any contaminant concentration is higher than the parameters listed in Table I, the division may require additional delineation upon review of the results and the operator must receive approval before proceeding with closure.

(2) If all contaminant concentrations are less than or equal to the parameters listed in Table I, then the operator can proceed to backfill with non-waste containing, uncontaminated, earthen material.

D. Within 60 days of closure completion, the operator shall submit a closure report on form C-147, including required attachments, to document all closure activities including sampling results and the details on any backfilling, capping or covering, where applicable. The closure report shall

certify that all information in the report and attachments is correct and that the operator has complied with all applicable closure requirements and conditions specified in division rules or directives.

E. Once the operator has closed the recycling containment, the operator shall reclaim the containment's location to a safe and stable condition that blends with the surrounding undisturbed area. Topsoils and subsoils shall be replaced to their original relative positions and contoured so as to achieve erosion control, long-term stability and preservation of surface water flow patterns. The disturbed area shall then be reseeded in the first favorable growing season following closure of a recycling containment. The operator shall substantially restore the impacted surface area to the condition that existed prior to the construction of the recycling containment.

F. Reclamation of all disturbed areas no longer in use shall be considered complete when all ground surface disturbing activities at the site have been completed, and a uniform vegetative cover has been established that reflects a life-form ratio of plus or minus fifty percent [(50%)] of pre-disturbance levels and a total percent plant cover of at least seventy percent [(70%)] of pre-disturbance levels, excluding noxious weeds.

G. The re-vegetation and reclamation obligations imposed by federal, state trust land or tribal agencies on lands managed by those agencies shall supersede these provisions and govern the obligations of any operator subject to those provisions, provided that the other requirements provide equal or better protection of fresh water, human health and the environment.

H. The operator shall notify the division when reclamation and re-vegetation are complete.

Closure Criteria for Recycling Containments			
Depth below bottom of containment to groundwater less than 10,000 mg/l TDS	Constituent	Method*	Limit**
51 feet - 100 feet	Chloride	EPA 300.0	10,000 mg/kg
	TPH (GRO+DRO+MRO)	EPA SW-846 Method 8015M	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8260B	10 mg/kg
> 100 feet	Chloride	EPA 300.0	20,000 mg/kg
	TPH (GRO+DRO+MRO)	EPA SW-846 Method 8015M	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8260B	10 mg/kg

* Or other test methods approved by the division.

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

[19.15.34.14 NMAC - N, 3/31/2015; A, 10/13/2020]

19.15.34.18 DENIAL OF FORM C-133: The division may deny approval of a form C-133 if:

A. the applicant is a corporation or limited liability company, and is not registered with the secretary of state to do business in New Mexico;

B. the applicant is a limited partnership, and is not registered with the New Mexico secretary of state to do business in New Mexico;

C. the applicant does not possess a warrant for transportation under the state registration system the public regulation commission administers, if it is required to have such a permit under the applicable statutes or rules; or

D. the applicant or officer, director or partner in the applicant, or a person with an interest in the applicant exceeding twenty-five percent [(25%)], is or was within the past five years an officer, director or partner in the applicant, or a person with an interest in the applicant exceeding twenty-five percent [(25%)] in another entity that possesses or has possessed an approved form C-133 that has been cancelled or suspended, has a history of violating division or other state or federal environmental laws; is subject to a commission or division order, issued after notice and hearing, finding such entity to be in violation of an order requiring corrective action; or has a penalty assessment for violation of division or commission rules or orders that is unpaid more than 70 days after issuance of the order assessing the penalty.

[19.15.34.18 NMAC - Rp, 19.15.34.9 NMAC, 3/31/2015; A, 10/13/2020]

SUPERINTENDENT OF INSURANCE, OFFICE OF

**TITLE 13 INSURANCE
CHAPTER 2 INSURANCE
COMPANY LICENSING AND
OPERATION
PART 10 CORPORATE
GOVERNANCE ANNUAL
DISCLOSURE**

13.2.10.1 ISSUING AGENCY: New Mexico Office of Superintendent of Insurance (“OSI”). [13.2.10.1 NMAC – N, 11/01/2020]

13.2.10.2 SCOPE: This rule applies to all insurers and insurance groups domiciled in this state. [13.2.10.2 NMAC – N, 11/01/2020]

13.2.10.3 STATUTORY AUTHORITY: Sections 59A-1-18 and 59A-2-9, NMSA 1978, Chapter 59A Article 4, NMSA 1978, and Chapter 59A Article 37, NMSA 1978 (“the Insurance Holding Company Law”). [13.2.10.3 NMAC – N, 11/01/2020]

13.2.10.4 DURATION: Permanent. [13.2.10.4 NMAC – N, 11/01/2020]

13.2.10.5 EFFECTIVE DATE: November 1, 2020 unless a later date is cited at the end of a section. [13.2.10.5 NMAC – N, 11/01/2020]

13.2.10.6 OBJECTIVE: The purpose of this rule is: to require an insurer or insurance group subject to the requirements of this rule to provide the superintendent with a summary of its corporate governance structure, policies and practices; to outline the requirements for completing and submitting a corporate governance annual disclosure; and to provide for the confidential treatment of the corporate governance annual disclosure and related information. [13.2.10.6 NMAC – N, 11/01/2020]

13.2.10.7 DEFINITIONS:

The following terms have the meaning given, unless the context otherwise requires. Other terms used in this rule have the meanings given in the New Mexico Insurance Code, the Insurance Holding Company Law, or other OSI rules.

A. “Corporate Governance Annual Disclosure (“CGAD”) means a confidential report submitted by an insurer or insurance group made in accordance with the requirements of this rule.

B. “Insurance group” means, for purposes of this rule, those insurers and affiliates included within an insurance holding company system as defined in the Insurance Holding Company Law.

C. “Insurer” has the same meaning given in the Insurance Holding Company Law.

D. “Lead State” means the state where the parent company is domiciled or, if there is no insurance parent, the state where the largest (by direct written premium volume as shown by the last filed annual statement) insurance subsidiary is domiciled.

E. “ORSA Summary Report” means a report filed in accordance with the National Association of Insurance Commissioners Risk Management and Own Risk and Solvency Assessment Model Act (“ORSA”).

F. “Senior Management” means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing information to shareholders or regulators and shall include, for example and without limitation, the chief executive officer (“CEO”), chief financial officer (“CFO”), chief operations officer (“COO”), or any other chief executive.

G. “Superintendent” means the New Mexico superintendent of insurance. [13.2.10.7 NMAC – N, 11/01/2020]

13.2.10.8 CORPORATE GOVERNANCE ANNUAL DISCLOSURE FILING PROCEDURES:

A. An insurer, or an insurance group of which an insurer is a member, shall, no later than June 1 of each calendar year, submit to the superintendent a CGAD that contains the information described in this rule.

B. The CGAD must include a signature of a member of the insurer's or insurance group's senior management attesting that, to the best of that individual's belief and knowledge, the insurer or insurance group has implemented the corporate governance practices and that a copy of the CGAD has been provided to the insurer's or insurance group's board of directors ("board") or the appropriate committee thereof.

C. The insurer or insurance group shall have discretion regarding the appropriate format for providing the information required by this rule and is permitted to customize the CGAD to provide the most relevant information necessary to permit the superintendent to gain an understanding of the corporate governance structure, policies and practices utilized by the insurer or insurance group.

D. For purposes of completing the CGAD, the insurer or insurance group may choose to provide information on governance activities that occur at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the CGAD disclosures at the level at which the insurer's or insurance group's risk appetite is determined, or at which the earnings, capital, liquidity, operations, and reputation of the insurer or insurance group are overseen collectively and at which the supervision of those factors is coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which of the

three criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

E. If the CGAD is completed at the insurance group level, then it shall be filed with the lead state of the insurance group as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the national association of insurance commissioners ("NAIC"). In these instances, a copy of the CGAD shall also be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer, upon request.

F. An insurer or insurance group may comply with this section by referencing other existing documents (e.g., ORSA summary report, holding company Form B or F filings, securities and exchange commission (SEC) proxy statements, foreign regulatory reporting requirements, etc.) if the documents provide information that is substantially similar to the information described in this rule. The insurer or insurance group shall clearly reference the location of the relevant information within the CGAD and attach the referenced document if it is not already filed or available to the regulator.

G. Each year following the initial filing of the CGAD, the insurer or insurance group shall file an amended version of the previously filed CGAD indicating where changes have been made. If no changes were made in the information or activities reported by the insurer or insurance group, the filing should so state. [13.2.10.8 NMAC – N, 11/01/2020]

13.2.10.9 CONTENTS OF CORPORATE GOVERNANCE ANNUAL DISCLOSURE:

A. The insurer or insurance group shall be as descriptive as possible in completing the CGAD, with inclusion of attachments or example documents that are used in the governance process, since these may provide a means to demonstrate the strengths

of their governance framework and practices.

B. The CGAD shall describe the insurer's or insurance group's corporate governance framework and structure including consideration of the following:

(1) The board and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level(s) at which that oversight occurs (e.g., ultimate control level, intermediate holding company, legal entity, etc.). The insurer or insurance group shall describe and discuss the rationale for the current board size and structure; and

(2) The duties of the board and each of its significant committees and how they are governed (e.g., bylaws, charters, informal mandates, etc.), as well as how the board's leadership is structured, including a discussion of the roles of CEO and chairman of the board within the organization.

C. The insurer or insurance group shall describe the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following factors:

(1) How the qualifications, expertise and experience of each board member meet the needs of the insurer or insurance group.

(2) How an appropriate amount of independence is maintained on the board and its significant committees.

(3) The number of meetings held by the board and its significant committees over the past year as well as information on director attendance.

(4) How the insurer or insurance group identifies, nominates and elects members to the board and its committees. The discussion should include, for example:

(a) Whether a nomination committee is in place to identify and select individuals for consideration.

(b)
Whether term limits are placed on directors.

(c)
How the election and re-election processes function.

(d)
Whether a board diversity policy is in place and if so, how it functions.

(5) The processes in place for the board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance (including any board or committee training programs that have been put in place).

D. The insurer or insurance group shall describe the policies and practices for directing senior management, including a description of the following factors:

(1) Any processes or practices (i.e., suitability standards) to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:

(a) Identification of the specific positions for which suitability standards have been developed and a description of the standards employed; and

(b) Any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.

(2) The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example:

(a) Compliance with laws, rules, and regulations; and

(b) Prompt reporting of any illegal or unethical behavior.

(3) The insurer's or insurance group's processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including

a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the superintendent to understand how the organization ensures that compensation programs do not encourage or reward excessive risk taking. Elements to be discussed may include, for example:

(a) The board's role in overseeing management compensation programs and practices.

(b) The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;

(c) How compensation programs are related to both company and individual performance over time;

(d) Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;

(e) Any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted;

(f) Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.

(4) The insurer's or insurance group's plans for CEO and senior management succession.

E. The insurer or insurance group shall describe the processes by which the board, its committees and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's or insurance

group's business activities, including a discussion of:

(1) How oversight and management responsibilities are delegated between the board, its committees and senior management;

(2) How the board is kept informed of the insurer's strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks;

(3) How reporting responsibilities are organized for each critical risk area. The description should allow the superintendent to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board. This description may include, for example, the following critical risk areas of the insurer:

(a) risk management processes (An ORSA summary report filer may refer to its ORSA summary report pursuant to the Risk Management and Own Risk and Solvency Assessment Model Act);

(b) actuarial function;

(c) investment decision-making processes;

(d) reinsurance decision-making processes;

(e) business strategy/finance decision-making processes;

(f) compliance function;

(g) financial reporting/internal auditing; and

(h) market conduct decision-making processes.

F. The insurer or insurance group shall retain and make available, upon examination or upon request of the superintendent, all documentation and other information supporting the CGAD.

[13.2.10.9 NMAC – N, 11/01/2020]

13.2.10.10

CONFIDENTIALITY:

A. Documents, materials and other information, including the CGAD, that are in the possession or control of OSI and that were submitted to OSI pursuant to this rule are confidential as provided by Chapter 59A Article 4, NMSA 1978.

B. To assist in the performance of the superintendent's regulatory duties, the superintendent:

(1) May, upon request, share documents, materials or other CGAD-related information including otherwise confidential, privileged, proprietary and trade secret documents and materials, with other state, federal and international financial regulatory agencies, including members of any supervisory college as defined in the Insurance Holding Company System rule, 13.2.2 NMAC, with the NAIC, and with third party consultants pursuant to 13.2.10.11 NMAC, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents, material or other information and has verified in writing the legal authority to maintain confidentiality; and

(2) May receive documents, materials or other CGAD-related information, including otherwise confidential, privileged, proprietary and trade secret documents and materials, from regulatory officials of other state, federal and international financial regulatory agencies, including members of any supervisory college as defined in the Insurance Holding Company System rule, 13.2.2 NMAC, and from the NAIC, and shall maintain as confidential or privileged any documents, materials or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

[13.2.10.10 NMAC –N, 11/01/2020]

13.2.10.11 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND THIRD-PARTY CONSULTANTS:

A. The superintendent may retain, at the insurer's or insurance group's expense, third-party consultants, including attorneys, actuaries, accountants and other experts not otherwise a part of the superintendent's staff as may be reasonably necessary to assist the superintendent in reviewing the CGAD and related information or the insurer's or insurance group's compliance with this rule.

B. Any persons retained pursuant to Subsection A shall be under the direction and control of the superintendent.

C. The NAIC and third-party consultants shall be subject to the same confidentiality standards and requirements as the superintendent.

D. As part of the retention process, a third-party consultant shall verify to the superintendent that it is free of a conflict of interest and that it has internal procedures in place to comply with the confidentiality standards and requirements of this rule.

E. A written agreement with the NAIC or a third-party consultant governing sharing and use of information provided pursuant to this rule shall contain the following provisions:

(1) Specific procedures and protocols for maintaining the confidentiality and security of CGAD-related information shared with the NAIC or a third-party consultant pursuant to this rule.

(2) Procedures and protocols for sharing by the NAIC only with other state regulators from states in which the insurance group has domiciled insurers.

The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents, materials or other information and has verified in writing the legal authority to maintain confidentiality.

(3) A

provision specifying that ownership of the CGAD-related information shared with the NAIC or a third-party consultant remains with the OSI and the NAIC's or third-party consultant's use of the information is subject to the direction of the superintendent;

(4) A

provision that prohibits the NAIC or a third-party consultant from storing the information shared pursuant to this rule in a permanent database after the underlying analysis is completed;

(5) A

provision requiring the NAIC or third-party consultant to provide prompt notice to the superintendent and to the insurer or insurance group regarding any subpoena, request for disclosure, or request for production of the insurer's CGAD-related information; and

(6) A

requirement that the NAIC or a third-party consultant to consent to intervention by an insurer or insurance group in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer or insurance group shared with the NAIC or a third-party consultant pursuant to this rule.

[13.2.10.11 NMAC – N, 11/01/2020]

13.2.10.12 SANCTIONS:

Any insurer or insurance group failing to timely file the CGAD may be subject to the penalty provisions of Section 59A-1-18, NMSA 1978 and other enforcement actions provided by law.

[13.2.10.12 NMAC – N, 11/01/2020]

History of 13.2.10 NMAC:
[RESERVED]

End of Adopted Rules

Other Material Related to Administrative Law

**SUPERINTENDENT OF
INSURANCE,
OFFICE OF****NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Superintendent of Insurance gives Notice of a Minor, Nonsubstantive Correction to 13.10.34 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:

In Section 9, Subsection J was correctly renumbered to Subsection I. Subsequent subsections were renumbered accordingly. In Subsections P and T the reference was corrected to read "Subsection O of Section 9 of this rule".

In Section 13, Subsection D was correctly renumbered to Subsection C. Subsequent subsections were renumbered accordingly.

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**

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Submittal Deadlines and Publication Dates

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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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