



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 XXXII, Issue 10

May 25, 2021

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## Notices of Rulemaking and Proposed Rules

### REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION

#### NOTICE OF PROPOSED RULEMAKING

The New Mexico Department of Health and the New Mexico Regulation and Licensing Department (Department) will hold a rule hearing on Tuesday, June 29, 2021, starting at 9:00 a.m. The rule hearing will be held via an Internet-based video conference and via telephone, due to the ongoing public health concerns posed by the threat of the contagious disease COVID-19. Please use the following link to access the video conference call:

<https://ccd.rld.state.nm.us/>.

**Purpose of Rule Hearing.** The purpose of the rule hearing is to consider the proposed new rules set forth by the Cannabis Regulation Act regarding the processing, approval, and denial of license applications for cannabis producers, cannabis producer microbusinesses and any person properly licensed and in good standing as a licensed cannabis producer pursuant to the Lynn and Erin Compassionate Use Act. Good standing requires that the licensee be in good standing as of June 29, 2021. The rule hearing will also consider the regulation of licensees specified under the Cannabis Regulation Act. Licensing consideration will include proposed fees for corresponding license types.

The hearing will also consider the plant count, canopy or square footage limit for each license type (excluding licenses for integrated cannabis microbusinesses or cannabis producer microbusinesses), as well as per-plant fees applied to licensees growing in excess of 200 plants.

Any technical information used to inform the proposed rules will be made available no later than May 26,

2021, and can be accessed by visiting: <https://ccd.rld.state.nm.us/>.

**Statutory Authority.** Legal authority for this rulemaking may be found in NMSA 1978, Section 9-16-6 (2020), and the Cannabis Regulation Act, enacted in House Bill 2, 1st Special Legislative Session, 2021. Additional authority may be found at NMSA 1978, Section 9-7-6(E) (2017), and NMSA 1978, Section 26-2B-7(A), (I), and (J) (2019).

**Public Comment.** The Department will begin accepting public comments on the proposed new rules beginning May 26, 2021. Please submit written comments on the proposed rules to Robert Sachs, Deputy Director of Policy for the Cannabis Control Division, via electronic mail at [ccd.publiccomment@state.nm.us](mailto:ccd.publiccomment@state.nm.us). Written comment may also be submitted by mailing the comment to the following address:

Cannabis Control Division  
Public Comment  
c/o Robert Sachs  
P.O. Box 25101  
Santa Fe, NM 87504

All public comments must be received by the close of the public rule hearing on Tuesday, June 29, 2021. Persons will also be given the opportunity to present their comments at the rule hearing. Comments received prior to the rule hearing will be posted to the RLD website at: [ccd.rld.state.nm.us](https://ccd.rld.state.nm.us).

No later than May 26, 2021, interested parties may obtain and review copies of the proposed rules and public comments by going to the Cannabis Control Division website at <https://ccd.rld.state.nm.us/> or by contacting the Cannabis Control Division at [rld.cannabiscontrol@state.nm.us](mailto:rld.cannabiscontrol@state.nm.us) or (505) 476-4995.

Any individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in

the hearing should contact Nicole Bazzano, Executive Assistant for the Office of the Superintendent, rld.cannabiscontrol@state.nm.us or (505) 469-0982 at least seven days prior to the hearing.

#### Summary of Proposed New Rules.

##### 16.8.1 NMAC: GENERAL PROVISIONS

Part 1 will provide for general requirements for licensees established under the Cannabis Regulation Act and required definitions.

##### 16.8.2 NMAC: LICENSING AND OPERATIONAL REQUIREMENTS FOR CANNABIS ESTABLISHMENTS

Part 2 will provide the requirements necessary for issuance of a license under the Cannabis Regulation Act. Part 2 will govern the licensing and operational requirements for additional types of licensees, however the proposed rules to be discussed at the hearing will only govern cannabis producers.

##### 16.8.6 NMAC: HEALTH AND SAFETY, FOOD AND PRODUCT SAFETY, ENVIRONMENTAL IMPACTS, AND NATURAL RESOURCES

Part 6 will provide the requirements for licensee compliance with necessary standards in health and safety, food and product safety, environmental impacts, and natural resources.

##### 16.8.7 NMAC: QUALITY CONTROL, INSPECTION, AND TESTING OF CANNABIS PRODUCTS

Part 7 will address the testing requirements of cannabis for particular licensees.

##### 16.8.8 NMAC: CANNABIS PLANT LIMITS AND PROCESS TO ADDRESS SHORTAGE OF CANNABIS SUPPLY IN THE MEDICAL CANNABIS PROGRAM

Part 8 will provide the requirements for limiting plant count, canopy or square footage for licensees.

**16.8.11 NMAC: FEES**

Part 11 will provide the licensing fees associated with corresponding license types, as well as plant-based fees for operations growing in excess of 200 plants.

**16.8.12 NMAC: DENIAL, SUSPENSION, OR REVOCATION OF LICENSE; SANCTION, PLAN OF CORRECTION, AND CIVIL MONETARY PENALTY**

Part 12 will address the disciplinary procedures for denial, suspension, or revocation of a license. This part will also address the sanctions, corrective action plans, and civil penalties that may be assessed by the Regulation and Licensing Department, Cannabis Control Division pursuant to the Cannabis Control Act.

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

## Adopted Rules

### Effective Date and Validity of Rule Filings

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

### CHILDREN, YOUTH AND FAMILIES DEPARTMENT

This is an amendment to 8.8.2 NMAC, Sections 7, 9, 13, 21, and 27, effective 5/25/2021.

#### 8.8.2.7 DEFINITIONS:

**A. “Administrative hearing”** in PSD, administrative hearings are used in the circumstances described herein at Paragraphs (1) through (3) of Subsection B of 8.8.2.13 NMAC.

**B. “Administrative review”** is an informal process, which may include an informal conference or may include only a record review. The administrative review does not create any substantive rights for the client.

**C. “AFCARS”** refers to the federally-required automated foster care and adoptions reporting system. States are required to submit AFCARS data semi-annually. This includes case level information on all children in PSD custody, children who are adopted under the auspices of PSD, and information on foster and adoptive parents.

**D. “Child abuse and neglect check”** is a review of the PSD family automated client tracking system, also known as FACTS, or another state’s central abuse or neglect registry to determine if there have been any previous referrals on the family to this state’s or any other state’s child protective services division.

**E. “Children’s Code”** refers to the New Mexico Children’s Code, Section 32A-1-1, et. seq., NMSA 1978.

**F. “Client”** means a person who is receiving services from PSD.

**G. “Communicable disease”** means any infectious disease

that is both potentially communicable through common social or sexual contact and poses a significant health risk if contracted.

**H. “Criminal records check (CRC)”** as discussed herein, means federal, state or local checks for criminal offenses conducted on PSD employees as well as volunteers and students working in a PSD office. The level of CRC depends on duties performed, as per 8.8.2.22 NMAC herein. Requirements for CRC in reference to foster or adoptive parents are outlined in “Licensing Requirements for Foster and Adoptive Homes,” 8.26.4.10 NMAC.

**I. “CYFD”** refers to the children, youth and families department.

**J. “FACTS”** refers to the family automated client tracking system (FACTS), the official data management system for CYFD.

**K. “NCANDS”** refers to the national child abuse and neglect data system (NCANDS), a voluntary national data collection and analysis system created in response to the requirements of the Child Abuse Prevention and Treatment Act.

**L. “Need to know”** is the standard by which individual(s) are identified as required to receive confidential information, based upon risk of transmission of a specific disease.

**M. “NYTD”** refers to the national youth in transition (NYTD) database, a national data collection and analysis system created in response to the requirements of the Foster Care Independence Act of 1999.

**N. “Policies”** are those regulations that govern CYFD activities and have the force of law.

**O. “Procedures”** direct PSD staff in how to implement policies.

**P. “Protective services division (PSD)”** refers to the protective services division of the children, youth and families department, and is the state’s designated child welfare agency.

**Q. “Provider”** refers to foster care and adoptive families.

**R. “RMS”** means random moment sample and is the process used by CYFD to collect information to support claims for reimbursement from the state and federal funding sources.

**S. “SACWIS”** means the statewide automated child welfare information systems (SACWIS), a comprehensive automated case management tool that supports foster care and adoptions assistance case management practice. FACTS is the state of New Mexico’s SACWIS system.

**T. “Secretary”** means the secretary of CYFD.

**U. “Stipend students”** are students in an undergraduate or graduate social work program in New Mexico who have been selected to receive stipends to support their education in return for working for PSD for a specified period of time.

**V. “Supervision”** is the formal, professional relationship in which the supervisor has oversight responsibility of the work duties and work life of the designated supervisee. Supervision is to be provided under the three functions of the supervisory framework.

**W. “Supervisor”** is an individual within the agency that are identified as responsible for assigned employee’s execution of job duties within the agency.

**X. “Supervisee”** is the employee assigned and reports directly to their designated supervisor.

**[V:] Y. “Universal precautions”** are the standardized



protocols for the prevention of communicable disease.

[W:] Z. “Vendor” refers to individuals or businesses from which PSD purchases goods and services for the needs of our clients.

[8.8.2.7 NMAC - Rp, 8.8.2.7 NMAC, 3/31/2010; A, 2/29/2012; A, 5/25/2021]

### 8.8.2.9 LEGAL AUTHORITY AND GUIDELINES:

PSD and its contractors shall provide services and issue licenses and certifications in accordance with federal and state constitutional, statutory and regulatory requirements, without regard to [~~race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity~~] race; ethnicity; creed; color; age; religion; sex or gender; gender identity; gender expression; sexual orientation; marital status or partnership; familial or parental status; pregnancy and breastfeeding or nursing; disability; genetic information; intersex traits; medical condition, including HIV/AIDS; citizenship or immigration status; national origin; tribal affiliation; ancestry; language; political affiliation; military or veteran status; status as a survivor of domestic violence; sexual assault, or stalking; or any other non-merit factor in accordance with law.

[8.8.2.9 NMAC - Rp, 8.8.2.10 NMAC, 3/31/2010; A, 5/25/2021]

### 8.8.2.13 ADMINISTRATIVE REVIEWS AND APPEALS:

PSD shall provide a client with either an administrative review or an administrative hearing to appeal a PSD decision, as outlined below. The outcome of an administrative review or hearing is final except as otherwise provided by law or these policies.

A. Administrative review:

(1) An administrative review shall be used in the following instances:

(a) removal of [~~foster~~] children in foster

care when the children have been in placement with the family for longer than six months;

(b) removal of adoptive children prior to finalization;

(c) denial of a [~~foster home~~] resource family license application;

(d) denial of the [~~foster~~] resource family’s request to adopt foster children placed in their home, if the children have been placed with the [~~foster~~] resource family for longer than six months;

(e) denial of transition support services;

(f) the substantiation of an abuse or neglect investigation unless the issue is in litigation in a pending children’s court case;

(g) the substantiation of a past abuse or neglect investigation that has been revealed by a present criminal record check where the records fails to show that PSD provided notice or an opportunity for a review, unless the issue was litigated in a children’s court case; or

(h) denial of certification as an independent investigator or adoption counselor.

(2) A client seeking an administrative review shall request the review in writing to PSD within ten days of the action or notice of the proposed action.

(3) The decision to initially place children with an adoptive family is not subject to an administrative review, but is made at PSD’s sole discretion.

B. Administrative hearing: An administrative hearing shall be used only in the following instances:

(1) the revocation, suspension, or non-renewal of a foster home licensed by PSD (as specified in 8.26.4 NMAC);

(2) the denial, non-renewal, probation, suspension, or revocation of a child placement agency license (as specified in 8.26.5 NMAC); or

(3) the substantiation of an abuse or neglect investigation after it has been upheld in an administrative review, unless the issue is in litigation in a pending children’s court case.

C. PSD shall comply with the administrative appeals process governed by 8.8.4 NMAC, Administrative Appeals.

D. A client seeking an administrative hearing shall request the hearing in writing to the PSD director’s office within 10 days of the action or notice of proposed action. [8.8.2.13 NMAC - Rp, 8.8.2.17 NMAC, 3/31/2010; A, 4/29/2011; A, 2/29/2012; A, 5/25/2021]

### 8.8.2.21 QUALIFICATIONS AND TRAINING OF STAFF:

Protective services division staff shall meet minimum qualifications as determined by their positions and job functions, and participate in formal pre-service and annual training as required by CYFD.

A. All PSD staff shall be trained in their legal duties to protect the constitutional and statutory rights of children and families from the initial time of contact, during the investigation and throughout the provision of services.

B. All PSD staff shall receive training in carrying out the provision of services to children and families in a manner that is respectful of race; ethnicity; creed; color; age; religion; sex or gender; gender identity; gender expression; sexual orientation; marital status or partnership; familial or parental status; pregnancy and breastfeeding or nursing; disability; genetic information; intersex traits; medical condition, including HIV/AIDS; citizenship or immigration status; national origin; tribal affiliation; ancestry; language; political affiliation; military or veteran status; status as a survivor of domestic violence; sexual assault, or stalking; or any other factor.

[B:] C. Protective services supervisors and county office managers shall receive training in supervision as soon as possible

of commencing supervision or employment as a supervisor or county office manager.

~~[C-]~~ **D.** All PSD field staff child protective services social and community services coordinators shall receive formal pre-service training as soon as possible after employment. Staff shall not be assigned primary case assignment until they have completed all pre-service training requirements, including on the job training.

~~[D-]~~ **E.** All PSD field staff, supervisors, and county office managers shall participate in in-service training as required by PSD management.

[8.8.2.21 NMAC - Rp, 8.8.2.26 NMAC, 3/31/2010; A, 2/29/2012; A; 5/25/2021]

**8.2.2.27 CYFD SUPERVISORY FRAMEWORK:**

New Mexico's children, youth and families department seeks to ensure quality supervision is provided to staff across all child welfare services and managerial levels within protective services that aligns with the mission and values of the agency, as well as to ensure that supervisory practice is conducted within the mandatory framework. The supervisory framework includes educational, administrative and supportive functions. The following statements reflect the agency's best practice standards regarding families, how the case process should work, where children should live, working in teams, importance of families' culture, collaboration and partnerships.

**A.** Regarding families, best practices include:

(1) children, youth, young adults and parents are the experts on their own lives, are motivated to recognize their strengths and needs, and must have a lead role in working toward change that matches their developmental abilities;

(2) caseworkers must base their relationships with children, youth, young adults and parents on mutual trust and respect, using open, honest, skillful, informed and transparent communication;

(3) networks of support (extended family, other fictive kin and naturally occurring support systems) and all resource families are vital to the wellbeing and success of the people served by the New Mexico CYFD;

(4) it is essential to maintain parent, sibling, and extended family connections through frequent family visitation in safe and natural settings;

(5) children, youth, young adults, and parents are full partners who bring a unique perspective that must be heard and valued; as such, CYFD strives to engage them in all aspects of practice and system improvements.

**B.** Regarding how the case process should work, best practices include:

(1) effective practice is strength-based using assessments and case plans to build on the strengths of children, youth, young adults, parents and communities in a collaborative, solution-focused way;

(2) practice is individualized and assessments, services, and supports enhance and address each person's strengths and needs;

(3) frequent and purposeful contacts, and visits by caseworkers, support families in achieving their goals;

(4) when interventions and culturally appropriate services are limited or not available, caseworkers and leadership must work collaboratively with families and communities to identify creative solutions that resolve the need;

(5) child welfare staff and providers must receive the training and support needed to ensure best practice, and caseload assignments that permit the integration of guiding values and beliefs in their daily work. C.

**C.** Regarding where children should live, best practices include:

(1) children, youth and young adults need to remain safely at home in their

families and communities whenever possible;

(2) services must occur in the least restrictive, most family-like setting appropriate for the child's and family's needs;

(3) when children are placed in out-of-home care, placements should be with relatives or fictive kin, geographically close to their family, with siblings safely placed together;

(4) when non-kin caregivers must be used, they should be licensed, competent, informed, supported, and promote permanency for the child or youth;

(5) children, youth, and young adults need and deserve a permanent family;

(6) children at risk of disruptions should receive services as soon as possible to stabilize placements;

(7) congregate care is an intervention for behavioral or mental health challenges, services must match the needs of the child, youth or young adult and be provided for only as long as necessary.

**D.** Regarding working in teams, best practices include:

(1) the team process values multiple perspectives and is often capable of creative and high quality decision-making than an individual;

(2) assessments, completed in partnership with children, youth, young adults, and parents, need to include suggestions and contributions from the full family team;

(3) children, youth, young adults, and family team members provide valuable ideas for identifying resources, keeping children and youth safe, reviewing progress on the service plan, and recognizing what is needed;

(4) staff are the agencies greatest asset and all staff members in the agency play a part in supporting staff retention;

(5) creating a culture that nurtures creative and critical thought, embraces diversity, and unites the agency's shared skills,

knowledge, and experience in support of one team is vital.

**E.** Regarding the importance of families' culture, best practices include:

(1) children, youth, young adults, and parents have the right to define and be understood within the contact of their own culture;

(2) the agency strives to eliminate racial and ethnic disparities and dismantle structural inequity experienced by children, youth, young adults, and parents;

(3) the agency has a responsibility to convey information and implement services in a manner that is developmentally, culturally, and linguistically appropriate and respectful;

(4) Native American families are entitled to receive active efforts to prevent the removal of their children and to reunify them if separation is necessary. Staff play a crucial role in ensuring that Native American families receive the support needed to keep their families intact through skilled case interventions.

**F.** Regarding collaboration and partnership, best practices include:

(1) the agency supports a collaborative approach to coordinating care and services with individuals, families, providers, systems, and community stakeholders;

(2) collaboration with all divisions, across all levels, strengthens our practice and expands the services and supports available to meet the needs of children, youth, young adults, and parents;

(3) the agency commits to working with community stakeholders to reduce disproportionality and disparities within the child welfare system, including outreach and engagement strategies to share information, obtain feedback, solicit buy-in, share resources and develop collaborative solutions with the broader community;

(4) the use of disaggregated data is key to assessing needs and ensuring the equitable distribution of child welfare resources across communities to reduce disproportionality and disparities. [8.8.2.27 NMAC - N; 5/25/2021]

## CHILDREN, YOUTH AND FAMILIES DEPARTMENT

This is an amendment to 8.10.2 NMAC, Sections 7, 8, 9, 10, 11, 12, 13, 14, 17 and 18, effective 5/25/2021.

### 8.10.2.7 DEFINITIONS:

**A.** "Caregiver" is an adult, parent, guardian or custodian in the household who provides care and supervision for the child.

~~[A:]~~ **B.** "Child abuse and neglect check" is a review of the PSD family automated client tracking system, also known as FACTS, or another state's central abuse or neglect registry to determine if there have been any previous referrals on the family to this state's or any other state's child protective services division.

**C.** "Child," "children" or "youth" refers to a person who is one of the following:  
(1) under the age of 18 years of age; or  
(2) up to 21 years of age and participating in the extended foster care program.

~~[B:]~~ **D.** "Children's Code" refers to the New Mexico Children's Code, Section 32A NMSA 1978.

~~[C:]~~ **E.** "Child vulnerability" refers to conditions resulting in the child's ability to protect ~~[him or herself]~~ themselves from identified ~~[safety threats]~~ danger indicators. ~~[as well as the child's ability to care for him or herself when the child's parent, or guardian is not able to meet the child's basic needs.]~~

~~[D:]~~ **F.** "Collateral contact" refers to any person who may be able to provide information to the PSD worker during an investigation of alleged abuse or neglect, concerning the alleged abuse

or neglect that would be helpful in assessing child vulnerabilities, ~~[safety threats]~~ danger indicators and parent, ~~[or]~~ guardian or custodian ~~[protective]~~ safety planning capacities.

**G.** "Complicating factors" are conditions that make it difficult for a caregiver to create safety for their child, but do not by themselves constitute imminent danger. Refer to the structure decision making manual to review the list of complicating factors protective services workers use in the New Mexico child safety and risk tool.

~~[E:]~~ **H.** "Custodian" as defined in the Children's Code, Subsection E of Section 32A-1-4~~(E)~~ NMSA 1978, means an adult with whom the child lives who is not a parent or guardian of the child.

~~[F:]~~ **I.** "CYFD" is the New Mexico children, youth and families department.

**J.** "Danger indicators" are conditions resulting in a child being exposed to harm or injury and was placed at risk of harm or injury that could occur immediately. Refer to the structured decision making manual to review the list of the ten identified danger indicators protective services workers use in the New Mexico safety and risk assessment tool.

~~[G:]~~ **K.** "FACTS" refers to the family automated client tracking system (FACTS), the official data and case management system for CYFD.

**L.** "Family" are caregivers, adults fulfilling the caregiver role, guardians, and others related by ancestry, adoption, or marriage, or as defined by the family itself.

~~[H:]~~ **M.** "Guardian" as defined in the Children's Code, Subsection I of Section 32A-1-4 ~~(H)~~ NMSA 1978, means a person appointed as guardian by a court or Indian tribal authority or a person authorized to care for the child by a parental power of attorney as permitted by law.

**N.** "Household" are all persons who have significant in-home contact with the child, including those who have a familial or intimate

relationship with any person in the home. This may include persons who have an intimate relationship with a caregiver in the household (or partner/significant other) but may not physically live in the home, or a relative whom the caregiver allows authority in parenting and caregiving decisions.

**[F:] Q. “Impending danger”** is when a child is living in a state of danger or position of continual danger due to a family circumstance or behavior. The threat caused by the circumstance or behavior is not presently occurring, but it can be anticipated to have severe effects on a child at any time.

**[J:] P. “Indian child”** means any unmarried person who is under age 18 and is either a member of an Indian tribe, or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

**Q. “New Mexico family resource connections (NMFRC)”** is New Mexico’s preventative program for differential response regarding screened out calls that do not meet criteria for an investigation.

**[K:] R. “Intake”** refers to the process by which intake workers receive, screen and prioritize reports of alleged child abuse or neglect.

**[E:] S. “Parent”** as defined in the Children’s Code, Subsection P of Section 32A-1-4 [(P)] NMSA 1978, includes a biological or adoptive parent if the biological or adoptive parent has a constitutionally protected liberty interest in the care and custody of the child.

**[M:] T. “Placement”** is an out of home residential arrangement for the care of children in PSD custody, which may include, but is not limited to, brief respite, resource family foster care, relative or fictive kin foster care and treatment foster care, or a facility such as residential treatment center, group home, or emergency shelter.

**[N:] U. “Present danger”** means immediate, significant and observable severe harm or threat of immediate and severe harm that is

presently occurring to a child and requires an immediate protective services response.

**[O:] V. “Prioritization”** is the assignment of a time frame for PSD to initiate an investigation based upon the reported [~~safety threats~~] danger indicators to the child, the age of the child and the safety planning [protective] capacities identified in the report (See herein at 8.10.2.13 NMAC).

**W. “REACH New Mexico”** is a PSD confidential texting program available for all children and youth residing in the state of New Mexico.

**[P:] X. “Safety planning [Protective] capacities”** are those assets possessed by the caregiver that [~~help~~] reduce or control [~~or prevent present or impending~~] the identified danger indicators [of serious harm to a child]. Refer to the structured decision making manual to review the list of four identified safety planning capacities protective services workers use in the New Mexico child and safety risk assessment tool.

**[Q:] Y. “Protective services division (PSD)”** refers to the [~~protective services~~] division within [of] the children, youth and families department, and is the state’s designated child welfare agency.

**[R:] Z. “PSD custody”** means custody of children as a result of an action occurring pursuant to the Children’s Code, Sections 32A-4-1 and 32A-3B-1 NMSA 1978.

**[S:] AA. “Report”** is a verbal or written presentation of information alleging child abuse or neglect that is received by an intake worker.

**[T:] BB. “Reporter”** refers to any individual who has contacted statewide central intake (SCI) to make a report of alleged child abuse or neglect.

**[U:] CC. “Safe Haven for Infants Act”** means an Act, Section 24-22-1 NMSA 1978, to promote the safety of infants and to immunize a parent from criminal prosecution for leaving an infant, 90 days of age or less, at a safe haven site. This Act is not intended to abridge the rights

or obligations created by the federal Indian Child Welfare Act of 1978 or the rights of the parents.

**[V:] DD. “Safe haven site”** as defined by Subsection F of Section 24-22-2 [(F)] NMSA 1978 means a hospital, law enforcement agency, or fire station that has staff onsite at the time an infant, 90 days of age or less, is left at such site.

**[W:] ——— “Safety threats”** are threats of serious harm to a child that may create a present or impending danger.]

**[X:] EE. “Screened in report”** is a report that has met PSD’s criteria for acceptance for investigation.

**[Y:] EE. “Screened out report”** is a report that has not met PSD’s criteria for acceptance for investigation.

**[Z:] GG. “Statewide central intake (SCI)”** is the unit within PSD whose responsibilities may include, but are not limited to receiving and screening reports of alleged child abuse or neglect and prioritizing and assigning accepted reports to the appropriate county office for investigation.

**[AA:] HH. “Witness”** refers to a person who has a firsthand account of an event that is relevant to a PSD abuse and neglect investigation. [8.10.2.7 NMAC - Rp, 8.10.2.7 NMAC, 3/31/2010; A, Same as previous comment.; A, 9/29/2015; A, 5/25/2021]

**8.10.2.8 PURPOSE OF INTAKE SERVICES:** The purpose of child protective services intake is to:

A. receive reports of alleged child abuse or neglect;

B. determine if the situation reported may constitute abuse or neglect as defined by the Children’s Code, Subsection B of Section 32A-4-2 [(B)] and Subsection E of Section 32A-4 [(E)] NMSA 1978;

C. determine if an investigation by PSD and a referral to another agency is warranted; [~~and~~]

D. determine if a

referral to the New Mexico family resource connection (NMFRC) program is warranted; and

~~(D.)~~ **E.** receive reports of incidents involving children in placements and determine if such reports warrant an investigation. [8.10.2.8 NMAC - Rp, 8.10.2.8 NMAC, 3/31/2010; A, 2/29/2012; A, 5/25/2021]

#### 8.10.2.9 ELIGIBILITY:

**A.** Any child up to age 18, shall be eligible for protective services intake.

**B.** All individuals are required by the Children's Code, Section 32A-4-3(A) NMSA 1978 to report suspected child abuse or neglect to SCI or law enforcement if ~~he or she~~ they know [s], or ~~has~~ have a reasonable suspicion ~~that~~ a child has been abused or neglected. [8.10.2.9 NMAC - Rp, 8.10.2.9 NMAC, 3/31/2010; A, 2/29/2012; A, 9/29/2015; A, 5/25/2021]

#### 8.10.2.10 PROVISION OF INTAKE SERVICES:

**A.** PSD intake workers shall be available to receive reports of suspected child abuse or neglect 24 hours a day, seven days a week, including reports involving suspected abuse or neglect of children in [placement] in PSD custody.

**B.** PSD intake workers shall accept reports from individuals wishing to remain anonymous.

**C.** Intake services shall be conducted by CYFD employees designated as PSD intake workers.

**D.** PSD intake workers shall collect sufficient information from the reporter in order to make a screening decision.

**E.** PSD intake workers shall assign a priority to screened-in reports as outlined in 8.10.2.13 NMAC.

**F.** PSD intake supervisors shall review all screening and prioritization decisions.

**G.** Once approved by the PSD intake supervisor, the intake worker shall assign screened-in, prioritized reports to the appropriate county office for investigation within the timelines established by PSD.

**H.** Designated PSD intake workers may complete a national crime information center (NCIC) check on alleged perpetrators of child abuse or neglect.

**I.** PSD intake workers shall send all screend out reports to the New Mexico family resource connection (NMFRC) supervisor. [8.10.2.10 NMAC - Rp, 8.10.2.10 NMAC, 3/31/2010; A, 2/29/2012; A, 5/25/2021]

#### 8.10.2.11 PROTECTION OF THE IDENTITY OF REPORT SOURCES:

PSD workers shall ask the reporting source if ~~he or she~~ they wishes wish to remain anonymous [that her identity be kept confidential]. If so, the reporter's name ~~with~~ shall be entered as anonymous and PSD shall protect the identity or identifying information of reporting sources and shall not disclose the reporter's identity, absent the consent of the reporter or a court order.

[8.10.2.11 NMAC - Rp, 8.10.2.11 NMAC, 3/31/2010; A, 2/29/2012; A, 5/25/2021]

#### 8.10.2.12 INTAKE SCREENING DECISION:

**A.** PSD intake workers make screening decisions on all reports received. Screening decisions ~~with~~ shall be made on all reports within established time frames. All screening decisions are staffed with an intake supervisor.

**B.** PSD intake workers shall use information received from the reporting source, information from collateral contacts as available, and results of the abuse and neglect check to assist in making the intake screening decision.

**C.** PSD intake workers utilize the New Mexico safety tool to determine the priority of the screened-in report.

~~(E.)~~ **D.** PSD intake workers shall ask the reporting source for contact information and ~~with~~ shall inform the reporting source of the intake screening decision, if ~~so~~ requested by the reporting source. [8.10.2.12 NMAC - Rp, 8.10.2.12 NMAC, 3/31/2010; A, 2/29/2012; A, 5/25/2021]

#### 8.10.2.13 PRIORITIZATION:

[Subject to the review and approval of the PSD intake supervisor, the intake] Intake workers shall prioritize accepted reports as follows:

**A.** Emergency report (E): A report alleging a ~~serious and immediate safety-threat~~ danger indicator involving a vulnerable child, including but not limited to an abandoned infant or child, any physical injury to an infant, a potentially life threatening situation, recent sexual abuse, a law enforcement request for immediate response, and recent serious trauma, such as a head injury, burns, or broken bones. An emergency report requires ~~that~~ an investigation be initiated within three hours of the SCI supervisor's screening decision.

**B.** Priority one report (P1): A report alleging physical injury involving a vulnerable child who is in a safe environment at the time of the report, or a report alleging a ~~serious-impending safety-threat~~ danger indicator involving a vulnerable child but where the alleged perpetrator will not have access to the child for the next 24 hours. A priority one report requires ~~that~~ an investigation be initiated within 24 hours of the SCI supervisor's screening decision.

**C.** Priority two report (P2): A report alleging ~~an impending safety-threat~~ danger indicators involving a vulnerable child with no immediate concern for the child's safety. This may include, but is not limited to, alleged physical abuse with no indication of injury or alleged abuse or neglect where the alleged perpetrator no longer has access to the child or a protective parent ~~or~~ guardian or custodian has already intervened. A priority two report requires ~~than~~ an investigation be initiated within five calendar days of the SCI supervisor's screening decision.

**D.** Custody of a safe haven infant: When SCI receives a report that an infant has been left under the provision of the Safe Haven Act at a safe haven site, as defined above at 8.10.2.7 NMAC, the children, youth and families

department through its protective services division is deemed to have emergency custody of that infant. Law enforcement is not notified and a law enforcement investigation or 48 hour hold is not required. [8.10.2.13 NMAC - Rp, 8.10.2.13 NMAC, 3/31/2010; A, 2/29/2012; A, 9/29/2015; A, 5/25/2021]

**8.10.2.14 CROSS REPORTING AND NOTIFICATION:**

**A.** PSD intake workers shall cross report all reports to the appropriate law enforcement agency pursuant to the New Mexico Children’s Code Section 32A-4-3(B) NMSA 1978.

**B.** When the alleged perpetrator of abuse or neglect is not a parent [or], guardian or custodian, [e.g. a coach, schoolteacher, or neighbor,] the PSD worker shall [receive] collect the information from the reporting source and [shall] informs [the reporter] them that [it] they will refer the allegation to the appropriate local law enforcement agency.

**C.** When the report received involves an Indian child on [the] a reservation or pueblo, PSD intake workers shall immediately transmit the information to the appropriate tribal authority, such as tribal law enforcement or tribal social services.

**D.** When SCI receives a report alleging abuse or neglect of a child residing in a facility, or a child not in custody residing outside of their home, the intake worker shall screen out the report and email the report to the CYFD licensing and certification authority and to the CYFD office of inspector general.

**E.** When the PSD intake worker receives a report that meets a screened-out criteria, they shall send the report to the New Mexico family resource connection program for further evaluation. [8.10.2.14 NMAC - Rp, 8.10.2.14 NMAC, 3/31/2010; A, 2/29/2012; A, 9/29/2015; A, 5/25/2021]

**8.10.2.17 NEW MEXICO FAMILY RESOURCE CONNECTIONS (NMFRC)**

**PROCESS:** If a report alleging abuse or neglect meets the criteria established pursuant to Section 32A-4-4.1 NMSA 1978, the department shall refer the case to the New Mexico family resource connection (NMFRC) program. The New Mexico family resource connection is a 30 day program within statewide central intake (SCI) that assists in coordinating prevention services to families who do not meet an investigation criteria. All screened out reports shall be referred to the NMFRC program. This program may include an alternative to investigation upon completion of an evaluation that may be completed at intake by the department, the results of which indicate there is no immediate concern for the child’s safety.

**A.** The department may remove a case from the NMRC program if there are any danger indicators identified that place the child in immediate danger. Conversely, the department may reassign a case from investigations to the NMFRC program, at the department’s discretion.

**B.** Each family participating in the NMFRC shall receive a family assessment. Based on the results of the assessment, the department may offer or provide referrals for service. A family member may choose to accept or decline any services or programs offered through the NMFRC program. [8.10.2.17 NMAC – N, 5/25/2021]

**8.10.1.18 REACH NEW MEXICO CHILD AND YOUTH TEXTING PROGRAM:**

REACH New Mexico is a PSD confidential texting program available for all children and youth residing in the state of New Mexico. REACH NM is a program held within the statewide central intake division. The texting program allows for any child or youth in New Mexico to safely report to PSD if they are the victim of abuse or neglect in their household. A REACH worker shall engage in a text

conversation with the child or youth to obtain information and provide support to the youth. After obtaining all of the information, the REACH worker shall either make a SCI report or refer the child or youth to the New Mexico family resource connections (NMFRC) program. [8.10.2.18 NMAC - N, 5/25/2021]

**CHILDREN, YOUTH AND FAMILIES DEPARTMENT**

This is an amendment to 8.10.3 NMAC, Sections 6 thru 10, 12, 14, 16, 17, 19, and 22, effective 5/25/2021.

**8.10.3.6 OBJECTIVE:** To establish guidelines for the investigation and disposition of cases of alleged abuse and neglect of children by their parent, guardian, custodian, other household members, or [foster care provider] resource family. [8.10.3.6 NMAC - Rp, 8.10.3.6 NMAC, 9/29/2012; A, 5/25/2021]

**8.10.3.7 DEFINITIONS:**  
**A. “Abandonment”** as defined in the Children’s Code, Subsection A of Section 32A-4-2 [(A)] NMSA 1978, includes instances when the parent, without justifiable cause:

(1) left the child without provision for the child’s identification for a period of 14 days; or

(2) left the child with other, including the other parent or an agency, without provision for support and without communication for a period of:

- (a) three months if the child was under six years of age at the commencement of the three month period; or
- (b) six months if the child was over six years of age at the commencement of the six month period.

**B. “Abused child”** as defined in the Children’s Code, Subsection B of Section 32A-4-2 NMSA 1978, means a child:

(1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian or custodian;

(2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian or custodian;

(3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian or custodian;

(4) whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or

(5) whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child.

**C. "Administrative hearing"** means a formal process in which the client shall have an opportunity to present evidence to an impartial hearing officer in accordance with CYFD's administrative appeals regulations 8.8.4 NMAC.

**D. "Administrative review"** is an informal process which may include an informal conference or a record review, and does not create any substantive rights for the family.

**E. "Accepted report"** is a verbal or written presentation of information concerning the alleged abuse or neglect made to the protective services division (PSD) of child abuse or neglect that falls within PSD's legal authority to investigate.

**F. "Brief respite"** is a non-legal, voluntary placement of a child for a period of no longer than five days. Brief respite occurs when a caregiver has asked a family member, friend or other person in the family's life to care for the child during a safety plan.

**G. "Caregiver"** is a parent, guardian or custodian in the household who provides care and supervision for the child.

**[F:] H. "Children's Code"** refers to the New Mexico State Statute, Chapter 32A NMSA 1978.

**[G:] I. "Child vulnerability"** refers to conditions resulting in the child's ability to protect [him or herself] themselves from identified [safety threats] danger indicators. [as well as the child's ability to care for him or herself when the child's parent, or guardian is not able to meet the child's basic needs.]

**[H:] J. "Collateral contact"** refers to any person who may be able to provide information to the PSD worker during an investigation of alleged abuse or neglect, concerning the alleged abuse or neglect that would be helpful in assessing child vulnerabilities, [safety threats] danger indicators and parent, [or] guardian or custodian [protective] safety planning capacities.

**K. "Complicating factors"** are conditions that make it difficult for a caregiver to create safety for their child, but do not by themselves constitute danger.

**[I:] "Conditionally safe"** means that one or more safety threats have been identified that places the child in present or impending danger of serious harm, however one or more protective capacities has been identified to offset, mitigate or control the threat of present or impending danger of serious harm.]

**[J:] L. "Custodian"** as defined in the Children's Code, Subsection E of Section 32A-1-4 NMSA 1978, means an adult with whom the child lives who is not a parent or guardian of the child.

**[K:] M. "CYFD"** refers to the New Mexico children, youth and families department.

**N. "Danger indicators"** are conditions resulting in a child being exposed to harm or injury or being placed at risk of harm or injury that could occur immediately.

**[L:] O. "Exigent circumstances"** means when there is credible information that a child is in danger of severe harm and requires immediate protective services.

**[M:] P. "Emotional [maltreatment] abuse"** is an observable behavior, activity, or words to intimidate, threaten, deride or degrade the child that causes substantial impairment of the child's mental or psychological ability to function.

**[N:] Q. "FACTS"** refers to the family automated client tracking system (FACTS), the official data and case management system for CYFD.

**R. "Family"** are caregivers, adults fulfilling the caregiver role, guardians, children, and others related by ancestry, adoption, or marriage, or as chosen by the family or child.

**S. "Fictive kin"** is a person not related by birth or marriage who has a significant relationship with the child.

**[O:] T. "Guardian"** as defined in the Children's Code, Subsection I of Section 32A-1-4 NMSA 1978, means a person appointed as guardian by a court or Indian tribal authority or a person authorized to care for the child by a parental power of attorney as permitted by law.

**[P:] U. "Home school"** is the operation of a home study program by a parent as filed with the public education department.

**V. "Household members"** are all persons who have significant in home contact with the child, including those who have a familial or intimate relationship with any person in the home. This may include persons who have an intimate relationship with a caregiver in the household (partner/significant other) but may not physically live in the home, or a relative whom the caregiver allows authority in parenting and caregiving decisions.

**[Q:] W. "Impending danger"** is when a child is living in a state of danger or position of continual danger due to a family circumstance or behavior. The threat caused by the circumstance or behavior is not presently occurring, but it can be anticipated to have severe effects on a child at any time.

~~[R:]~~ X. **“Indian child”** means any unmarried person who is under age 18 and is either a member of an Indian tribe, or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

~~[S:]~~ Y. **“Initiation”** of an investigation is the face-to-face contact by a PSD worker with the alleged victim, or documented diligent efforts to establish face-to-face contact with the victim.

~~[T:]~~ Z. **“Investigative decision”** is a determination of whether each allegation in the report is substantiated or unsubstantiated, as defined herein at 8.10.3.17 NMAC.

~~[U:]~~ AA. **“Investigation disposition”** is the determination of the level of involvement, if any, of PSD with the family based upon an assessment of safety threats and protective capacities, and considering the ongoing risk to the child and the needs and strengths of the family.

~~[V:]~~ BB. **“Neglected child”** as defined in the Children’s Code, Subsection E Section 32A-4-2 NMSA 1978, means a child:

(1) who has been abandoned by the child’s parent, guardian or custodian;

(2) who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child’s well-being because of faults or habits of the child’s parent, guardian or custodian, or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them;

(3) who has been physically or sexually abused, the child’s parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm;

(4) whose parent, guardian or custodian is unable to discharge that person’s responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity; or

(5) who has been placed for care of adoption in violation of the law; provided that nothing in the Children’s Code shall be construed to imply that a child who is being provided with treatment by spiritual needs alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof is for that reason alone a neglected child within the meaning of the Children’s Code; and further provided that no child shall be denied the protection afforded to all children under the Children’s Code.

CC. **“New Mexico child safety and risk assessment”** is the research-based structured decision making tool child protective service workers use to gather information on an abuse or neglect or in-home services case by focusing on critical characteristics of a family to make informed safety decisions.

~~[W:]~~ DD. **“Parent”** as defined in the Children’s Code, Subsection P of Section 32A-1-4 NMSA 1978, includes a biological or adoptive parent if the biological or adoptive parent has a constitutionally protected liberty interest in the care and custody of the child.

~~[X:]~~ EE. **“Parental notice or notification”** is an in-person or telephone notice to the parent or legal guardian that ~~[his or her]~~ their child will be or has been interviewed as part of an investigation.

~~[Y:]~~ FF. **“Permission”** is the consent for the child to participate in an investigation.

~~[Z:]~~ GG. **“Physical abuse”** as defined in the Children’s Code, Subsection F of Section 32A-4-2 NMSA 1978 includes, but is not limited to any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:

(1) there is not a justifiable explanation for the condition or death;

(2) the explanation given for the condition is

at variance with the degree or nature of the condition;

(3) the explanation given for death is at variance with the nature of the death; or

(4) circumstances indicate that the condition or death may not be the product of an accidental occurrence.

~~[AA:]~~ HH. **“Placement”** is an out of home residential arrangement for the care of children in PSD custody, which may include, but is not limited to brief respite, resource family foster care, relative or fictive kin foster care and treatment foster care, or a facility such as residential treatment center, group home, or emergency shelter.

~~[BB.]~~ **“Present danger”** means immediate, significant and observable severe harm or threat of immediate and severe harm that is presently occurring to a child and requires an immediate protective services response.]

~~[CC.]~~ **“Protective capacities”** are those assets possessed by the parent or guardian that help reduce, control or prevent present or impending danger of serious harm to a child.]

~~[DD:]~~ II. **“Protective services division (PSD)”** refers to the protective services division of the children, youth and families department, and is the state’s designated child welfare agency.

~~[EE:]~~ JJ. **“Provider”** refers to a person or agency providing services to a PSD client.

~~[FF:]~~ KK. **“Private school”** is a public education department authorized school, including private childcare, other than a home school, that is not under the control, supervision or management of a local school board.

~~[GG:]~~ LL. **“PSD custody”** means custody of children as a result of an action occurring pursuant to the Children’s Code, 32A-4 NMSA 1978 or 32A-3B and 34A-4 NMSA 1978.

~~[HH:]~~ MM. **“PSD worker”** refers to a person employed



by the children, youth and families department, protective services division.

**[H:] NN.** “**Public school**” is a school that is under the control, supervision or management of a local school district or the state board of education, including charter schools.

**[J:] OO.** “**Reasonable efforts**” as used in this policy refers to the provision of services or other interventions to prevent the removal of the child from the home, or if removal is required, to return the child home as soon as possible.

**[K:] PP.** “**Report**” is a verbal or written presentation of information alleging child abuse or neglect that is received by an intake worker.

**OO.** “**Relative**” means a person related to another person by birth, adoption or marriage, within the fifth degree of consanguinity or affinity.

**[L:] RR.** “**Risk**” is the term used to describe PSD’s assessment, based on established criteria, of the likelihood that child will be abused or neglected by [his or her] their parents, [or] legal guardians or custodian.

**[M:] SS.** “**Safe**” as used in this policy means [that] there are no [safety threats] danger indicators placing the child in a present or impending danger of serious harm.

**[N:] TT.** “**Safe Haven for Infants Act**” means an Act, Section 24-22-1 NMSA 1978, to promote the safety of infants and to immunize a parent from criminal prosecution for leaving an infant, 90 days of age or less, at a safe haven site. This Act is not intended to abridge the rights or obligations created by the federal Indian Child Welfare Act of 1978 or the rights of the parents.

**[O:] UU.** “**Safe haven site**” as defined by Subsection F of Section 24-22-2 NMSA 1978 means a hospital, law enforcement agency, or fire station that has staff onsite at the time an infant, 90 days of age or less, is left at such site.

**VV.** “**Safe with a plan**” is a New Mexico child safety assessment tool decision when one or more danger indicators are present, however, the child can safely remain in the home with a safety plan.

**[P:] WW.** “**Safety decision**” is based on the presence of [safety threats] danger indicators and [protective] safety planning capacities a family possesses that may offset, mitigate or control those [threats] danger indicators. [A child may be assessed to be safe, conditionally safe or unsafe.] Using the New Mexico child safety assessment tool, a child may be assessed to be safe, safe with a plan or unsafe.

**[Q:] XX.** “**Safety plan**” [is a document that identifies the strategy or group of strategies implemented to control a safety threat. It is an intrusion into family life in the form of ongoing assessment and specific strategies designed to match the duration and level of the safety threat up to and including removal of the child from home.] is a detailed strategy that outlines immediate action steps the family and their network will take to help keep the child safe from the identified danger indicators.

**[R:]** “**Safety threats**” are threats of serious harm to a child that may create a present or impending danger.]

**YY.** “**Safety Planning capacities**” are those assets possessed by the caregiver that reduce or control the identified danger indicators.

**[S:] ZZ.** “**Sexual abuse**” as defined in the Children’s Code, Subsection [(G)] J of Section 32A-4-2 NMSA 1978, includes but is not limited to criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by state law.

**[T:] AAA.** “**Sexual exploitation**” as defined in the Children’s Code, Subsection [(H)] K of Section 32A-4-2 NMSA 1978 includes, but is not limited to:

- (1) allowing, permitting or encouraging a child to engage in prostitution;
- (2) allowing, permitting or encouraging a

child in obscene or pornographic photographing; or

(3) filming or depicting a child for obscene or pornographic commercial purposes, as those acts are defined by state law.

**[U:] BBB.** “**Statewide central intake (SCI)**” is the unit within PSD whose responsibilities may include, but is not limited to receiving and screening reports of alleged child abuse or neglect and prioritizing and assigning accepted reports to the appropriate county office for investigation.

**[V:] CCC.** “**Unsafe**” [means that one or more safety threats have been identified that place the child in present or impending danger of serious harm and there are not sufficient protective capacities to offset, mitigate or control the threat of present or impending danger of serious harm.] is a New Mexico child safety assessment tool decision when one or more danger indicators are present and a safety plan cannot be created.

**[W:] DDD.** “**Witness**” refers to a person who has a firsthand account of an event that is relevant to a PSD abuse and neglect investigation.

[8.10.3.7 NMAC - Rp, 8.10.3.7 NMAC, 9/29/2015; A, 5/25/2021]

### 8.10.3.8 PURPOSE OF CHILD PROTECTIVE SERVICES INVESTIGATION:

A. The purpose of protective services investigation is to assess safety of children who are the subjects of reports of alleged abuse or neglect by:

(1) collecting and assessing information to determine whether the alleged child abuse or neglect occurred;

(2) determining whether any child in the home is vulnerable to [present or impending danger] danger indicators;

(3) assessing the parent, [or] guardian or custodian [protective] safety planning capacities; and

(4) determining the need for additional services.

**B.** Investigations shall be conducted for children in the custody of their [biological] parents, [adoptive parents,] guardians, or custodians and for children in PSD custody.

**C.** Reports of child abuse or neglect in schools, facilities, and childcare homes or centers shall be investigated by a local law enforcement agency. See 8.10.3.13 NMAC. [8.10.3.8 NMAC - Rp, 8.10.3.8 NMAC, 9/29/2015; A, 5/25/2021]

**8.10.3.9 ASSIGNMENT AND INITIATION OF INVESTIGATION:**

**A.** Every accepted report concerning alleged child abuse or neglect shall be assigned for investigation according to the investigation priority as determined by statewide central intake (SCI).

**B.** Investigation priority: The PSD worker shall initiate the investigation within the time frames established by PSD as follows:

(1) An emergency report requires [than] an investigation be initiated within three hours of the SCI supervisor’s screening decision.

(2) A priority one report requires [than] an investigation be initiated within 24 hours of the SCI supervisor’s screening decision.

(3) A priority two report requires [than] an investigation be initiated within five calendar days of the SCI supervisor’s screening decision.

**C.** In cases when there has been a child fatality, the PSD worker shall not be required to make face to face contact with the deceased alleged victim for purposes of the initiation of the investigation. [8.10.3.9 NMAC - Rp, 8.10.3.9 NMAC, 9/29/2015; A, 5/25/2021]

**8.10.3.10 INVESTIGATION REQUIREMENTS - GENERAL:**

**A.** The safety of the child is the overriding concern throughout the casework relationship

with the family. If the safety of the child is ever in conflict with the preservation of a family unit, the child’s need for protection always takes precedence. PSD shall request immediate assistance from law enforcement if necessary to assess and secure the safety of the child.

**B.** The PSD worker shall conduct the investigation in a manner that protects the privacy of the child and family.

**C.** The PSD worker shall make efforts to engage the family in the investigation and assessment process to gather the information required to identify the [safety threats] danger indicators, child vulnerabilities, [protective] safety planning capacities and ongoing risks [of harm] to the child.

**D.** The PSD worker shall interview collateral contacts during the investigation.

**E.** The PSD worker shall visit the home during an investigation. This requirement may be waived in specific circumstances that include but are not limited to:

(1) the parent, guardian or custodian refuses the worker entrance;

(2) the home has been determined to be unsafe by law enforcement or public health; or

(3) the family is homeless.

**F.** The PSD worker shall complete the New Mexico child safety assessment and risk assessment tools in all investigations. These are [FACTS] tools used by the PSD worker in determining the investigation disposition.

**G.** The PSD worker shall make efforts to provide or arrange for services for the child and family during the investigation to enhance the family’s capacity to safely care for their child.

[8.10.3.10 NMAC - Rp, 8.10.3.10 NMAC, 9/29/2015; A, 5/25/2021]

**8.10.3.12 INVESTIGATION REQUIREMENTS - PARENTS [AND] GUARDIANS AND CUSTODIANS:**

**A.** The PSD worker shall notify the parent, guardian or

custodian of the interview with the child in advance of the interview unless the worker has determined that notification could adversely affect the safety of the child about whom the report has been made or compromise the investigation.

**B.** If the PSD worker determines that notification could adversely affect the safety of the child or compromise the investigation, the worker may interview a child without prior notification to the parent, guardian, or custodian. In this situation, the PSD worker shall notify the parents, [or] guardians or custodians of the interview within 24 hours.

**C.** The PSD worker shall identify all legal guardians of the child.

**D.** The PSD worker shall interview the parent, guardian or custodian and collateral contacts or witnesses during the investigation.

**E.** At the time of initial contact with the parents, guardian, custodian or alleged perpetrator the PSD worker shall inform [him or her] them of the reported allegations in a manner consistent with laws protecting the rights of the reporter.

**F.** At the beginning of the investigation, or prior to beginning an interview with the parent [or], guardian, or custodian, the PSD worker shall inform the parents, [or] guardians or custodian of the following:

(1) that prior to filing an abuse and neglect petition any PSD interaction with the parents [or], guardians, or custodians is voluntary;

(2) that PSD has received a report alleging child abuse or neglect and the nature of the allegations;

(3) that PSD is required by law to conduct an investigation of screened-in reports;

(4) that only law enforcement can remove a child who is not in PSD custody, if necessary to protect the child’s health and safety, unless the district court issues an ex parte order allowing PSD to remove the child;

(5) that the investigation findings, decision, and disposition are confidential in accordance with the Children’s Code, Section 32A-4-33 NMSA 1978;

(6) that information concerning the report and investigation has been entered into FACTS;

(7) that other people may be interviewed in order to complete the investigation; and

(8) children age 14 and older may consent to an interview away from the home even when the parent does not consent.

G. The PSD worker shall provide the parent, guardian or custodian with information regarding CYFD’s complaint process should the parent [or], guardian, or custodian have any complaints.  
[8.10.3.12 NMAC - Rp, 8.10.3.12 NMAC, 9/29/2015; A, 5/25/2021]

**8.10.3.14 ALLEGATIONS OF ABUSE OR NEGLECT IN [FOSTER] RESOURCE FAMILY HOMES, TREATMENT FOSTER HOMES, AND PRE-ADOPTIVE HOMES:**

A. PSD shall investigate abuse or neglect allegations involving a PSD licensed [foster] resource family home, treatment foster home, or pre-adoptive home.

B. PSD shall notify law enforcement and coordinate the investigation with law enforcement when law enforcement is involved.  
[8.10.3.14 NMAC - Rp, 8.10.3.14 NMAC, 9/29/2015; A, 5/25/2021]

**8.10.3.16 SEEKING OR ACCEPTING CUSTODY OF CHILDREN, INCLUDING INDIAN CHILDREN:**

A. PSD shall make reasonable efforts to maintain the family unit and prevent the removal of a child from [his or her] their home, as long as the child’s safety is assured.

B. If temporary out-of-home placement is necessary to ensure the immediate safety of the child, PSD shall make reasonable

efforts to effect the safe reunification of the child and family.

C. PSD shall seek custody of Indian children who are domiciled or residing off-reservation when continued custody of the child by the parent, guardian or custodian or Indian custodian is likely to result in serious emotional or physical harm to the child.

D. An Indian child who is domiciled on the reservation but temporarily located off the reservation may be removed by law enforcement from his parent, guardian or custodian in order to prevent imminent physical harm to the child. PSD shall notify the tribe as soon as possible and facilitates a transfer of the case to the tribe.

E. PSD shall notify the parent, guardian or custodian that their child is in custody within 24 hours of the child being taken into custody.

F. PSD shall make reasonable efforts to identify, locate and notify appropriate relatives or fictive kin for consideration of placement of a child in custody who requires out of home placement.

G. When a law enforcement agency seeks to place a child in the custody of PSD, then the PSD worker shall obtain a statement of reasonable grounds for temporary protective services division custody from the law enforcement officer making the request.

H. When SCI receives a report that an infant has been left under the provisions of the Safe Haven for Infants Act, the children, youth and families department through its protective services division shall be deemed to have emergency custody of that infant. A law enforcement investigation and 48 hour hold is not required.

[8.10.3.16 NMAC - Rp, 8.10.3.16 NMAC, 9/29/2015; A, 5/25/2021]

**8.10.3.17 COMPLETION OF AN INVESTIGATION AND INVESTIGATION DECISION:**

A. The PSD worker shall complete the investigation and decide whether the report’s allegations

of abuse or neglect are substantiated or unsubstantiated within 45 days of SCI accepting the report for investigation, unless an extension is approved by the supervisor. Extensions are not to exceed an additional 30 days after the original 45 days have passed. Completion of the investigation includes, but is not limited to making the investigation decision, determining the investigation disposition and completing, sending out the notice of results of the investigation letter to the parent or guardian and completing all documentation in FACTS.

(1)

**Substantiated report:** an allegation of child abuse or neglect in which a parent, guardian, [~~foster parent~~] resource family, pre-adoptive parent or treatment foster care parent has been identified as the perpetrator or as failing to protect the child and credible evidence exists to support the investigation worker’s conclusion that the child has been abused or neglected, as defined in the Children’s Code. Credible evidence upon which to base a finding of substantiation may include, but is not limited to:

(a)

admission by the parent, guardian or custodian;

(b)

physical evidence;

(c)

collateral or witness statements and observations;

(d) a

child’s disclosure; or

[~~(e)~~—

~~a child born drug exposed or affected due to illegal or illicit drug use; or]~~

[~~(f)~~] (e) the

investigation worker’s observations.

(2)

**Unsubstantiated report:** an allegation of child abuse or neglect in which the information collected during the investigation does not support a finding that the child was abused or neglected, as defined in the Children’s Code by a parent, guardian, [~~foster parent~~] resource family, pre-adoptive parent or treatment foster parent, or that such a person failed to protect the child from

abuse or neglect as defined by the Children’s Code.

**B.** When there is clear evidence that a child has been abused or neglected while in the custody of the parent, guardian or custodian, but there is unclear information about who was the perpetrator, then the PSD worker shall substantiate the investigation on an unknown perpetrator. In addition to substantiation on the unknown perpetrator, the PSD worker shall substantiate the investigation on the parent, guardian or custodian because of the failure to protect the child by the parent, guardian or custodian.

**C.** The PSD worker shall document the investigation decision and the supervisory review and approval of the decision in FACTS within 45 days of the date the report was accepted by SCI, or if an extension was granted, by the end of the extension period.

[8.10.3.17 NMAC - Rp, 8.10.3.17 NMAC, 9/29/2015; A, 5/25/2021]

**8.10.3.19 INVESTIGATION DISPOSITION:**

**A.** PSD shall make an investigation disposition within 45 days of SCI accepting the report in every investigation PSD conducts, unless an extension is approved by the supervisor. Extensions are not to exceed an additional 30 days after the original 45 days have passed.

**B.** PSD shall determine the disposition of the investigation based upon the safety decision [~~safe, conditionally safe, or unsafe~~] and whether a safety plan is required, the family’s willingness to participate in services, and the assessment of risk.

**C.** Disposition options may include, but are not limited to closing the case, referring the family to community providers, providing in-home services (IHS), or referring the case to PSD legal for possible legal action.

**D.** PSD shall document the investigation disposition in FACTS and include the investigation disposition in the notice of results of investigation letter sent to the parent [or] guardian or custodian.

[8.10.3.19 NMAC - Rp, 8.10.3.18 NMAC, 9/29/2015; A, 5/25/2021]

**8.10.3.22 NOTIFICATION OF THE INVESTIGATIVE DECISION AND RIGHT TO ADMINISTRATIVE REVIEW AND ADMINISTRATIVE HEARING:**

**A.** The PSD worker shall provide parents, guardians, [foster parents] resource families, pre-adoptive parents and treatment foster parents who were the subject of the investigation the notice of results of the investigation letter. The PSD worker shall send the notice of the results of the investigation letter within the 45 day time frame, or with a possible 30 day extension. (See above at Subsection A of 8.10.3.17 NMAC).

**B.** The PSD worker shall notify parents, guardians, [foster parents] resource families, pre-adoptive parents and treatment foster parents who were the subject of a substantiated investigation, which is not the subject of a pending children’s court case, in writing that the decision to substantiate the investigation may be reviewed through PSD’s administrative review process. A client seeking an administrative review shall request the review in writing to PSD within 10 days of the action or notice of the proposed action.

**C.** If the investigation decision is upheld after being reviewed through PSD’s administrative review process, then PSD shall send a formal letter to the parent, guardian, [foster parent] resource family, pre-adoptive parent or treatment foster parent, who was the subject of the investigation, notifying them of the decision to uphold the substantiation and that the upheld decision may be reviewed through CYFD’s administrative hearing process. The parent, guardian, [foster parent] resource family, pre-adoptive parent or treatment foster parent shall request an administrative hearing in writing to the PSD director’s office within 10 days of [receipt of the letter] of the

action.

[8.10.3.22 NMAC - Rp; 8.10.3.21 NMAC, 9/29/2015; A, 5/25/2021]

**CHILDREN, YOUTH AND FAMILIES DEPARTMENT**

**This is an amendment to 8.10.7 NMAC, Sections 7, 9, 11, 12, 15, 16, 17, 18, 20, 21, 29 and 30, effective 5/25/2021.**

**8.10.7.7 DEFINITIONS:**

**A. “Adjudication hearing”** is the hearing that occurs within 60 days of service on the respondents at which the court determines whether the child is abused or neglected.

**B. “Adjustment of status”** is the application or procedure to obtain lawful permanent residency.

**C. “Affidavit”** means a sworn statement of facts and accompanies the petition for an ex-parte order. It is signed by any person who either has personal knowledge of the facts or has been informed of them and believes them to be true.

**D. “Best interest of the child”** is the standard that reflects the protection of the child from abuse and neglect. In motions to terminate parental rights and for permanent guardianship cases, the term encompasses stability and permanency in placement.

**E. “Case planning issues”** include placement decisions, permanency planning goals and treatment recommendations.

**F. “Children’s Code”** refers to the New Mexico Children’s Code, Section 32A-1-1, et. seq., NMSA 1978.

**G. “Children’s court attorneys”** are the attorneys who have been given the authority and the responsibility to represent protective services division (PSD) in child abuse and neglect and family in need of services proceedings.

**H. “Child’s attorney”** is a trained attorney appointed by the court to represent the child who is fourteen (14) years of age or older; also referred to as “youth attorney.”

**I. “Citizen”**  
**“Citizenship and immigration services (CIS)”** is the bureau within the department of homeland security responsible for processing immigrant related services and benefits, including special immigrant juvenile status (SIJS) and adjustment of status petitions.

**J. “Constitutionally protected liberty interest,”** in terms of the parent-child relationship, refers to the right of parents to the care, custody and nurture of their children; a parent’s constitutionally protected liberty interest includes retaining custody of one’s children and, thus, a state may not interfere with a parent’s custodial rights absent due process protections.

**K. “Custodian”** refers to an adult with whom the child lives who is not a parent or guardian.

**L. “Custody hearing”** is the hearing at which the court determines if probable cause exists for the child to remain in PSD’s custody pending adjudication.

**M. “Date child enters foster care”** means the earlier of 60 days from the date of removal of the child or the date of the adjudication of child abuse or neglect.

**N. “Disposition”** means the court hearing which establishes custody and where the court may adopt a treatment plan for the child and family.

**O. “Emergency custody”** exists when a child is removed from the parent’s home based upon a determination by law enforcement that the child is in need of protective custody or based upon an ex parte custody order.

**P. “Ex parte custody order”** is an order issued by the court pursuant to an ex parte affidavit that grants emergency custody to PSD.

**Q. “Fictive kin”**  
means a person not related by birth, adoption or marriage with whom the child has an emotionally significant relationship.

**Q. “Foreign national”** or **“alien”** means a person who is not a United States citizen.

**R. “Guardian ad litem”** is a trained attorney appointed by the court to represent and protect the best interests of the child in a neglect and abuse proceeding when the child is less than 14 years old.

**S. “Immigration and customs enforcement (ICE)”** refers to the bureau within the department of homeland security that carries out investigation and enforcement functions. ICE has no authority over SIJS.

**T. “Indian child”** refers to an unmarried person who is  
**(1)** under the age of 18 years old;

**(2)** a member of an Indian tribe or is eligible for membership in an Indian tribe; and  
**(3)** the biological child of a member of an Indian tribe.

**U. “Infant”** means a child less than one year of age.

**V. “Juvenile court”** under federal immigration law, means a court with jurisdiction under state law to make determinations over the care and custody of children. In New Mexico, the term used is children’s court rather than juvenile court.

**W. “Lawful permanent resident”** refers to a foreign national or alien with permission to live and work indefinitely in the United States, but who cannot vote (also known as a “green card holder”).

**X. “Legal custody”** means a legal status created by order of the children’s court or other court of competent jurisdiction or by operation of the New Mexico Children’s Code, Section 32A-4-1 et seq or 32A-3B-1 et seq, NMSA 1978, that vests in a person, department or agency the:

**(1)** right to determine where and with whom a child shall live;  
**(2)** right and duty to protect, train and discipline the child and to provide the child with food, shelter, personal care, education and ordinary and emergency medical care;

**(3)** right to consent to major medical, psychiatric,

psychological and surgical treatment and to the administration of legally prescribed psychotropic medications pursuant to the Children’s Mental Health and Developmental Disabilities Act; and

**(4)** right to consent to the child’s enlistment in the armed forces of the United States.

**Y. “Party”** in a neglect and abuse proceeding is any individual named in the petition or subsequently granted that status in the case by the court.

**Z. “Periodic review”** is a court hearing where the court reviews the treatment plan (case plan) and may modify the plan or adopt a new plan.

**AA. “Permanency hearing”** is a court hearing where the court reviews the progress made in the case, determines the permanency plan for the child and creates orders to expedite the achievement of permanency for the child.

**BB. “Permanency review hearing”** is a court hearing held within three months of the permanency hearing when the court has adopted a permanency plan of reunification and a transition plan or a court hearing held within 60 days of the permanency hearing when the court has adopted a permanency plan other than reunification and has determined that reasonable efforts have not been made to identify or locate relatives or fictive kin or reasonable efforts have not been made to conduct home studies on appropriate relatives or fictive kin interested in providing permanency for the child.

**CC. “Petition”** means the document filed with the court setting forth the allegations of abuse or neglect and relief sought.

**DD. “Protective services division (PSD)”** refers to the protective services division of the children, youth and families department, and is the state’s designated child welfare agency.

**EE. “Protective supervision”** is ordered by the court to allow PSD to visit the child in the home where the child resides, inspect

the home, transport the child to court-ordered diagnostic examinations and evaluations and obtain information and records concerning the child.

**FF. “Reasonable medical judgment”** means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and treatment possibilities with respect to the medical conditions involved.

**GG. “Relative”** [~~refers to grandparents, aunts and uncles, adult siblings, and any other relative that the parent identifies as a potential placement resource~~] means a person related to another person by blood within the fifth degree of consanguinity or through marriage by the fifth degree of affinity.

**HH. “Respondent”** refers to a parent, guardian or custodian of a child named in an abuse or neglect proceeding.

**II. “Special immigrant juvenile status (SIJS)”** refers to a status created by federal law that helps abused, neglected or abandoned a foreign national child in the juvenile court system to become lawful permanent residents where reunification and return to the country of origin are not viable options.

**JJ. “Stipulation”** is an admission or a plea of no contest by the respondent to one or more of the allegations in the petition.

**KK. “Trial home visit”** means the period of time, not to exceed six months, in which a child with a plan of reunification resides with the parent or guardian while services are provided to the child and family to address risk factors and ensure safety of the child.

**LL. “Undocumented foreign national”** or “undocumented alien” refers to a foreign national or alien without lawful immigration status in the United States. This includes persons who may have entered without legal permission or entered legally and overstayed his or her visa.

**MM. “United States citizen”** refers to a person born in the United States, Guam, Puerto Rico or the U.S. Virgin Islands, or

a person, who “naturalizes,” i.e., becomes a United States citizen upon an application after five (5) years of being a permanent resident. This also generally includes children born abroad to United States citizen parents.

**NN. “Use immunity”** means that the in-court testimony, statements made in the course of court ordered psychological evaluation or treatment program, records, documents or other physical objects produced by a respondent who has been granted use immunity status by the court shall not be used against that respondent in a criminal prosecution.

**OO. “Withholding medically indicated treatment”** means the failure to respond to a child’s life-threatening condition by providing treatment which, in the treating physician’s reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions. [8.10.7.7 NMAC - Rp, 8.10.7.7 NMAC, 3/31/2010; A, 5/25/2021]

#### **8.10.7.9 THE CHILDREN’S COURT ATTORNEY:**

**A. Role of the children’s court attorney:** The children’s court attorney shall provide information, interpretation of law and general assistance to PSD in the provision of child protective services and presents PSD’s recommendations in a court of law.

**B. Attorney-client relationship:** The primary decision-maker on the case shall be the PSD worker for the purpose of the attorney-client relationship.

**C. Differences of opinion:** When the children’s court attorney, PSD worker and supervisor cannot agree on the most appropriate course of action, the issues shall be resolved between the managing children’s court attorney and county office manager. The protective services director shall be the final arbiter in a decision.

**D. Attorney-client privileged communications:** Written and verbal communications concerning PSD business between a

children’s court attorney and a PSD worker is privileged. Privileged communications may not be disclosed to a third party outside the department unless a specific decision with the appropriate approval has been made to waive such privilege.

**E. No conversations concerning settlement or disposition shall occur in the absence the children’s court attorney representing PSD in the case.**

**(1) Direct contact between PSD workers and respondent’s counsel is limited to the exchange of routine information, such as, time for visitation and the name of psychologist to perform evaluation.**

**(2) PSD routinely informs the guardian ad litem or child’s attorney about important decisions relating to the child.**

[8.10.7.9 NMAC - Rp, 8.10.7.9 NMAC, 3/31/2010; A, 5/25/2021]

#### **8.10.7.11 PROCEDURAL PRINCIPLES:**

**A. PSD shall comply with the provisions of the New Mexico Children’s Code and the children’s court rules.**

**B. Emergency custody given to PSD by law enforcement shall not be extended.**

**C. When protective supervision has been ordered, the child shall not be removed from [his or her] their home absent emergency custody granted by law enforcement, or by an order of the court.**

**D. Legal custody includes the right to place a child. If PSD has legal custody, the court shall only order a specific placement when PSD has abused its discretion in the placement or proposed placement of a child.**

**E. Allegations of abuse or neglect shall be made for each individual named as a respondent in a petition. To perfect PSD’s custody, both parents may be named as respondents. If there are no allegations as to one parent, then that parent may generally receive custody.**

**F. A father who does not have parental rights to the child,**

i.e. a constitutionally protected liberty interest, may be excluded from the petition.

**G.** A custodian may be named as a respondent.

**H.** If allegations of abuse or neglect are proven as to only one child, and PSD makes the decision that other siblings in the household are at risk and should be placed in PSD custody, then the children's court attorney utilizes New Mexico case law to seek custody of those at-risk children.

**I.** A hearing on custody pending an adjudicatory hearing shall be held within 10 working days of the filing of the petition. A judgment granting custody to PSD remains in force for an indeterminate period not to exceed two years. If custody is still required to protect the child, then PSD shall request an extension of custody prior to the expiration.

**J.** An adjudicatory hearing shall be held in regard to the abuse or neglect of each parent. The time frame shall run separately based on the respective dates of service on each parent.

**K.** Parties shall not extend the time frame for "commencing" the adjudicatory hearing by agreement. Parties may seek an extension by filing a petition with the children's court judge or the supreme court, as specified in Children's Court Rules 10-343 (Adjudicatory hearing; time limits; continuances).

**L.** Prior to the adjudicatory hearing and permanency hearing, PSD shall meet with the other parties and shall attempt to settle issues attendant to the hearing and proposed treatment plan that serves the child's best interest.

**M.** Cases in which the child is removed from the home:

**(1)** In the first court order that sanctions the removal of a child from the home, PSD shall seek a judicial determination that continuing in the home would be contrary to the child's welfare, or that placement would be in the best interest of the child.

**(2)** PSD shall seek to obtain, within 60 days from the date the child is removed, a judicial determination that reasonable efforts were made, or were not required, to prevent removal.

**(3)** If feasible, both judicial determinations shall be sought simultaneously.

**N.** In those cases where a child remains in voluntary foster care longer than 180 days, PSD shall obtain a judicial determination prior to the one hundred eightieth (180th) day that the child's placement in voluntary foster care is in the best interest of the child.

**O.** At the first judicial review, PSD shall report the child's immigration status to the court. [8.10.7.11 NMAC - Rp, 8.10.7.13 NMAC, 3/31/2010; A, 5/25/2021]

#### **8.10.7.12 LITIGATION CONSIDERATIONS:**

**A.** PSD shall make reasonable efforts to prevent removal of the child and, when removal is necessary, PSD shall make reasonable efforts to reunify the child, and to finalize the child's current permanency plan.

**B.** Reasonable efforts to prevent a child's removal from home, or to reunify the child and family shall not be required if PSD obtains a judicial determination that such efforts are not required because:

**(1)** a court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as set forth in the New Mexico Children's Code; or

**(2)** the parent or custodian has been convicted, by a court of competent jurisdiction, of murder or voluntary manslaughter of another child of the parent, or of aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or voluntary manslaughter, or convicted of a felony assault that results in serious bodily injury to the child or another child of the parent.

**C.** The child or youth participates in court proceedings

in [his-or-her] their case unless it is determined not to be in the child's or youth's best interest. At the permanency hearing, the child is consulted, in an age-appropriate manner, about the permanency plan developed for the child.

**D.** PSD shall pursue obtaining use immunity when PSD's reunification efforts may conflict with a criminal prosecution.

**E.** The PSD worker is PSD's primary witness on case planning issues.

**F.** PSD shall give the children's court attorney advance notice of all witnesses, expert or otherwise, to be called to allow sufficient time to secure subpoenas and service by the sheriff's department or contracted process servers. PSD shall reimburse for expert testimony, time and travel according to established guidelines. Payments which exceed the established guidelines shall be approved by the chief children's court attorney.

**G.** In a case where a parent has a recognizable mental or physical disability, PSD shows how services provided were designed to address the disability within the context of the parenting plan.

**H.** PSD shall seek to obtain judicial determinations that are made on a case-by-case basis, and in which the court states the specific reasons for its determination.

**I.** When a court rules against PSD on a significant issue, the children's court attorney shall initiate a discussion with the child's worker and the appellate attorney to determine whether there are grounds to appeal and the ramifications of the appeal on the department.

[8.10.7.12 NMAC - Rp, 8.10.7.18 NMAC, 3/31/2010; A, 5/25/2021]

#### **8.10.7.15 DOCUMENTATION TO COURT:**

**A.** PSD shall complete and provide reports to the court and other parties as required by law.

**B.** The children's court attorney shall provide documentation and evidence so that the court may

make specific factual findings in determinations of:

- (1) reasonable efforts to prevent removal;
- (2) reasonable efforts not required to prevent removal;
- (3) reasonable efforts to finalize the permanency plan in effect; or
- (4) reasonable efforts to place siblings together unless joint placement would be contrary to the safety or well-being of any of the siblings, and whether siblings not jointly placed together have been provided reasonable visitation or other ongoing contact unless contrary to the safety or well-being of any of the siblings.

C. The children’s court attorney shall provide the court with a documented description of the child’s current foster care placement, and whether it is appropriate in terms of the educational setting and proximity to the school the child was enrolled in at the time of the placement, including plans for travel for the child to remain in the school in which the child was enrolled at the time of placement, if reasonable and in the child’s best interest.

D. The children’s court attorney shall document to the court the compelling reasons for seeking placement in the legal custody of PSD under a planned permanent living arrangement as the child’s permanency plan when PSD has considered reunification, adoption, permanent guardianship, or placement with a fit and willing relative, or fictive kin and has concluded [~~that~~] these are not the most appropriate permanent plans for the child.

E. If the court adopts a permanency plan other than reunification, the children’s court attorney shall provide documentation and evidence so [~~that~~] the court may make a specific factual finding in determinations of reasonable efforts to identify and locate relatives or fictive kin, and to conduct home studies on relatives or fictive kin expressing an interest in providing permanency for the child.

**F. The Children’s**

Code refers to three types of transition plans, with varying requirements depending on the case for review by the court.

(1) The transition plan designed to assist the youth in living independently: This plan, as defined in the Children’s Code, Subsection I of Section 32A-4-2 NMSA 1978, is an individualized written plan based on the unique needs of the youth outlining services to be provided to increase the youth’s independent living skills. PSD considers this plan the youth’s life skills plan. The youth’s life skills plan is required for each youth 16 years of age and older, and shall be included in the youth’s pre-dispositional report as required in Children’s Code, Paragraph (11) of Subsection B of Section 32A-4-21 NMSA 1978. The youth’s life skills plan shall also be included in the youth’s case plan, and reviewed by the court at every judicial review or permanency hearing. (See youth services policy, 8.10.9.11 NMAC.)

(2) The youth transition plan designed to assist the youth in transitioning to adult living: This plan, as described in the Children’s Code, Subsection B of Section 32A-4-25.2 NMSA 1978, is required prior to the youth reaching age of 17. The plan is developed collaboratively at a transition meeting by the youth, the youth transition specialist, the youth’s youth attorney, and whomever else the youth chooses to invite. The plan shall identify a youth’s needs, strengths and goals in the areas of safety, housing, education, employment or income, health and mental health, local opportunities for mentors and continuing support services. In accordance with the Children’s Code, Section 32A-4-25.3 NMSA 1978, the transition plan shall be reviewed and ordered by the court at the discharge hearing (see herein at 8.10.7.19 NMAC), the first hearing scheduled after the child’s seventeenth (17th) birthday and at every subsequent review and permanency hearing (See youth services policy, 8.10.9.12 NMAC).

**(3) The**

transition home plan designed to achieve successful reunification of a child: A transition home plan shall be developed and presented to the court at the time of the permanency hearing when PSD is proposing the court adopt a permanency plan of reunification. The transition home plan shall identify the steps that must be taken to achieve the child’s successful transition home (see herein at 8.10.7.18 NMAC and the Children’s Code, Subsection C of Section 32A-4-25.1 NMSA 1978). [8.10.7.15 NMAC - Rp, 8.10.7.19 NMAC, 3/31/2010; A, 5/25/2021]

**8.10.7.16 RIGHTS OF PARENTS AND RESPONDENTS:**

**A. Parent’s rights:**

Mothers, fathers who are married to the child’s mother, and adoptive parents have a constitutionally protected liberty interest in rearing the child. Additionally, those unmarried biological fathers who participate in the child’s life as a parent have a similar constitutionally protected liberty interest. At the inception of the case, PSD identifies those parents with protected rights.

**B. PSD shall**

inform parents of their rights at the commencement of the investigation.

**C. The court shall**

inform the respondent of [~~his or her~~] their rights at the respondent’s first appearance. Under Children’s Court Rule 10-314, those rights include:

- (1) notice of the allegations of the petition;
- (2) the right to trial on the petition;
- (3) the right to be represented by an attorney; and
- (4) the possible consequences if the allegations of the petition are found to be true.

**D. Biological fathers**

who participate in the child’s life have a constitutionally protected liberty interest and shall be accorded all of the notice and reasonable efforts protection under the Children’s Code. Those biological fathers who do not participate in the child’s life have no



protected liberty interest and shall not be entitled to notice of the protections offered under the Children's Code.

**E.** PSD shall attempt to obtain a sworn statement from the mother on the identity of the father, or shall place the mother on the stand and ask questions concerning the father's identity.

**F.** PSD shall check the putative father registry if the mother does not identify any person as the father.

[8.10.7.16 NMAC - Rp, 8.10.7.15 NMAC, 3/31/2010; A, 5/25/2021]

#### **8.10.7.17 NOTIFYING RELATIVES:**

**A.** PSD shall exercise due diligence to identify and notify adult relatives of a child's removal within 30 days of the removal. The notice shall inform relatives or fictive kin of their option to become a placement resource for the child.

**B.** If the parent is unable or unwilling to provide the PSD worker with names and contact information of relatives or fictive kin, the children's court attorney shall inform the court and ask the court to question the parents about relatives or fictive kin. The children's court attorney shall include in the court order that the parents will provide names of relatives or fictive kin, for possible relative or fictive kin placement, to PSD and attorneys of record five days from the date of the hearing.

**C.** At the permanency hearing, when the court adopts a plan other than reunification, the children's court attorney shall request ~~that~~ the court determine whether or not the department has made reasonable efforts to identify and locate, and conduct home studies of any appropriate relative expressing an interest in providing permanency for the child.

[8.10.7.17 NMAC - N, 3/31/2010; A, 5/25/2021]

#### **8.10.7.18 PERMANENCY HEARING REQUIREMENTS:**

**A.** A permanency hearing shall be commenced within

six months of the initial judicial review of a child's dispositional order or within 12 months from the date a child enters foster care, whichever occurs first.

**B.** If the court adopts a permanency plan of reunification at the permanency hearing, the court shall adopt a transition home plan for the child, and schedule a permanency review hearing within three months. If a child is reunified, the subsequent hearing may be vacated.

**C.** If the court adopts a permanency plan other than reunification at the permanency hearing, the court shall determine whether or not PSD has made reasonable efforts to identify and notify all grandparents ~~and~~, other relatives or fictive kin. The court shall also determine whether or not the department has made reasonable efforts to conduct home studies on any appropriate relatives or fictive kin interested in providing permanency for the child. If the court finds reasonable efforts have not been made to identify and locate relatives or fictive kin or to conduct home studies on relatives or fictive kin, the court shall schedule a permanency review hearing within 60 days to determine whether an appropriate relative or fictive kin placement has been made. If a relative or fictive kin placement is made, the subsequent hearing may be vacated.

**D.** The court shall hold permanency hearings every 12 months when a child is in the legal custody of PSD.

**E.** PSD shall provide the ~~foster parent(s)~~ resource family of a child and any pre-adoptive parent(s), ~~or~~ relative(s) or fictive kin providing care for the child with timely notice of permanency hearings and notice of their right to be heard in permanency hearings and permanency review hearings. The right to be heard does not confer the right to standing as a party to the case.

**F.** The children's court attorney shall ensure that PSD's report to the court for the permanency hearing documents that PSD has considered out-of state, as well as in-

state permanent placements for the child.

**G.** If the child is in an out-of-state placement at the time of the permanency hearing, the children's court attorney shall request a finding that the out-of-state foster care placement continues to be appropriate and in the child's best interests.

[8.10.7.18 NMAC - Rp, 8.10.7.30 NMAC, 3/31/2010; A, 5/25/2021]

#### **8.10.7.20 NOTICE AND OPPORTUNITY TO BE HEARD AT REVIEWS:**

PSD shall give notice to all parties, the child's guardian ad litem or youth attorney if 14 years or older, the child's court appointed special advocate, the contractor administering the citizen review board, the child's ~~foster parents~~ resource family, pre-adoptive parents, or relative or fictive kin caregiver, of the time, place and purpose of any judicial review hearing held pursuant to the Children's Code, Subsections A or B of Section 32A-4-25 NMSA 1978, including hearings held after a termination of parental rights has occurred. Notice to the child's ~~foster parents~~ resource family, pre-adoptive parents, or relative or fictive kin caregiver shall include notice of the right to be heard at the review hearing. Such notice does not confer the right to standing as a party to the case.

[8.10.7.20 NMAC - Rp, 8.10.7.31 NMAC, 3/31/2010; A, 5/25/2021]

#### **8.10.7.21 TERMINATION OF PARENTAL RIGHTS:**

**A.** The children's court attorney shall attend the change of plan staffing when PSD is considering recommending to the court that a child's plan be changed to adoption. PSD shall pursue a motion to terminate parental rights within 45 days of the PSD staffing establishing a plan of adoption for the child, or when it is clinically indicated.

**B.** In the case of a child who has been in foster care 15 of the most recent 22 months, PSD shall pursue a motion to terminate parental rights by the end of the

fifteenth (15th) month in foster care, unless the child is being cared for by a relative or fictive kin, or PSD has documented compelling reason(s) for not filing; or PSD has not provided to the family those services deemed necessary for the safe return of the child within the time period in the case plan. PSD calculates the 15 of the most recent 22 month period from the date the child entered foster care, uses a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the 22 month period, and excludes trial home visits and runaway episodes in calculating the 15 months. If there are compelling reasons for not seeking to terminate parental rights, those reasons shall be documented in the case plan.

[8.10.7.21 NMAC - Rp, 8.10.7.22 NMAC, 3/31/2010; A, 5/25/2021]

#### **8.10.7.29 SPECIAL IMMIGRANT JUVENILE STATUS (SIJS):**

**A.** In those cases in which a child is [~~an undocumented immigrant~~] a foreign national child without legal permanent residency in the United States, and if the permanency plan does not include reunification with at least one parent and PSD does not recommend that the child be returned to the country of origin, PSD shall determine whether the child may be eligible for SIJS under federal law. Under federal law, in addition to legal requirements of being under court jurisdiction and the court making the necessary judicial determination, a child must be in the United States, unmarried and under the age of 21.

**B.** If the child is eligible for SIJS, PSD shall move the court for a SIJS order containing a judicial determination that the child is deemed unable to reunify with one or both parents due to abuse, neglect or abandonment, and that it is not in the child's best interest to return to the country of nationality or last habitual residence. PSD's motion shall include a statement of the express wishes of the child, as expressed by

the child or the child's guardian ad litem or attorney.

**C.** If it has been determined that it is in the child's best interest to file a petition for SIJS and an application for adjustment of status, then within 60 days after an entry of the SIJS order, PSD shall file a petition for SIJS and an application for adjustment of status on behalf of the child.

**D.** [~~If a petition and application have been filed and the petition and application has yet to be granted by the time the child reaches 18 years of age, the court may retain jurisdiction over the case for the sole purpose of ensuring that the child continues to satisfy the requirement for SIJS.~~] The court order for SIJS must be filed and accepted by the court prior to the child turning age 18.

**E.** The children's court attorney shall request court jurisdiction and set review hearings pending the granting of SIJS. The children's court attorney shall provide judicial review reports for a child for whom the court has granted the SIJS order, and shall advise the court of the status of the petition and application process concerning the child.

**F.** The court's jurisdiction terminates upon the final decision of the federal authorities, however the court may not retain jurisdiction of the case after the child's twenty first birthday.  
[8.10.7.29 NMAC - Rp, 8.10.7.28 NMAC, 3/31/2010; A, 5/25/2021]

#### **8.10.7.30 CONSULAR NOTIFICATION:**

**A.** [~~When PSD is given custody of a foreign national child, PSD shall notify that child's foreign national consulate in writing without delay after obtaining custody. If it is unclear whether the child is a foreign national, it is best practice to give the consulate notice.~~] Foreign national child: When PSD is given custody of a foreign national child, that is, a child who is not a citizen of the United States, PSD shall notify that child's foreign national consulate in writing, without delay, after obtaining custody. When PSD is given custody of a child

who has at least one parent who is a foreign national of any country other than Mexico, PSD shall notify the appropriate foreign consulate except in cases in which notification may create a risk to the child's safety or may impede the goal of reunification of the child with their family.

**B.** [~~When PSD obtains custody of a child who has at least one parent who is a foreign national, PSD shall notify the appropriate foreign consulate without delay.~~] Mexican national child: When PSD is given custody of a Mexican national child, that is, a child who is a national of Mexico or has at least one parent who is a national of Mexico, PSD shall notify the Mexican consulate without delay.  
[8.10.7.30 NMAC - N, 3/31/2010; A, 5/25/2021]

## **CHILDREN, YOUTH AND FAMILIES DEPARTMENT**

**This is an amendment to 8.26.2 NMAC, Sections 6, 7, 8, 10 through 18, and 21 through 25, effective 5/25/2021.**

**8.26.2.6 OBJECTIVE:** To establish standards for the provision of foster care adoption services for children in PSD custody and for families who are seeking to foster and adopt, or current [~~foster parents~~] resource parents who want to adopt those children.

[8.26.2.6 NMAC - Rp, 8.26.2.6 NMAC, 5/29/2009; A, 5/25/2021]

#### **8.26.2.7 DEFINITIONS:**

**A. "Administrative appeal"** is a formal hearing for families whose license has been revoked, suspended, or not renewed. The family has the opportunity to present evidence to an impartial hearing officer in accordance with CYFD's Administrative Appeals regulations 8.8.4 NMAC.

**B. "Administrative review"** is an informal process that may include an informal conference or record review, and does not create any substantive rights for the family.

**C.** “**Adoptee**” refers to any person who is the subject of an adoption petition.

**D.** “**Adoption**” is the establishment of a court sanctioned legal parental relationship between an adult and a child.

**E.** “**Adoption subsidy**” is a third party payment program that may include reimbursement for adoption related expenses, monthly maintenance payments, medical provisions, or payments for pre-approved expenses for pre-existing conditions.

**F.** “**Adoption tax credit**” is a federal or state tax credit program that may be available to families who adopt children from foster care.

**G.** “**Adoptive home**” refers to:

(1) a [foster home] resource family licensed by PSD or a licensed child placement agency who chooses to adopt a [foster] child in foster care; or

(2) a family approved by a private agency or a licensed individual to adopt a child.

**H.** “**Age appropriate activities and items**” means an activity or item that is generally accepted as suitable for a child of the same age or level of maturity based on the child’s cognitive, emotional, physical, social and behavioral capacities.

**I.** “**Assessment**” is the process of collecting information and conducting interviews with applicants by the licensing agent, and evaluating that information to determine the suitability of an applicant for a [foster] resource parent license.

**J.** “**Best interest adoptive placement**” is the adoption placement considered by PSD staff to be the most appropriate placement to meet the child’s needs and best interest.

**K.** “**Case management team**” means the group of individuals with responsibility for implementing the case plan which may include PSD staff, parents or relatives, and the child if age appropriate.

**L.** “**Community service providers**” refers to organizations or individuals that provide support services to families, and may include CYFD contractors or any public or private agency or individual.

~~[M.]~~ “**Concurrent plan**” means a second permanency plan of adoption or guardianship in addition to the primary permanency plan of reunification.]

~~[N.]~~ **M.** “**Consent to adoption**” is a document signed by the adoptee if the child is 14 of age or older consenting to the adoption.

~~[O.]~~ **N.** “**Conversion adoption**” refers to an adoption in which the child’s [foster] resource parents have adopted the child.

~~[P.]~~ **O.** “**CYFD**” means the New Mexico children, youth and families department.

~~[Q.]~~ **P.** “**Disruption**” means the removal of a child by CYFD from a pre-adoptive home after an adoptive agreement has been signed, but prior to the finalization of the adoption.

~~[R.]~~ **Q.** “**Dissolution**” means the legal termination of an adoption.

~~[S.]~~ **R.** “**Fictive kin**” is a person not related by birth or marriage who has a significant relationship with the child.

~~[T.]~~ “**Foster care provider**” refers to a person or entity licensed by CYFD, licensed by another state’s child welfare agency, or a licensed child placement agency to provide foster care services including respite, non-relative, relative, or treatment foster care.]

**S.** “**Foster child**” or “**Child in foster care**” as referred to as “child” herein, means a child who is placed in the care and custody of children, youth and families department protective services division either under the legal authorization of the Children’s Code or through a voluntary placement agreement signed by the parent or legal guardian, or a child who is placed with a licensed child placement agency under the authority of the Child Placement

Agency Licensing Act. If the court orders legal custody to a relative, person, facility, or agency other than the children, youth and families department protective services division, the child is not a child in foster care of protective services division.

~~[V.]~~ “**Foster home license**” is the document which bears the name or names and address or addresses of those who are foster parents for the protective services division or licensed child placement agency. The license displays the ages and number of foster children the licensees are authorized to care for and the date such authorization begins and ends. The license shall bear the signature of the authorized person who issued the license.

~~[W.]~~ “**Foster parent**” is the person named on the license issued by protective services division or a licensed child placement agency who is authorized to care for foster children. Throughout this policy, the term foster parent also refers to an adoptive parent whose adoption has not yet finalized.

~~[X.]~~ “**Foster parent bill of rights**” is a statement of PSD’s responsibilities to foster parents.]

~~[Y.]~~ **T.** “**Freed for adoption**” means all parental rights are terminated and all time for appeal is exhausted.

~~[Z.]~~ **U.** “**Home study**” is the final written document that results from the assessment process to determine the suitability of an applicant for a [foster] resource parent license.

~~[AA.]~~ **V.** “**Individualized adoption plan (IAP)**” is an individualized and specific recruitment plan developed by PSD staff for children who have a plan of adoption.

~~[BB.]~~ **W.** “**Initial relative or fictive kin assessment**” is an in-home assessment of relative or fictive kin completed by the child’s caseworker to determine suitability for provisional licensure.

~~[CC.]~~ **X.** “**Life book**” is a combination of documents that remains with the child that

may include photos, letters, correspondence, development milestones, memorabilia and other items related to the child's life.

**[DD:] Y.**

**“Maintenance payments”** are payments designed to reimburse [foster care providers] resource families for the cost of food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, and reasonable travel required to address the child's needs. Maintenance payments are not considered income.

**[EE:] Z.** **“Non-conversion adoption”** refers to an adoption in which a child is placed in a pre-adoptive home, for the purpose of adoption, which did not serve as a [foster] resource home for the child.

**[FF:] AA.** **“Non-recurring adoption expenses (NRAE)”** are reasonable and necessary adoption fees that may include transportation, food and lodging for the child and adoptive parent, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs and which have not been reimbursed from other sources or funds.

**[GG:] BB.** **“Post adoption contact agreement (PACA)”** is an agreement between the birth and adoptive families regarding contact between them after the adoption has been finalized.

**[HH:] CC.** **“Post placement support services”** are services intended to strengthen families and support adoptive placement provided by PSD staff, or community service providers to children in custody and their pre-adoptive families to enhance the family's capacity to care for the child, assure the stability of the placement, and help the family meet the requirements to finalize the adoption.

**[I:] DD.** **“Post decree support services”** are services provided by PSD staff or community service providers to children and families who have finalized an adoption to enhance the family's capacity to care for the child and support family functioning.

**[JJ:] EE.** **“Pre-adoptive home”** refers to a family who has signed the adoption agreement to adopt a [foster] child in foster care, but the adoption has yet to finalize.

**[KK:] FF.** **“Protective services division (PSD)”** refers to the protective services division of the children, youth and families department, and is the state's designated child welfare agency.

**[LL:] GG.** **“PSD custody”** means custody of children as a result of an action filed under the New Mexico Children's Code, Sections 32A-4-1 NMSA 1978 or 32A-3B-1 NMSA 1978.

**[MM:] HH.** **“Reasonable and prudent parent standard”** means the standard of care characterized by careful, nurturing and thoughtful decision-making by the [foster] resource parent or out of home provider that is intended to maintain a child's health, safety, culture or cultural identity and best interests while encouraging the child's emotional, social and developmental growth.

**[NN:] II.** **“Relative”** means a person related to another person by birth, adoption or marriage within the fifth degree of consanguinity or affinity.

**[JJ.] “Resource family”** refers to a person or entity licensed by CYFD, licensed by another state's child welfare agency, or a licensed child placement agency to provide foster care services including respite, non-relative, relative, or treatment foster care. . Resource family includes foster parents as defined by Subsection I of Section 32A-1-4 NMSA 1978 and pre-adoptive parents as defined by Subsection U of Section 32A-1-4 NMSA 1978.

**[KK.] “Resource home license”** is the document which bears the name or names and address or addresses of those who are resource parents for the protective services division or licensed child placement agency. The license displays the ages and number of children in foster care the licensees are authorized to care for and the date such authorization begins

and ends. The license shall bear the signature of the authorized person who issued the license.

**[LL.] “Resource parent”** is the person named on the license issued by protective services division or a licensed child placement agency who is authorized to care for children in foster care. Throughout this policy, the term resource parent also refers to an adoptive parent whose adoption has not yet finalized. Resource parent includes foster parents as defined by Subsection I of Section 32A-1-4 NMSA 1978 and pre-adoptive parents as defined by Subsection U of Section 32A-1-4 NMSA 1978.

**[MM.] “Resource parent bill of rights”** is a statement of PSD's responsibilities to resource parents.

**[OO:] NN.** **“Transition calendar”** refers to the calendar which is developed once the family has accepted the child for an adoptive placement.

**[PP:] OO.** **“Traveling file”** includes copies of the medical and educational records related to the [foster] child in foster care. The traveling file shall remain with the child.

[8.26.2.7 NMAC - Rp, 8.26.2.7 NMAC, 5/29/2009; A, 9/29/2015; A, 5/25/2021]

**8.26.2.8 PURPOSE OF PLACEMENT SERVICES:** The purpose of placement services is to recruit, support and retain safe and stable families willing to make life long commitments to [foster] children in foster care and their families, to create permanent families for children requiring adoption, and to ensure a child's safety, permanency, and well-being.

[8.26.2.8 NMAC - Rp, 8.26.2.8 NMAC, 5/29/2009; A, 5/25/2021]

**8.26.2.10 RECRUITMENT AND INQUIRIES FOR PSD FAMILIES:**

**A.** PSD recruits foster and adoptive families and responds to inquiries from individuals interested in becoming [foster] resource or adoptive parents. PSD provides general information regarding the

special needs of children requiring foster care and adoption, and makes attempt to identify and locate relatives or fictive kin for consideration of placement.

**B.** PSD completes an annual recruitment plan to recruit [foster] resource and adoptive families. The recruitment plan, at a minimum, addresses the following:

- (1) information about the characteristics and needs of available children;
- (2) information about the nature of the foster care and adoption process; and
- (3) information about the cultural, racial, and ethnic identity of children in the population.

**C.** PSD may coordinate adoption events in order to create permanent families for children in PSD custody with a plan of adoption. Only licensed adoptive families may attend these events. Children who are freed for adoption or who have a plan of legal risk adoption may attend these events. [8.26.2.10 NMAC - Rp, 8.26.2.14 NMAC, 5/29/2009; A, 5/25/2021]

#### 8.26.2.11 **RIGHTS OF ~~[FOSTER PARENTS]~~ RESOURCE PARENTS:**

**A.** PSD shall provide services to resource parents and prospective resource parents without regard to race; ethnicity; creed; color; age; religion; sex or gender; gender identity; gender expression; sexual orientation; marital status or partnership; familial or parental status; pregnancy and breastfeeding or nursing; disability; genetic information; intersex traits; medical condition, including HIV/AIDS; citizenship or immigration status; national origin; tribal affiliation; ancestry; language; political affiliation; military or veteran status; status as a survivor of domestic violence; sexual assault, or stalking; or any other factor unrelated to suitability to parent.

~~**A.**~~ **B.** PSD shall share records or information about the social, medical, psychological or

educational needs of a child in PSD custody to a [foster] resource parent who is considering a child for placement to make an informed decision regarding the placement.

~~**B.**~~ **C.** PSD staff shall provide updated information regarding the status of a child's case to the [foster] resource parent, upon request of any confidential records or information concerning the child's social, medical, psychological or educational needs pursuant to the New Mexico Children's Code 32A-4-33 NMSA 1978.

~~**C.**~~ **D.** [Foster] Resource parents shall maintain confidentiality of all information regarding the [foster] child in foster care and the child's family as described herein at 8.26.2.12 N, NMAC.

~~**D.**~~ **E.** PSD shall inform [foster] resource parents of their right to receive notice of and be heard at any court proceeding held with respect to the child placed in the home.

~~**E.**~~ **F.** [PSD shall provide each foster parent with a copy of the foster parent bill of rights.] Prior to full licensure, the PSD shall provide resource families with a copy of the "resource family bill of rights and grievance process." PSD shall review the "resource family bill of rights and grievance process" and "memorandum of agreement for resource families" with the family prior to full licensure.

[8.26.2.11 NMAC - Rp, 8 NMAC 27.3.24, 5/29/2009; A, 5/25/2021]

#### 8.26.2.12 **ROLES AND RESPONSIBILITIES OF ~~[FOSTER] RESOURCE PARENTS:~~**

**A.** [Foster] Resource parents are considered integral members of a professional team dedicated to the critical responsibility of providing safety, permanency and well-being for children who have been abused or neglected. As such, [foster] resource parents shall be active participants in case planning for [foster] children in foster care. The [foster] resource parent shall work closely with PSD staff to

implement the service plan for each [foster] child in foster care including visitation for each [foster] child in foster care.

**B.** [Foster] Resource families support the preservation of connections for [foster] children in foster care in their care. Preserving connections may include the development of a long-term supportive relationship with [foster] children in foster care and their [foster] resource families even after the child has been discharged from care.

**C.** [Foster-care providers] Resource families shall adhere to applicable PSD policy and procedure, including the reasonable and prudent parent standard.

**D.** [Foster] Resource parents shall not use words, language, gestures, either directed at the [foster] child in foster care or made within [a foster child's] their sight or hearing, which disparage the [foster children's] child's parents, relatives or the child's cultural heritage. [Foster] Resource parents shall encourage the child to recognize and accept such strengths and achievements of their family as honestly identified.

**E.** Prohibited forms of discipline, for all children residing in the home, shall include, but are not limited to the following: corporal punishment such as shaking, spanking, hitting, whipping, or hair or ear pulling; isolation; forced to exercise; denial of food, sleep or approved visits or contact with parent; verbal assaults which subject the child to ridicule or which belittle the child or the child's family based on: [gender, race, religious preference, sexual orientation, or cultural identity] race; ethnicity; creed; color; age; religion; sex or gender; gender identity; gender expression; sexual orientation; marital status or partnership; familial or parental status; pregnancy and breastfeeding or nursing; disability; genetic information; intersex traits; medical condition, including HIV/AIDS; citizenship or immigration status; national origin; tribal affiliation; ancestry; language;

political affiliation; military or veteran status; status as a survivor of domestic violence, sexual assault or stalking; and housing status, including homelessness; or any other factor.

The child shall not be excluded from the [foster] resource family and shall not be threatened with exclusion from the [foster] resource home as punishment. The child shall not be locked in a room or closet.

F. The [foster] resource parent may serve as the child's educational decision maker to protect the [foster-child's] their educational rights and act as the student's advocate in the educational decision making process if appointed by the court.

G. When appointed by the New Mexico department of health family, infant and toddler program director, the [foster] resource parent may serve as a the child's decision maker to represent the special needs of a child in all matters related to the early intervention and evaluation assessment and treatment for the child in the event the parent is unable or unwilling to act in that capacity.

H. [Foster] Resource parents shall return all of a child's belongings when [he or she] the child moves to another placement, including the return home.

I. [Foster] Resource parents shall not release a [foster] child in foster care to anyone without the authorization of PSD, except when pursuant to the reasonable and prudent parent standard defined at 8.26.2.7 NMAC. [Foster-children] Children in foster care may also be surrendered to the custody of a law enforcement officer.

J. [Foster] Resource parents shall adhere to all statutes and regulations applicable to the provision of foster care, including but not limited to child labor laws, public health laws, mandatory school attendance, and motor vehicle laws.

K. [Foster] Resource parents shall provide PSD with any documents they obtain with respect to the [foster] child's legal status, health needs or care, service planning, school progress or other relevant documents.

L. [Foster] Resource parents shall maintain copies of all educational and medical documents related to the [foster] child in a traveling medical and educational file that shall remain with the child if the child is moved.

M. [Foster] Resource parents, in cooperation with PSD staff, shall create or maintain a life book for each child in their care that shall remain with the child if the child is moved.

N. The [foster] resource parent shall maintain the confidentiality of all information regarding the [foster] child and the child's family pursuant to the New Mexico Children's Code 32A-4-33 NMSA 1978. The unlawful public disclosure of such confidential information is a misdemeanor under New Mexico criminal law.

O. [Foster] Resource parents shall immediately report any signs, symptoms, indications or risk of abuse or neglect to any child to PSD statewide central intake (SCI) or law enforcement.

P. Pursuant to the reasonable and prudent parent standard, [foster] resource parents may consent to the use of their own personal vehicle by a [foster] child, and shall assume all civil and financial liabilities applicable to the [foster] child's operation of a motor vehicle. [Foster] Resource parents shall provide to PSD written documentation that all requirements have been met, including insurance coverage for any vehicle driven by the [foster] child in foster care.

Q. [Foster] Resource parents shall complete the [foster] resource parent report form provided by PSD regarding the child's well-being and progress and submit it to their PSD worker monthly. [8.26.2.12 NMAC - Rp, 8 NMAC 27.3.25 & 8.27.2.29 NMAC, 5/29/2009; A, 9/29/2015; A, 5/25/2021]

#### **8.26.2.13 APPLICATION OF THE REASONABLE AND PRUDENT PARENT STANDARD**

A. PSD shall make

efforts to normalize the lives of children in PSD's custody and to empower caregivers to approve a child's participation in activities, based on the caregiver's own assessment using a reasonable and prudent parent standard, without prior approval of PSD.

B. [Foster-care-providers] Resource families shall not require advance permission from PSD to apply the reasonable and prudent parent standard to decisions about the care of a child.

C. In applying the reasonable and prudent parent standard, the [foster] resource parent shall consider the following:

(1) the desires of the child including, but not limited to, cultural identity, spiritual identity, gender identity, and sexual orientation;

(2) the child's age, maturity and developmental level;

(3) potential risk factors and the appropriateness of the activity;

(4) the best interests of the child based on the [foster-care-provider's] resource family's knowledge of the child;

(5) the importance of encouraging the child's emotional and developmental growth;

(6) the terms of any court orders and any case plan applying to the child;

(7) the values and preferences of the child's biological parent or parents, if appropriate;

(8) whether the decision would bring about a permanent (e.g. tattoo) rather than a transient change to the child.

(9) the importance of providing the child with the most safe and affirming family-like and culturally relevant living experience possible;

(10) the legal rights and responsibilities of the child, including the youth bill of rights and responsibilities;

(11) Americans with Disabilities Act.

**D.** Age and developmentally appropriate activities that may be the subject of decisions under the reasonable and prudent parent standard include, but are not limited to, the following:

- (1) a cultural, social, or enrichment activity or support that fosters positive identity development;
- (2) a sleepover of one or more nights;
- (3) participation in sports or social activities, including related travel;
- (4) obtaining a driver's license and conditions for driving of a vehicle;
- (5) allowing the child to travel in another person's vehicle;
- (6) possession and use of a cell phone;
- (7) obtaining a job or working for pay (e.g. babysitting, yard work, etc.)
- (8) recreational activities (including, but not limited to, such activities as boating, swimming, camping, hunting, cycling, hiking, horseback riding).

**E.** [Foster] Resource parents may consult with the PSD worker when uncertain or uncomfortable with a decision under their consideration.

**F.** In situations in which a child age 14 or older disagrees with a decision made under the prudent parent standard, the child shall request a review of the decision in writing. The decision shall be reviewed by a neutral three-person panel through the youth grievance process. This process does not preclude any party from seeking a court order regarding the decision.

**G.** PSD shall seek appropriate statutory change to ensure [that foster] resource parents and other substitute care providers are shielded from liability when they act in accordance with the reasonable and prudent parent standard. In the meantime, CYFD will hold harmless and defend its licensed [foster-care-providers] resource families in

situations where they have acted and made decisions in accordance with the reasonable and prudent parent standard.

[8.26.2.13 NMAC - N, 9/29/2015; A, 5/25/2021]

**8.26.2.14 HEALTH SERVICES FOR ~~[FOSTER-CHILDREN]~~ CHILDREN IN FOSTER CARE:**

**A.** The [foster] resource parent shall observe [daily-the foster child's] the child in care's behavior and signs of emotional or physical health problems, daily. Any concerns shall be reported to PSD immediately.

**B.** There shall be a designated licensed physician and dentist for each child so that a coordinated plan of care is assured. [Foster] Resource parents shall obtain medical attention for any sick or injured child. [Foster] Resource parents, in their role as an adjunct representative of state government, shall not rely solely on spiritual or religious healing for [foster-children] children in foster care.

[8.26.2.14 NMAC - Rp, 8.26.2.13 NMAC, 9/29/2015; A, 5/25/2021]

**8.26.2.15 EDUCATIONAL SERVICES FOR ~~[FOSTER-CHILDREN]~~ CHILDREN IN FOSTER CARE:**

**A.** [Foster] Resource parents shall assist PSD in meeting the child's educational requirements, and in transporting the child to school [he or she] they attended at the time of placement when necessary and reasonable. [Foster] Resource parents shall ensure [that the foster] the child in foster care attends school. [Foster-children may not be home schooled:]

**B.** [Foster] Resource parents shall actively advocate for the [foster-child's] child in foster care's interest in the school setting, including seeking evaluations of the child's abilities and placement in any special education programs appropriate to the child's needs. [Foster] Resource parents shall attend school conferences and activities when appropriate. [Foster] Resource

parents shall report significant educational information to PSD. [8.26.2.15 NMAC - Rp, 8.26.2.14 NMAC, 9/29/2015; A, 5/25/2021]

**8.26.2.16 FOSTER CARE MAINTENANCE PAYMENTS:**

**A.** Reimbursement: [Foster-care providers] Resource families shall receive reimbursement for the care and support of a child in PSD custody placed in their home. Rates are established through legislative appropriation based on the age and needs of the child.

**B.** [Foster] Resource parents receiving CYFD foster care and support maintenance payments shall use these funds for the care and support of the identified child in their care, and shall not be considered a source of income and is not recognized as income when filing taxes.

**C.** PSD shall advise [foster] resource parents that they should consult a tax advisor to determine if [foster] children in their home may be considered eligible for a federal tax credit under the Internal Revenue Code.

[8.26.2.16 NMAC - Rp, 8.26.2.15 NMAC, 9/29/2015; A, 5/25/2021]

**8.26.2.17 MONITORING AND SUPPORT:**

**A.** PSD monitors [foster] resource and adoptive homes licensed by PSD.

**B.** At a minimum, when a child is placed in the home, PSD placement staff shall:

(1) visit the [foster] resource or adoptive parent in the home within five days of each new placement;

(2) conduct a home visit to the [foster] resource or adoptive parent once a month for the first three months following placement;

(3) conduct a home visit to the [foster] resource or adoptive parent at least every three months, and make phone contact at least every 30 days thereafter.

**C.** At a minimum, when a child is not placed in the

home, PSD placement staff shall conduct a home visit to the [foster] resource parent every three months and have monthly phone contact.

**D.** PSD receives documents and investigates all reported licensing violations and reports of maltreatment in foster care.

**E.** PSD placement staff may continue to have contact with a [foster] resource family it licenses that is under investigation for allegations of child abuse or neglect, but is prohibited from action in such a manner that may interfere with any ongoing civil or criminal investigation.

**F.** PSD may develop and implement a professional development plan to include training and professional development opportunities to address parenting needs, or licensing and policy infractions. At no time is the safety of a [foster] child in foster care compromised to allow for a [foster] resource parent to participate in a professional development plan.

**G.** Relative [foster] resource homes receive the same monitoring and support afforded to non-relative [foster] resource homes.

**H.** Additional support services may be available from community service providers or PSD staff.

[8.26.2.17 NMAC - Rp, 8.26.2.16 NMAC, 9/29/2015; A, 5/25/2021]

**8.26.2.18 INVESTIGATIONS OF ABUSE AND NEGLECT REFERRALS AND POLICY VIOLATIONS:**

**A.** Any CYFD employee suspecting child abuse or neglect in a [foster] resource parent home makes a report as set forth in Protective Services Intake policy, 8.10.2 NMAC. PSD staff who suspects, has knowledge of, or receives an allegation about a [foster] resource parent violating CYFD policy or licensing regulations shall immediately notify the placement supervisor.

**B.** Investigations of abuse and neglect referrals in [foster] resource homes:

**(1)** PSD shall investigate all screened-in reports of allegations of abuse or neglect regarding children in accordance with protective services investigation policy and procedure.

**(2)** If a screened-out report involves a child in PSD custody, the child’s worker shall conduct a safety assessment of the placement.

**(3)** No new placement may be made in the home during a pending investigation. Existing placements in the home shall be evaluated for safety. The decision as to whether to maintain placement shall depend on the continued safety of any child.

**(4)** Based upon the results of the investigation of the abuse or neglect referral, PSD may take one or more of the following actions:

**(a)** continue the placement, implementing a professional development and safety plan, if appropriate;

**(b)** terminate the placement; or

**(c)** determine if the family shall continue to be licensed as a PSD [foster] resource family.

**C.** Investigations of CYFD policy violations:

**(1)** The placement worker shall assess any allegations that the family has violated CYFD policy or licensing regulations.

**(2)** Based upon the results of the investigation of the alleged policy violation, PSD may take one or more of the following actions:

**(a)** continue the placement, implementing a professional development and safety plan, if appropriate;

**(b)** terminate the placement; or

**(c)** determine if the family shall continue to be licensed as a PSD [foster] resource family.

**D.** PSD shall notify the [foster] resource parent in writing, by

return of receipt mail, of the results and PSD actions of any substantiated abuse and neglect investigation or policy violations.

**E.** The results of any substantiated abuse and neglect investigation or policy violation, which is not the subject of court action, may be reviewed through CYFD’s administrative review process. The [foster] resource family may request an administrative review within 10 days of receiving the written notice.

[8.26.2.18 NMAC - Rp, 8.26.2.17 NMAC, 9/29/2015; A, 5/25/2021]

**8.26.2.21 BEST INTEREST ADOPTION PLACEMENT:**

**A.** When a child’s permanency plan becomes adoption, the child is referred to a PSD adoption consultant for the purposes of identifying a potential adoptive family. If an adoptive family is not identified, an individualized adoption plan is developed for the child.

**B.** The best interest of a child is paramount in identifying an adoptive family for a child. PSD makes reasonable efforts to place siblings together in the same adoptive home, unless PSD documents that such a joint placement would be contrary to the safety and well-being of any of the children in the sibling group. PSD will not separate siblings solely because an adoptive placement is available for one or more children, but not the entire group.

**C.** When a family is identified, placement staff will schedule a best interest placement staffing.

**D.** Children aged 14 years or older must consent to the adoption.

**E.** The placement of a child shall not be delayed or denied based on the [~~race, color, sex, gender identity, sexual orientation, mental or physical handicap, ancestry, or national origin~~] race; ethnicity; creed; color; age; religion; sex or gender; gender identity; gender expression; sexual orientation; marital status or partnership; familial or parental status; pregnancy and breastfeeding



or nursing; disability; genetic information; intersex traits; medical condition, including HIV/AIDS; citizenship or immigration status; national origin; tribal affiliation; ancestry; language; political affiliation; military or veteran status; status as a survivor of domestic violence; sexual assault, or stalking; or any other non-merit factor of the adoptive parent or child involved.

**F.** For Native

American children, the Indian Child Welfare Act (ICWA) adoption preferences shall be followed pursuant to the Adoption Act, 32A-5-5 NMSA 1978.

[8.26.2.21 NMAC - Rp, 8.26.2.20 NMAC, 9/29/2015; A, 5/25/2021]

**8.26.2.22 FULL DISCLOSURE:**

**A.** Prior to placement, PSD staff shall provide full disclosure about the child to the [foster] resource or adoptive family, and continue to provide full disclosure throughout the case and after finalization of the adoption, provided the information does not reveal information that would identify the biological family. Pursuant to the New Mexico Children's Code, Section 32A-5-3 NMSA 1978, full disclosure information includes:

- (1) health history;
- (2) psychological history;
- (3) mental history;
- (4) hospital history;
- (5) medication history;
- (6) genetic history;
- (7) physical description;
- (8) social history;
- (9) placement history; and
- (10) education.

**B.** All records, whether on file with the court, an agency, PSD, an attorney or other provider or professional services

in connection with an adoption are confidential pursuant to the New Mexico Children's Code, Section 32A-5-8 NMSA 1978. A person who intentionally and unlawfully releases any information or records closed to the public pursuant to the Adoption Act or releases or makes other unlawful use of records in violation of that act is guilty of a petty misdemeanor.

**C.** Documentation

provided for the purpose of full disclosure shall remain the property of the person making the full disclosure when a prospective adoptive parent decides not to accept a placement. Immediately upon refusal of the placement, the prospective adoptive parent shall return all full disclosure documentation to the person providing the full disclosure. A prospective adoptive parent shall not make public any confidential information received during the full disclosure process, but may disclose such information only as necessary to make an informed placement decision, or to the child's guardian ad litem or youth attorney.

[8.26.2.22 NMAC - Rp, 8.26.2.21 NMAC, 9/29/2015; A, 5/25/2021]

**8.26.2.23 PRE-PLACEMENT ACTIVITIES FOR NON-CONVERSION ADOPTIONS:**

**A.** PSD placement staff in coordination with the child's worker shall develop a calendar for the transition of the child to the adoptive home, except in the event a [foster] resource parent decides to adopt the child.

**B.** PSD staff and the adoptive family shall review and sign a placement agreement when the child is placed in the home.

**C.** Placement staff becomes responsible for the case form placement in the adoptive home until finalization of the adoption.

[8.26.2.23 NMAC - Rp, 8.26.2.22 NMAC, 9/29/2015; A, 05/25/2025]

**8.26.2.24 FOSTER HOME ADOPTIONS:**

**A.** PSD shall attempt to place [foster] children in foster care

with concurrent plans of adoption in foster homes which have been identified as concurrent families.

**B.** PSD completes the pre-placement home study for [foster] resource parents and treatment foster parents who have been selected as adoptive parents for children in PSD custody.

[8.26.2.24 NMAC - Rp, 8.26.2.23 NMAC, 9/29/2015; A, 5/25/2021]

**8.26.2.25 ADOPTION ASSISTANCE:**

**A.** The purpose of adoption assistance is to support the adoption of a [foster] child in foster care who meets special-needs criteria by providing financial assistance or medical coverage to support families in meeting the needs of the child. PSD verifies whether a child has special needs according to the following criteria:

(1) the child cannot or should not be returned to the home of the parents;

(2) there is documentation of at least one of the following factors or conditions that make it reasonable to conclude that the child cannot be placed for adoption without providing adoption assistance:

- (a) the child is age five or older, or
- (b) the child has a diagnosed physical, developmental, or psychological or emotional condition requiring medical or mental health intervention, or
- (c) the child is a member of a minority group, or

(d) the child is part of a sibling group that will be placed together; and

(3) a reasonable, but unsuccessful, effort has been made to place the child without adoption assistance, unless such effort would be against the best interests of the child

**B.** A child may be eligible for state funded adoption assistance or Title IV-E adoption assistance. If a child is not determined to meet special needs

criteria, then the child shall not be eligible for any adoption assistance.

**C.** Initial adoption agreement:

(1) PSD shall negotiate adoption assistance based on the family’s circumstances and any special needs of the child. The monthly adoption maintenance payment may not exceed the maximum monthly amount that was paid for the child in foster care.

(2) Types of assistance available:

(a) Maintenance: Monthly adoption assistance maintenance payments for the eligible child shall be utilized to meet the child’s existing day to day needs and is not considered income. Monthly adoption assistance maintenance payments are terminated on the child’s eighteenth birthday.

(b) Medical: Medical adoption assistance may be made on behalf of a child and shall cover only those pre-approved, pre-existing conditions that are not covered by the family’s private or group medical insurance or medicaid, and does not include co-payments or deductibles for which the patient is responsible. Medicaid is available in accordance with the laws, regulations or procedures of the state in which the child resides. Medical assistance may be extended until the child is 21 years of age, if the child is certified medically fragile by the New Mexico department of health.

(3) Interstate placement: When the adoption of the child involves interstate placement, the state that enters into the adoption assistance agreement shall be responsible for paying the non-recurring adoption expenses of the child. In cases in which there is interstate placement, but no agreement for adoption assistance, the state in which the final adoption decree is issued shall be responsible for paying the non-recurring expenses if the child meets the requirements.

(4) With placement worker approval, the adoptive family may be reimbursed for non-recurring adoption expenses

(NRAE) up to \$2000.00 per child in PSD custody. NRAE may include transportation and other reasonable expenses such as lodging and food for the child and adoptive parents that are not otherwise reimbursed. NRAE are not reimbursable in the event the adoption does not finalize. There is no income eligibility requirement for adoptive parents in determining whether payments for non-recurring expenses of adoption shall be made. However, parents cannot be reimbursed for out-of-pocket expenses for which they have otherwise been reimbursed.

(5) An adoptive family may receive a one-time only subsidy for legal services leading to the finalization of an adoption based on the adoption case regardless of number of siblings.

**D.** Prior to adoption finalization, the placement worker and the adoptive family shall sign the adoption assistance agreement that specifies adoption assistance and NRAE. Each Title IV-E subsidy agreement shall be completed and signed prior to the adoption finalization to be valid.

**E.** By signing the adoption assistance agreement, the adoptive parent agrees to immediately notify PSD of any of the changes listed below:

(1) the adoptive parent is no longer legally responsible for the child;

(2) the adoptive parent is no longer financially responsible for the child;

(3) change of address, phone numbers, or email addresses;

(4) change in the child’s name and social security number;

(5) change in the family’s needs or circumstances;

(6) change in electronic funds deposit information;

(7) the adoptive child no longer lives with the adoptive parents; or

(8) the death of an adoptive child.

**F.** Annual contact: On an annual basis PSD shall provide the

adoptive family a form to complete and return to PSD attesting to the following:

(1) the family continues to have financial and legal responsibility for the child; or

(2) that the adopted child is a full time elementary or secondary student (or has completed secondary school). If the child is incapable of attending school on a full time basis due to medical condition, the adoptive parent must submit to PSD regularly updated medical information to support such incapability. The parent must certify one of the following:

(a) that the child is enrolled (or is in a timely process of enrolling) in an institution that provides elementary or secondary education and meets school attendance requirements in accordance with state law;

(b) that the child is being home schooled in an elementary or secondary school program that complies with state law; or

(c) that the child is in an independent study elementary or secondary school program that complies with state law and is administered by the local school or school district.

(3) the child is or is not covered by private medical insurance.

**G.** Adoption assistance shall be terminated based upon any of the following events:

(1) the child reaches 18 years of age, except in the event of medically fragile certification;

(2) PSD determines that the adoptive family is no longer legally responsible for the child; or

(3) PSD determines that the adoptive family is no longer providing any support to the child.

**H.** PSD shall notify the adoptive family in writing, by return of receipt mail, of any decision to reduce, change, suspend or terminate an adoption subsidy. The adoptive

parent may request an administrative appeal within 10 days of receiving notification of the decision to reduce, change, suspend or terminate adoption subsidy.

[8.26.2.25 NMAC - Rp, 8.26.2.24 NMAC, 9/29/2015; A, 5/25/2021]

## DENTAL HEALTH, BOARD OF

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

#### CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.) PART 60 DENTAL THERAPISTS, FEES

##### 16.5.60.1 ISSUING

**AGENCY:** New Mexico Board of Dental Health Care.

[16.5.60.1 NMAC - N, 5/30/2021]

**16.5.60.2 SCOPE:** The provisions of 16.5.60 NMAC apply to all applicants for licensure; to active, retired, expired and suspended licenses; to anyone who requests a list or labels of licensed dental therapists, multiple copies of the law or rules, or copies of public records.

[16.5.60.2 NMAC - N, 5/30/2021]

##### 16.5.60.3 STATUTORY

**AUTHORITY:** 16.5.60 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-20 and Paragraph (5) of Subsection A of 61-5A-13.1 NMSA 1978.

[16.5.60.3 NMAC - N, 5/30/2021]

##### 16.5.60.4 DURATION:

Permanent.

[16.5.60.4 NMAC - N, 5/30/2021]

##### 16.5.60.5 EFFECTIVE

**DATE:** May 30, 2021, unless a later date is cited at the end of a section.

[16.5.60.5 NMAC - N, 5/30/2021]

**16.5.60.6 OBJECTIVE:** To establish fees to generate revenue to support the cost of program administration.

[16.5.60.6 NMAC - N, 5/30/2021]

##### 16.5.60.7 DEFINITIONS:

[RESERVED]

[16.5.60.7 NMAC - N, 5/30/2021]

##### 16.5.60.8 FEES:

**A.** All fees are non-refundable.

**B.** Application fee for licensure is \$250, which includes the initial licensing period.

**C.** An applicant who does not obtain a passing score on the jurisprudence exam must submit an additional fee of \$50 to re-take the exam.

**D.** Triennial renewal fee for all dental therapist licensee is \$150:

**(1)** late renewal fee of \$100 after July 1 through September 1, plus renewal and impaired fees;

**(2)** cumulative late fee of \$5 per day from August 1 to the date of the postmark or hand-delivery to the board office plus renewal, late and impaired fees.

**E.** Fees for temporary licenses and application:

**(1)** forty-eight hour license, application fee of \$50, license fee of \$50;

**(2)** six month license, application fee of \$100, license fee of \$100;

**(3)** twelve month license, application fee of \$100, license fee of \$150.

**F.** Reinstatement fee is \$200.

**G.** Application for licensure for inactive status is \$50.

**H.** Administrative fees:

**(1)** duplicate license fee is \$25;

**(2)** multiple copies of the statute or rules are \$10 each;

**(3)** copies cost \$0.25 per page;

**(4)** list of current dental therapist licensees is \$300; an annual list of current licensees is available to the professional association upon request at no cost; and

**(5)** mailing labels of current dental therapist

licensees is \$300.

[16.5.60.8 NMAC - N, 5/30/2021]

#### HISTORY OF 16.5.60 NMAC: [RESERVED]

## DENTAL HEALTH, BOARD OF

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

#### CHAPTER 5 DENTISTRY

#### (DENTISTS, DENTAL HYGIENISTS, ETC.)

#### PART 61 DENTAL THERAPISTS, LICENSURE AND CERTIFICATION

##### 16.5.61.1 ISSUING

**AGENCY:** New Mexico Board of Dental Health Care.

[16.5.61.1 NMAC - N, 5/30/2021]

**16.5.61.2 SCOPE:** The provisions of 16.5.61 NMAC apply to all applicants for licensure as a dental therapist.

[16.5.61.2 NMAC - N, 5/30/2021]

##### 16.5.61.3 STATUTORY

**AUTHORITY:** 16.5.61 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-13.1-3 NMSA 1978.

[16.5.61.3 NMAC - N, 5/30/2021]

##### 16.5.61.4 DURATION:

Permanent.

[16.5.61.4 NMAC - N, 5/30/2021]

##### 16.5.61.5 EFFECTIVE

**DATE:** May 30, 2021, unless a later date is cited at the end of a section.

[16.5.61.5 NMAC - N, 5/30/2021]

##### 16.5.61.6 OBJECTIVE:

To establish the requirements for application for licensure as a dental therapist.

[16.5.61.6 NMAC - N, 5/30/2021]

##### 16.5.61.7 DEFINITIONS:

**“dental therapy post-graduate clinical experience”** means a clinical education program as defined in Section 61-5A-13.1 NMSA 1978 to

provide advanced training for dental therapists in patient treatment and technical competency.  
[16.5.61.7 NMAC - N, 5/30/2021]

**16.5.61.8 PREREQUISITE REQUIREMENTS FOR DENTAL THERAPIST LICENSE:**

Each applicant for a license to practice dental therapy must possess the following qualifications:

- A. licensed as a dental hygienist in New Mexico;
- B. graduated and received a degree from an accredited dental therapy education program as defined in Section 61-5A-13.1 NMSA 1978;
- C. passed a clinical examination approved by the board; the results of the clinical examination are valid in New Mexico for a period not to exceed five years:
  - (1) the applicant shall apply directly to a board accepted examining agent for examination, and
  - (2) results of the clinical examination must be sent directly to the board office.
- D. Take and pass the New Mexico jurisprudence exam for dental therapy.  
[16.5.61.8 NMAC - N, 5/30/2021]

**16.5.61.9 DOCUMENTATION REQUIREMENTS:**

- Each applicant for a license must submit the required fees and following documentation:
- A. completed application signed and notarized with a passport quality photo taken within six months; applications are valid for one year from the date of receipt;
  - B. official transcripts or an original letter on letterhead with an embossed seal verifying successfully passing all required courses from the dental therapy education program, to be sent directly to the board office from the accredited program;
  - C. a copy of clinical examination score card;
  - D. proof of having taken a course in infection control technique or graduation from a dental therapy program within the past 12 months;

E. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross; or the American safety and health institute (ASHI); cannot be a self-study course;

F. the board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Impaired Dentists and Hygienists Act, or if it is determined that the applicant poses a threat to the welfare of the public;

G. verification of licensure in all states where the applicant holds or has held a license in good standing to practice dental therapy, or other health care profession; verification must be sent directly to the office from the other state(s) board, must include a seal, and must attest to the status, issue date, license number, and other information contained on the form.  
[16.5.61.9 NMAC - N, 5/30/2021]

**16.5.61.10 LICENSURE PROCEDURE:**

Upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or the delegate of the board will review and may approve the application. The board shall formally accept the approval of the application at the next scheduled meeting.

- A. Initial dental therapist licenses are issued for a period not to exceed three years, as defined in 16.5.63.8 NMAC.
- B. Any application that cannot be approved by the delegate of the board will be reviewed by the entire board at the next scheduled meeting.  
[16.5.61.10 NMAC - N, 5/30/2021]

**16.5.61.11 DENTAL THERAPY POST-GRADUATE CLINICAL EXPERIENCE:**

A dental therapist shall qualify to perform the procedures as stated in Section 61-5A-13.2 NMSA 1978 under general supervision, upon successful completion of a dental

post-graduate clinical experience and submission to the board office of the following documentation .

- A. a current active license in good standing to practice dental therapy in New Mexico;
- B. proof of successful completion from a dental therapy post-graduate clinical experience which:
  - (1) meets criteria developed and approved by the board;
  - (2) is sanctioned by a regionally accredited educational institution with a program accredited by the commission on dental accreditation; and
  - (3) provides advanced training:
    - (a) of at least 2000 hours following completion of a CODA accredited dental therapy education program: or
    - (b) of at least 1500 hours following completion of a CODA accredited dental therapy education program and applicant can document active practice experience as a dental hygienist for five years or more.

C. There is no fee associated for filing this documentation.

D. The board will re-issue the dental therapy license with a designation of the completion of the post graduate clinical experience.  
[16.5.61.11 NMAC - N, 5/30/2021]

**HISTORY OF 16.5.61 NMAC: [RESERVED]**

**DENTAL HEALTH, BOARD OF**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING  
CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)  
PART 62 DENTAL THERAPISTS, CONTINUING EDUCATION REQUIREMENTS**

**16.5.62.1 ISSUING**

**AGENCY:** New Mexico Board of Dental Health Care.

[16.5.62.1 NMAC - N, 5/30/2021]

**16.5.62.2 SCOPE:** The provisions of Part 62 of Chapter 5 apply to all licensed dental therapists who are applying to renew their license.

[16.5.62.2 NMAC - N, 5/30/2021]

**16.5.62.3 STATUTORY**

**AUTHORITY:** Part 62 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-10 NMSA 1978.

[16.5.62.3 NMAC - N, 5/30/2021]

**16.5.62.4 DURATION:**

Permanent.

[16.5.62.4 NMAC - N, 5/30/2021]

**16.5.62.5 EFFECTIVE**

**DATE:** May 30, 2021, unless a later date is cited at the end of a section.

[16.5.62.5 NMAC - N, 5/30/2021]

**16.5.62.6 OBJECTIVE:**

To establish criteria for continuing education for dental therapists licensed in New Mexico.

[16.5.62.6 NMAC - N, 5/30/2021]

**16.5.62.7 DEFINITIONS:**

[RESERVED]

[16.5.62.7 NMAC - N, 5/30/2021]

**16.5.62.8 HOURS**

**REQUIRED:** 15 hours of continuing education in addition to the 45 hours required for the dental hygiene license, a maximum of fifty percent of the required 15 hours can be on-line, webinars or self-study are required during each triennial renewal cycle as defined in 16.5.1 NMAC. Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are pro-rated at 20 hours per full year of the initial licensing period. Initial licenses issued for less than a full year do not require continuing education for the first renewal.

[16.5.62.8 NMAC - N, 5/30/2021]

**16.5.62.9 COURSES**

**REQUIRED:** a minimum of 15 hours per triennial renewal cycle in any of in any of the following subjects are required for dental therapist license renewal:

- A. dental materials and restorative technique.
- B. palliative care.
- C. pediatric dentistry.
- D. geriatric dentistry.

[16.5.62.9 NMAC - N, 5/30/2021]

**16.5.62.10 VERIFICATION OF CONTINUING EDUCATION:**

The board will select renewal applications for verification of continuing education. Audit requests will be included with the renewal notice and those selected individuals will be asked to submit proof of compliance with the continuing education requirements. Continuing education records may be audited by the board at any time. The records identified in Subsection F of 16.5.1.15 NMAC are considered acceptable forms of documentation. Continuing education records must be maintained for one year following the renewal cycle in which they are earned.

[16.5.62.10 NMAC - N, 5/30/2021]

**16.5.62.11 EMERGENCY****DEFERRAL:**

A. A licensee unable to fulfill the continuing education requirements may apply to the board for an emergency deferral of the requirements due to extenuating circumstances as defined in 16.5.1.7 NMAC. Deferrals of up to four months may be granted by a designee of the board.

B. A licensee practicing or residing outside the United States shall not be required to fulfill the continuing education requirements for the period of the absence.

(1) The board must be notified prior to license expiration that the licensee will be outside the US, including the period of the absence.

(2) Upon return to the US, the licensee shall complete the continuing education

required for the years of practice within the US during the renewal cycle, or apply for an emergency deferral.

[16.5.62.11 NMAC - N, 5/30/2021]

**HISTORY OF 16.5.62 NMAC:**  
[RESERVED]

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**DENTAL HEALTH,  
BOARD OF**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING**

**CHAPTER 5 DENTISTRY  
(DENTISTS, DENTAL  
HYGIENISTS, ETC.)**

**PART 63 DENTAL  
THERAPISTS, LICENSE  
EXPIRATION AND RENEWAL**

**16.5.63.1 ISSUING**

**AGENCY:** New Mexico Board of Dental Health Care.

[16.5.63.1 NMAC - N, 5/30/2021]

**16.5.63.2 SCOPE:** The provisions of Part 63 of Chapter 5 apply to all dental therapists with a license to practice in New Mexico.

[16.5.63.2 NMAC - N, 5/30/2021]

**16.5.63.3 STATUTORY**

**AUTHORITY:** Part 24 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978.

[16.5.63.3 NMAC - N, 5/30/2021]

**16.5.63.4 DURATION:**

Permanent.

[16.5.63.4 NMAC - N, 5/30/2021]

**16.5.63.5 EFFECTIVE**

**DATE:** May 30, 2021, unless a later date is cited at the end of a section.

[16.5.63.5 NMAC - N, 5/30/2021]

**16.5.63.6 OBJECTIVE:**

To establish procedures for license issuance, expiration and renewal.

[16.5.63.6 NMAC - N, 5/30/2021]

**16.5.63.7 DEFINITIONS:**

[RESERVED]

[16.5.63.7 NMAC - N, 5/30/2021]

**16.5.63.8 LICENSE EXPIRATION:** Initial licenses expire on July 1 in the third year of licensure. No license will be issued for longer than 36 months or less than 25 months.  
[16.5.63.8 NMAC - N, 5/30/2021]

**16.5.63.9 RENEWAL PERIOD AND EXPIRATION:** After the initial license period, dental therapy licenses expire every three years on June 30. Dental therapy licenses not renewed by July 1 are considered expired.  
[16.5.63.9 NMAC - N, 5/30/2021]

**16.5.63.10 RENEWAL PROCESS:** A completed renewal application, accompanied by the required fee as set forth in 16.5.60.8 NMAC, along with the required proof of completion of 60 hours of continuing education as set forth in 16.5.62.8 NMAC. The completed renewal application must be post-marked on or before July 1, of the renewal year.  
[16.5.63.10 NMAC - N, 5/30/2021]

**16.5.63.11 LICENSEE RESPONSIBILITY:** The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal form if one has not been received thirty days prior to license expiration. Incomplete renewal applications shall be returned to the licensee for completion and may result in the assessment of a late renewal fee as set forth in 16.5.60.8 NMAC.  
[16.5.63.11 NMAC - N, 5/30/2021]

**16.5.63.12 RENEWAL AFTER JUNE 30:** Renewal applications post-marked after July 1, and prior to August 1, of the renewal year must be accompanied by the completed renewal application with the required proof of completion of 60 hours of continuing education as set forth in 16.5.62.8 NMAC, along with the triennial renewal fee, impairment fee and the late fee as set forth in 16.5.60.8 NMAC.  
[16.5.63.12 NMAC - N, 5/30/2021]

**16.5.63.13 RENEWAL AFTER AUGUST 1 AND BEFORE SEPTEMBER 1:** Renewal applications post-marked on or after August 1, but before September 1, of the renewal year, must be accompanied by the completed renewal application with the required proof of completion of 60 hours of continuing education as set forth in 16.5.62.8 NMAC, along with the triennial renewal fee, impairment fee, late fee and the cumulative late fee as set forth in 16.5.60.8 NMAC.  
[16.5.63.13 NMAC - N, 5/30/2021]

**16.5.63.14 RENEWAL APPLICATION UNDELIVERABLE:** If the notice of renewal is returned to the office and the licensee has not sent a change of address, the revocation order will be considered undeliverable and will not be mailed.  
[16.5.63.14 NMAC - N, 5/30/2021]

**HISTORY OF 16.5.63 NMAC:**  
[RESERVED]

## DENTAL HEALTH, BOARD OF

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 5 DENTISTRY  
(DENTAL HYGIENISTS, ETC.)  
PART 64 DENTAL  
THERAPISTS, LICENSE  
REVOCATION FOR NON-  
RENEWAL**

**16.5.64.1 ISSUING AGENCY:** New Mexico Board of Dental Health Care.  
[16.5.64.1 NMAC - N, 5/30/2021]

**16.5.64.2 SCOPE:** The provisions of Part 64 of Chapter 5 apply to all dental therapists licensed in New Mexico who do not submit an application for license renewal within 60 days of the license expiration date.  
[16.5.64.2 NMAC - N, 5/30/2021]

**16.5.64.3 STATUTORY AUTHORITY:** Part 64 of Chapter 5

is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978.  
[16.5.64.3 NMAC - N, 5/30/2021]

**16.5.64.4 DURATION:** Permanent.  
[16.5.64.4 NMAC - N, 5/30/2021]

**16.5.64.5 EFFECTIVE DATE:** May 30, 2021, unless a later date is cited at the end of a section.  
[16.5.64.5 NMAC - N, 5/30/2021]

**16.5.64.6 OBJECTIVE:** To establish the procedures and policies for revocation of expired licenses and the reinstatement of a license revoked for non-renewal.  
[16.5.64.6 NMAC - N, 5/30/2021]

**16.5.64.7 DEFINITIONS:**  
[RESERVED]  
[16.5.64.7 NMAC - N, 5/30/2021]

**16.5.64.8 REVOCATION OF LICENSE FOR NON-RENEWAL:** Unless an application for license renewal is received by the board office, or post-marked, before September 1, the license shall be revoked for non-renewal.  
[16.5.64.8 NMAC - N, 5/30/2021]

**16.5.64.9 REINSTATEMENT OF REVOKED LICENSE FOR NON-RENEWAL:**  
A. Within one year of the revocation notice, the license may be reinstated by payment of renewal and reinstatement fees, compliance with continuing education for the previous renewal cycle and for the year of the revocation. Applicants for reinstatement after one year of revocation shall apply as a new applicant and meet all requirements for initial licensure.

B. Applicants for reinstatement shall provide for verification of licensure in all states where the applicant holds or has held a license to practice dental therapy, or other health care profession within the previous year. Verification shall be sent directly to the board office from the other state(s) board, shall include a seal, and shall attest to the

status, issue date, expiration date, license number, and other information contained on the form.

C. Upon receipt of a completed reinstatement of revoked license application, including all documentation and fees, a dental board member, will review and may approve the application. The board may formally accept the approval of the application at the next scheduled meeting.

[16.5.64.9 NMAC - N, 5/30/2021]

**HISTORY OF 16.5.64 NMAC:  
[RESERVED]**

## DENTAL HEALTH, BOARD OF

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.) PART 65 DENTAL THERAPISTS, PRACTICE

#### 16.5.65.1 ISSUING

**AGENCY:** New Mexico Board of Dental Health Care.

[16.5.65.1 NMAC - N, 5/30/2021]

#### 16.5.65.2 SCOPE:

The provisions of Part 65 of Chapter 5 apply to all active dental therapy license holders and all dental therapists working in New Mexico.

[16.5.65.2 NMAC - N, 5/30/2021]

#### 16.5.65.3 STATUTORY

**AUTHORITY:** Part 65 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Sections 61-5A-13.2 NMSA 1978.

[16.5.65.3 NMAC - N, 5/30/2021]

#### 16.5.65.4 DURATION:

Permanent.

[16.5.65.4 NMAC - N, 5/30/2021]

#### 16.5.65.5 EFFECTIVE

**DATE:** May 30, 2021, unless a later date is cited at the end of a section.

[16.5.65.5 NMAC - N, 5/30/2021]

**16.5.65.6 OBJECTIVE:** To establish allowable practice settings, scope of practice and limitations on dental therapy practice in New Mexico.

[16.5.65.6 NMAC - N, 5/30/2021]

#### 16.5.65.7 DEFINITIONS:

A. **“Atraumatic restorative therapy”** means a temporary or sedative restoration in an open carious lesions after excavation of gross decay and debris without the use of mechanical preparation.

B. **“Dental therapy practice agreement”** means a contract between the supervising dentist and a dental therapist that outlines the parameters of care, level of supervision, and protocols to be followed while performing dental therapy procedures on patients under the supervising dentists and dental therapists care.

C. **“Dental therapy post-graduate clinical experience”** as defined in Subsection N of 61-5A-3 NMSA 1978, means advanced training in patient management and technical competency:

(1) that is approved by the board, based on educational and supervisory criteria developed by the board and established by board rule;

(2) that is sanctioned by a regionally accredited educational institution with a program accredited by the commission on dental accreditation;

(3) that consists of two thousand hours of advanced training or, if the dental therapy educational program graduate has five years of experience as a dental hygienist, one thousand five hundred hours of advanced training; and

(4) for which the dental therapist may have received compensation.

[16.5.65.7 NMAC - N, 5/30/2021]

#### 16.5.65.8 SCOPE OF

**PRACTICE:** A dental therapist shall provide care in accordance with a dental therapy practice agreement;

provided that the dental therapy practice agreement is limited to the following activities:

#### A. UNDER GENERAL SUPERVISION:

(1) oral evaluation and assessment of dental disease;

(2) formulation of an individualized treatment plan as authorized by a supervising dentist;

(3) place and shape direct restorations without mechanical preparation;

(4) impressions for single-tooth removable prosthesis;

(5) temporary cementation;

(6) atraumatic restorative therapy;

(7) temporary and sedative restorations;

(8) extraction of primary teeth without radiological evidence of roots;

(9) palliative treatments;

(10) fabrication and placement of temporary crowns;

(11) recementation of permanent crowns;

(12) removal and nonsurgical placement of space maintainers;

(13) repairs and adjustments to prostheses;

(14) tissue conditioning;

(15) administration of analgesics, anti-inflammatory substances and antibiotics that a supervising dentist orders;

(16) other closely related procedures that the board authorizes through rules it has adopted and promulgated;

(17) all procedures within the scope of practice of a dental hygienist;

#### B. UNDER INDIRECT SUPERVISION:

(1) preparation and direct restoration of cavities in primary and permanent teeth; and

(2) fitting, shaping and cementing of stainless steel crowns on teeth prepared by a dentist; and.

**C. DENTAL THERAPISTS WITH POST-GRADUATE CLINICAL**

**EXPERIENCE:** A dental therapist that has completed a dental therapy post-graduate clinical experience, who has been certified by the board, may perform the following procedures under general supervision:

(1) preparation and direct restoration of cavities in primary and permanent teeth; and

(2) fitting, shaping and cementing of stainless steel crowns on teeth prepared by a dentist:

**D.** A dental therapist may treat a patient prior to a dentist’s examination or diagnosis, subject to a dental therapy practice agreement. [16.5.65.8 NMAC - N, 5/30/2021]

**16.5.65.9 LIMITATIONS ON PRACTICE:** Dental therapists shall not perform, or attempt to perform, the following services or procedures:

**A.** diagnosis;  
**B.** Dental treatment planning that has not been authorized by a supervising dentist;

**C.** the final fitting, adaptation, seating and cementation of any fixed or removable dental appliance or restoration except stainless steel crowns on teeth prepared by a dentist and the cementation of single tooth crowns previously cemented by a dentist;

**D.** final impressions for restorations or prosthetic appliances except single tooth removable prostheses;

**E.** administration of substances outside of a dental hygienist prescriptive authority as defined in 16.5.29.11 NMAC or under the orders of a prescribing dentist;

**F.** other services defined as the practice of dentistry in Subsection A of Section 61-5A-4 NMSA 1978 of the act and not specifically listed in Subsection B and C of Section 61-5A-4 NMSA 1978,

unless exempted by regulation. [16.5.65.9 NMAC - N, 5/30/2021]

**16.5.65.10 DENTAL THERAPY PRACTICE AGREEMENT:**

**A.** Prior to performing any of the services authorized under Sections 61-5A-13.2 and 61-5A-13.3 NMSA 1978, a dental therapist must enter into a written dental therapist practice agreement with a New Mexico licensed dentist. The agreement must include:

(1) practice settings where services may be provided, which may include:

(a) a facility operated by a nonprofit community dental organization;

(b) a health facility operated by the federal Indian health service;

(c) a health facility that a tribe operates under Section 638 of the federal Indian Self-Determination and Education Assistance Act;

(d) a federally qualified health center;

(e) a facility certified by the federal centers for medicare and medicaid services as a “federally qualified health center look-alike” facility;

(f) a private residence or a facility in which an individual receives long-term community-based services under the state’s medicaid program;

(g) a long-term care facility;

(h) a private residence, when exclusively to treat an individual who, due to disease, disability or condition, is unable to receive care in a dental facility; or

(i) an educational institution engaged in the training of dental therapists accredited by the commission on dental accreditation.;

(2) the parameters of care that may be provided by the dental therapist, including the level of supervision required by the supervising dentist

and what treatment is permitted within the scope of practice prior to the dentist examining the patient;

(3) a protocol to manage medical emergencies in each setting where the therapist provides care;

(4) protocols for administering and dispensing medications; and

**B.** A dental therapy practice agreement shall be prepared, amended and submitted to the board using a template tool provided by the New Mexico board of dental health care. The agreement template shall be an online-based tool maintained by the board. Electronic signatures are required.

**C.** Dental therapy practice agreements must be signed and maintained by the supervising dentist(s) and the dental therapist and renewed whenever there is any change in the agreement, including but not limited to, a dentist or dental therapist that has left the practice or organization, any change in employment or ownership that affects the relationship between the dental therapist and the supervising dentist, or similar. The agreement shall be updated via the board template and on file with the board office. Electronic signatures are required.

[16.5.65.10 NMAC - N, 5/30/2021]

**HISTORY OF 16.5.65 NMAC: [RESERVED]**

**DENTAL HEALTH, BOARD OF**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**

**CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)**

**PART 66 DENTAL THERAPISTS, DISCIPLINARY PROCEEDINGS, LICENSE REVOCATION OR SUSPENSION FOR DISCIPLINARY ACTIONS**

**16.5.66.1 ISSUING**

**AGENCY:** New Mexico Board of



Dental Health Care.

[16.5.66.1 NMAC - N, 5/30/2021]

**16.5.66.2 SCOPE:** The provisions of 16.5.66 NMAC apply to all active license holders and applicants for licensure. These provisions may also be of interest to anyone who may wish to file a complaint against a licensed dental therapist.

[16.5.66.2 NMAC - N, 5/30/2021]

**16.5.66.3 STATUTORY AUTHORITY:** 16.5.66 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-21, NMSA 1978.

[16.5.66.3 NMAC - N, 5/30/2021]

**16.5.66.4 DURATION:** Permanent.

[16.5.66.4 NMAC - N, 5/30/2021]

**16.5.66.5 EFFECTIVE DATE:** May 30, 2021, unless a later date is cited at the end of a section.

[16.5.66.5 NMAC - N, 5/30/2021]

**16.5.66.6 OBJECTIVE:** To establish the procedures for filing complaints against licensees, the disciplinary actions available to the board, the authority to issue investigative subpoenas and to further define actions by a licensee which are considered incompetent or unprofessional practice.

[16.5.66.6 NMAC - N, 5/30/2021]

**16.5.66.7 DEFINITIONS:**

**A. "Addiction"**

means a neurobehavioral syndrome with genetic and environmental influences that result in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and craving.

**B. "Chronic pain"**

means a pain state which is persistent and in which the cause of the pain cannot be removed or otherwise treated.

**C. "Drug abuser"**

means a person who takes a drug or drugs for other than legitimate medical purposes.

**D. "Pain"**

means an unpleasant sensory and emotional experience associated with inflammation or with actual or potential tissue damage, or described in terms of such inflammation or and damage.

**E. "Patient abandonment"**

means withdrawing a patient from treatment without giving reasonable notice or providing a competent replacement provider.

**F. "Physical dependence"**

means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

**G. "Tolerance"**

means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

[16.5.66.7 NMAC - N, 5/30/2021]

**16.5.66.8 COMPLAINTS:**

Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the board and committee. Any hearing held pursuant to the complaint shall conform to the provisions of the Uniform Licensing Act, the Dental Health Care Act and the Impaired Dentists and Dental Hygienists Act.

[16.5.66.8 NMAC - N, 5/30/2021]

**16.5.66.9 ACTIONS:**

**A.** The board may assess fines, deny, revoke, suspend, stipulate, or otherwise limit a license if it is determined the licensee is guilty of violating any of the provisions outlined in the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules.

**B.** The board may reprimand, censure, or require licensees to fulfill additional continuing education hours within

limited time constraints for violations of the act or rules.

**C.** The board shall take into consideration the dual role of dental therapists as professionals and employees when taking disciplinary action against a licensee.

[16.5.66.9 NMAC - N, 5/30/2021]

**16.5.66.10 GUIDELINES:** The board shall define the following as guidelines for disciplinary action.

**A. "Gross incompetence" or "gross negligence"** means, but shall not be limited to, a significant departure from the prevailing standard of care in patient treatment.

**B. "Unprofessional conduct"** means, but is not limited to because of enumeration:

(1)

performing, or holding oneself out as able to perform, professional services beyond the scope of one's license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the dental therapy profession;

(2) failure

to refer a patient, after emergency treatment, to his/her regular dentist and inform the latter of the conditions found and treated;

(3) failure

to release to a patient copy of that patient's records and x-rays within 15 business days regardless whether patient has an outstanding balance;

(4) failure

to seek consultation whenever the welfare of the patient would be safeguarded or advanced by referral to individuals with special skills, knowledge, and experience;

(5) failure

to advise the patient in simple understandable terms of the proposed treatment, the anticipated fee, the expectations of success, and any reasonable alternatives;

(6) failure

to inform dentist or patient of periodontal assessment;

(7) failure to provide patient education of oral health care regimens which assist in maintaining good oral health throughout life;

(8) sexual misconduct;

(9) failure to use appropriate infection control techniques and sterilization procedures;

(10) breach of ethical standards, an inquiry into which the board will begin by reference to the most recent version of the American dental association's code of ethics;

(11) fraud, deceit or misrepresentation in any application;

(12) violation of any order of the board, and ratified by the board, including any probation order;

(13) injudicious administration of any drug or medicine;

(14) failure to report to the board any adverse action taken by any licensing board, peer review body, malpractice insurance carrier or any other entity as defined by the board, the surrender of a license to practice in another state, surrender of membership on any medical staff or in any dental therapy or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

(15) deliberate and willful failure to reveal, at the request of the board, the incompetent, dishonest, or corrupt practices of a dentist or dental hygienist licensed or applying for licensure by the board or board; and

(16) cheating on an examination for licensure;

(17) failure of a dental therapist to comply with advertising guidelines as outlined in 16.5.1 NMAC;

(18) assisting a health professional, or be assisted by a health professional that is not licensed to practice by a New Mexico board, agency or commission;

(19) failure to make available to current patients of record a reasonable method of contacting the treating dental therapist or on-call service for dental emergencies; dental practices may refer patients to an alternate urgent care or emergency facility if no other option is available at the time, or if the contacted supervising dentist deems it necessary for the patient's well-being;

(20) conviction of either a misdemeanor or a felony punishable by incarceration;

(21) aiding and abetting a dental auxiliary who is not properly certified;

(22) patient abandonment;

(23) habitually addicted as defined in Subsection 4 & 6 of Section 61-5A-21 NMSA 1978 and Subsections C and D of 61.5B-3 NMSA 1978 habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act, 30-31-1 NMSA 1978 or habitual or excessive use or abuse of alcohol;

(24) failure of the licensee to furnish the board within 10 business days of request; its investigators or representatives with information requested by the board, and ratified by the board;

(25) failure to appear before the board when requested by the board, and ratified by the board, in any disciplinary proceeding; and

(26) failure of compliance with the Parental Responsibility Act Section 40-5A-3 seq., NMSA1978.  
[16.5.66.10 NMAC - N, 5/30/2021]

**16.5.66.11 INVESTIGATIVE SUBPOENAS:** The complaint committee of the board is authorized to issue action investigative subpoenas and to employ experts with regard to pending investigations.  
[16.5.66.11 NMAC - N, 5/30/2021]

**16.5.66.12 REVOCATION OF DENTAL THERAPISTS LICENSE FOR DISCIPLINARY ACTIONS:** A dental therapist

licensee whose license is revoked for disciplinary actions shall:

A. provide proof of written notification of practice closure to all patients currently under active treatment;

B. notification to patients should include where and how dental treatment records may be obtained and contact information for dentists available; and

C. provide to the board the location where all active dental treatment records will be maintained for a minimum of six years; active treatment records are records of patients treated in the two years previous to the date of closure; the notification to the board shall include the name, address, and telephone number of the person who is serving as the custodian of the records.  
[16.5.66.12 NMAC - N, 5/30/2021]

**16.5.66.13 REINSTATEMENT OF REVOKED LICENSE FOR DISCIPLINARY ACTIONS:** A licensee whose license has been revoked for disciplinary actions may request reinstatement of the license after the terms of the settlement agreement have been met. Upon approval from the board, and ratified by the board, and receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement shall include the reinstatement fee, the triennial renewal fee, impairment fee, and proof of the following continuing education courses:

- (1) 20 hours of approved continuing education courses related to the clinical practice of dental hygiene and dental therapy, per year of revocation; at least 20 of these hours shall be in the 12 months previous to the request;
- (2) proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

(3) proof of infection control course within the past 12 months; and

(4) 60 hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of revocation as well as any continuing education taken during the revoked period.

**B.** Applicant shall authorize the American association of dental examiners clearinghouse to send verification of status directly to the board office.

**C.** The board will obtain electronic verification of applicant status from the national practitioners' data bank.

**D.** Verification of licensure in all states where the applicant holds or has held a license to practice dental therapy, or other health care profession. Verification shall be sent directly to the board office from the other state(s) board, shall include a seal, and shall attest to the status, issue date, expiration date, license number, and other information contained on the form.

**E.** The board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of revocation and information on any existing impairment. If the board finds the application in order and is satisfied the applicant has fulfilled all required continuing education, the license may be reinstated and the previous license number reassigned. The reinstated license will expire as defined in 16.5.63 NMAC.

**F.** A dental therapist with a license in revocation status may not practice dental therapy in New Mexico until proof of active licensure is received from the board office.

**G.** If reinstatement of a revoked license is not requested within three years after settlement agreement has been met, application for a new license shall be made by examination or credentials in order

to practice dental therapy in New Mexico.  
[16.5.66.13 NMAC - N, 5/30/2021]

**16.5.66.14 REINSTATEMENT OF SUSPENDED LICENSE FOR DISCIPLINARY ACTIONS:** For licenses suspended for greater than six months; a licensee whose license has been suspended for disciplinary actions in addition to meeting the terms of the settlement agreement shall also meet the following conditions before reinstatement of licensure:

**A.** verification of licensure in all states where the applicant holds or has held a license to practice dental therapy, or other health care profession; verification shall be sent directly to the board office from the other state(s) board, shall include a seal, and shall attest to the status, issue date, expiration date, license number, and other information contained on the form;

**B.** the board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of suspension and information on any existing impairment; the reinstated license will expire as defined in 16.5.63 NMAC; and

**C.** a dental therapist with a license in suspended status may not practice dental therapy in New Mexico until proof of active licensure is approved by the board and issued by the board office.  
[16.5.66.14 NMAC - N, 5/30/2021]

**HISTORY OF 16.5.66 NMAC:**  
[RESERVED]

## DENTAL HEALTH, BOARD OF

**This is an amendment to 16.5.1 NMAC, Sections 2, 7 and 20, effective 5/30/2021.**

**16.5.1.2 SCOPE:** The provisions in 16.5.1 NMAC apply to all parts of Chapter 5 and provide relevant information to all licensees

or certificate holders or anyone affected or interested in the licensing and regulation of dentists, dental hygienists and dental assistants, dental therapists, and non-dentist owners.  
[16.5.1.2 NMAC - Rp, 16.5.1.2 NMAC, 12/14/2019; A, 5/30/2021]

**16.5.1.7 DEFINITIONS:**

**A. "Act"** means the Dental Health Care Act, Sections 61-5A-1 through 61-5A-29, NMSA 1978.

**B. "Assessment"** means the review and documentation of the oral condition, and the recognition and documentation of deviations from the healthy condition, without a diagnosis to determine the cause or nature of disease or its treatment.

**C. "Authorization"** means written or verbal permission from a dentist to a dental hygienist, dental assistant, dental therapist, community dental health coordinator, expanded function dental auxiliary, or dental student to provide specific tests, treatments or regimes of care.

**D. "CITA"** means the council of interstate testing agencies, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

**E. "Close personal supervision"** means a New Mexico licensed dentist directly observes, instructs and certifies in writing the training and expertise of New Mexico licensed or certified employees or staff.

**F. "Consulting dentists"** means a dentist who has entered into an approved agreement to provide consultation and create protocols with a collaborating dental hygienist and, when required, to provide diagnosis and authorization for services, in accordance with the rules of the board and the committee.

**G. "CRDTS"** means the central regional dental testing service, a separate and independent entity not including any successor, which acts as a representative

agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

**H. "Current patients of record"** means the New Mexico licensed dentist has seen the patient in the practice in the last 12 months.

**I. "Dental hygiene-focused assessment"** means the documentation of existing oral and relevant systemic conditions and the identification of potential oral disease to develop, communicate, implement and evaluate a plan of oral hygiene care and treatment.

**J. "Dental record"** means electronic, photographic, radiographic or manually written records.

**K. "Diagnosis"** means the identification or determination of the nature or cause of disease or condition.

**L. "Direct supervision"** means the process under which an act is performed when a dentist licensed pursuant to the Dental Health Care Act:

- (1) is physically present throughout the performance of the act;
- (2) orders, controls and accepts full professional responsibility for the act performed;
- (3) evaluates and approves the procedure performed before the patient departs the care setting; and
- (4) is capable of responding immediately if any emergency should arise.

**M. "Electronic signature"** means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

**N. "Extenuating circumstances"** are defined as a serious, physician-verified illness or death in immediate family, or military service. The extenuating circumstances must be presented for the board's consideration on a case-by-case basis.

**O. "General supervision"** means the authorization by a dentist of the procedures to be used by a dental hygienist, dental assistant, expanded function dental auxiliary, dental student, dental therapist, or community dental health coordinator and the execution of the procedures in accordance with a dentist's diagnosis and treatment plan at a time the dentist is not physically present and in facilities as designated by the rules of the board.

**P. "Impaired Act"** means the Impaired Dentists and Dental Hygienists Act, Sections 61-5B-1 through 61-5B-11 NMSA 1978.

**Q. "Indirect supervision"** means that a dentist, or in certain settings a dental hygienist or dental assistant certified in expanded functions, is present in the treatment facility while authorized treatments are being performed by a dental hygienist, dental assistant, dental therapist, or dental student as defined in Section 61-5A-3 NMSA 1978.

**R. "Jurisprudence exam"** means the examination given regarding the laws, rules and regulations, which relate to the practice of dentistry, dental hygiene, dental therapy and dental assisting in the state of New Mexico.

**S. "Licensee"** means an individual who holds a valid license to practice dentistry, dental therapy or dental hygiene in New Mexico. This also includes non-dentist owners who are licensed in New Mexico.

**T. "NERB/CDCA"** means the former north east regional board of dental examiners, now called the commission of dental competency assessments, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

**U. "Mobile dental facility"** means a facility in which dentistry is practiced and that is routinely towed, moved or transported from one location to another.

**V. "Non-dentist owner"** means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services and that does not meet an exemption status as detailed in Subsection G of 61-5A-5 NMSA 1978.

**W. "Palliative procedures"** means nonsurgical, reversible procedures that are meant to alleviate pain and stabilize acute or emergent problems.

**X. "Portable dental unit"** means a non-facility in which dental equipment used in the practice of dentistry is transported to and used on a temporary basis at an out-of-office location.

**Y. "Professional background service"** means a board designated professional background service, which compiles background information regarding an applicant from multiple sources.

**Z. "Protective patient stabilization"** means any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move his or her arms, legs, body, or head freely.

**AA. "Provider"** means a provider of dental health care services, including but not limited to dentists, dental hygienists, dental therapists, community dental health coordinators and dental assistants, including expanded function dental auxiliaries.

**BB. "Specialist"** means a specialty is an area of dentistry that has been formally recognized by the board and the American dental association as meeting the specified requirements for recognition of dental specialists.

**CC. "SRTA"** means the southern regional testing agency, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the

applicant's competence to practice in New Mexico.

**DD. "Supervising dentist"** means a dentist that maintains the records of a patient, is responsible for their care, has reviewed their current medical history and for purposes of authorization, has examined that patient within the previous 11 months or will examine that patient within 30 days of giving authorization.

**EE. "Supervision"** means the dentist shall adequately monitor the performance of all personnel, licensed or unlicensed, that he or she supervises. The dentist is ultimately responsible for quality patient care and may be held accountable for all services provided by administrative and clinical individuals that the dentist supervises.

**FF. "Teledentistry"** means a dentist's use of health information technology in real time to provide limited diagnostic treatment planning services in cooperation with another dentist, a dental hygienist, a community health coordinator, dental therapist or a student enrolled in a program of study to become a dental assistant, dental hygienist, dental therapist or dentist.

**GG. "Third Party payer"** means an organization other than the patient (1<sup>st</sup> party) or the health care provider (2<sup>nd</sup> party) involved in the financing of personal health services.

**HH. "WREB"** means the western regional examining board, which acts as the representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

**II. "Written authorization"** means a signed and dated prescription from a supervising dentist [~~to a dental hygienist~~] to provide specific tests, treatments or regimes of care in a specified location for 30 days following the date of signature.

[16.5.1.7 NMAC - Rp, 16.5.1.7 NMAC, 12/14/2019; A, 5/30/2021]

**16.5.1.20 [U.S.-CITIZENSHIP OR LEGAL-RESIDENT:** Any person requesting a license to practice dentistry, dental hygiene or certificate to practice as a dental assistant, expanded function dental auxiliary or community dental health coordinator must be a United States citizen or legal resident with a valid social security number.]

[RESERVED]  
[16.5.1.20 NMAC - Rp, 16.5.1.20 NMAC, 12/14/2019; Repealed, 5/30/2021]

### DENTAL HEALTH, BOARD OF

**This is an amendment to 16.5.3 NMAC, Sections 2, 6 and 11, effective 5/30/2021.**

**16.5.3.2 SCOPE:** The provisions of Part 3 of Chapter 5 apply to all dentists, dental therapists, non-dentist owners and dental hygienists licensed to practice in New Mexico.  
[9/30/1996; 16.5.3.2 NMAC - Rn, 16 NMAC 5.3.2, 4/17/2006; A, 5/30/2021]

**16.5.3.6 OBJECTIVE:** To establish mandatory reporting requirements for adverse events and incidents against licensed dentists, dental therapists, non-dentist owners and dental hygienists.  
[9/30/1996; 16.5.3.6 NMAC - Rn, 16 NMAC 5.3.6, 4/17/2006; A, 5/30/2021]

**16.5.3.11 VIOLATIONS:** Violations of the provisions of Part 3 of Chapter 5 may result in suspension or revocation of the license to practice as a dentist, dental therapist, non-dentist owner or dental hygienist in accordance with Section 61-5A-21 NMSA 1978.  
[5/31/1995; 9/30/1996; 16.5.3.11 NMAC - Rn, 16 NMAC 5.3.11, 4/17/2006; A, 5/30/2021]

### DENTAL HEALTH, BOARD OF

**This is an amendment to 16.5.4 NMAC, Sections 6, 8 and 9, effective 5/30/2021.**

**16.5.4.6 OBJECTIVE:** To establish rules to govern the emergency licensure or certification for [~~dentists, dental hygienists, dental assistants, expanded function dental auxiliary, and community dental health coordinators~~] all licensee and certificate holders affected by a declared disaster.  
[16.5.4.6 NMAC - N, 4/17/2006; A, 1/9/2012; A, 5/30/2021]

**16.5.4.8 REQUIREMENTS FOR EMERGENCY LICENSURE:**

**A.** Dentists, dental hygienists, dental assistants, expanded function dental auxiliary, dental therapists and community dental health coordinators currently licensed or certified and in good standing, or otherwise meeting the requirements for New Mexico licensure or certification in a state in which a federal disaster has been declared, may be licensed or certified in New Mexico during the four months following the declared disaster at no cost upon satisfying the following requirements:

(1) receipt by the board of a completed application which has been signed and notarized and which is accompanied by proof of identity, which may include a copy of a driver's license, passport or other photo identification issued by a governmental entity;

(2) licensing qualifications and documentation requirements 16.5.6 NMAC, 16.5.7 NMAC, 16.5.8 NMAC for Dentists, 16.5.19 NMAC, 16.5.20 NMAC, 16.5.21 NMAC for Dental Hygienists, 16.5.33 NMAC for Dental Assistants 16.5.42 NMAC for Expanded Function Dental Auxiliary and 16.5.50 NMAC for Community Dental Health Coordinators, and 16.5.61 NMAC for dental therapists;

(3) other required information and

documentation will be the name and address of employer, copy of diploma, copy of current active license or certificate in good standing in another state, or verification of licensure, copy of DEA license if applicable; a license or certificate will not be granted without a practice location; the board will query the national practitioners databank, American association of dental examiners and other state dental boards where the practitioner has ever held a license or certificate; if any or all of this information or documents are not available or destroyed in a disaster, an affidavit certifying this will be required.

**B.** The board may waive the following requirements for licensure:

- (1) application fee;
- (2) background check by a professional background information service; and
- (3) transcripts from an ADA accredited program.

**C.** The board may waive the specific forms required under the requirements for licensure or certification if the applicant is unable to obtain documentation from the federal declared disaster areas.

**D.** Nothing in this section shall constitute a waiver of the requirements for licensure or certification for dentists as required in 16.5.6 NMAC, 16.5.7 NMAC, 16.5.8 NMAC; dental hygienists as required in 16.5.19 NMAC, 16.5.20 NMAC, 16.5.21 NMAC; dental assistants as required in 16.5.33 NMAC; expanded function dental auxiliary as required in 16.5.42 NMAC, dental therapists in 16.5.61 NMAC and community dental health coordinator as required in 16.5.50 NMAC.

**E.** Licenses and certifications issued under the emergency provision shall expire four months, following the date of issue, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made 30 days prior to the date of expiration and may be renewed no more than once. The applicant must obtain a permanent or temporary license or

certification within eight months of the issuance of the initial emergency license or certificate. The board reserves the right to request additional documentation, including but not limited to recommendation forms and work experience verification forms prior to approving license or certification renewal. The board will renew an emergency license or certificate for a period of four months for the following renewal fees:

- (1) dentists \$100.00 emergency license renewal fee;
- (2) dental hygienists \$ 50.00 emergency license renewal fee;
- (3) dental assistants \$ 10.00 emergency certificate renewal fee;
- (4) expanded function dental auxiliary \$ 10.00 emergency certificate renewal fee;
- (5) community dental health coordinator \$ 10.00 emergency certificate renewal fee;
- (6) dental therapists \$10.00 emergency certificate renewal fee.

**F.** Licensees issued a license or certificate under the emergency provision are subject to all provisions of the Dental Health Care Act, Article 5A and the rules and regulations, Title 16 Chapter 5, specifically the disciplinary proceedings Section 61-5A-21 NMSA 1978. [16.5.4.8 NMAC - N, 4/17/2006; A, 07/16/2007; A, 07/17/2008; A, 1/9/2012; A, 5/30/2021]

**16.5.4.9 EMERGENCY LICENSE TERMINATION:**

**A.** The emergency license or certification shall terminate upon the following circumstances:

- (1) the issuance of a permanent or temporary license for dentists as required in 16.5.6 NMAC, 16.5.7 NMAC, 16.5.8 NMAC; dental hygienists as required in 16.5.19 NMAC, 16.5.20 NMAC,

16.5.21 NMAC; dental assistants as required in 16.5.33 NMAC; expanded function dental auxiliary as required in 16.5.42 NMAC, dental therapists in 16.5.61 NMAC and community dental health coordinators as required in 16.5.50 NMAC; or

(2) proof that the emergency license or certificate holder has engaged in fraud deceit; misrepresentation in procuring or attempting to procure a license or certificate under this section.

**B.** Termination of an emergency license or certificate shall not preclude application for permanent licensure or certification. [16.5.4.9 NMAC - N, 4/17/2006; A, 1/9/2012; A, 5/30/2021]

**DENTAL HEALTH, BOARD OF**

**This is an amendment to 16.5.9 NMAC, Sections 11 and 12, effective 5/30/2021.**

**16.5.9.11 LICENSURE**

**PROCEDURE:** Upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or the delegate of the board will review and may approve the application. The board shall formally accept the approval of the application at the next scheduled meeting.

**A. Initial license:** Non-dentist owner licenses are issued for a period not to exceed three years. The licensee shall apply for renewal on a triennial basis.

**B. Posting:** The license and subsequent renewal certificates shall be posted in each place of business. Duplicates may be requested from the board office with location of each business address where they will be posted for the public to view.

**C. License:** This license is non-transferable.

**D. Renewal:** After the initial license period, non-dentist owner licenses expire every three years on July 1. Licenses not renewed by July 1 are considered expired.

(1) A completed renewal application with appropriate fees shall be post-marked on or before July 1 of the renewal year.

(2) The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee’s responsibility to make timely request for the renewal form if one has not been received 30 days prior to license expiration.

**E. Late renewals:**

Renewal applications post-marked after July 1 and prior to August 1 of the renewal year shall be accompanied by the completed renewal application, the triennial renewal fee, and the late fee.

(1) Renewal applications post-marked on or after August 1 but before September 1 of the renewal year, shall be accompanied by the completed application, the triennial renewal fee, a late fee, and a cumulative late fee of ten-dollars (\$10) per day from August 1 to the date of the postmark or hand-delivery to board office.

(2) If a renewal application is not received by the board office, or post-marked before September 1, the license shall be summarily revoked for non-payment of fees. Dental professionals in such offices or clinics shall cease and desist from further practice of dentistry or dental hygiene until non-dentist owner has renewed or re-applied.

**F. Fees:**

	(1)	Initial
Licensure:	\$300.	
	(2)	Renewal:
	\$150.	

[16.5.9.11 NMAC - N, 3/6/2005; A, 1/9/2012; A, 7/17/2013; A, 3/15/2017; A, 5/30/2021]

**16.5.9.12 PREREQUISITES FOR NON-DENTIST OWNER:**

Each applicant for licensure as a non-dentist owner shall possess the following:

A. [shall be a United States citizen or United States legal resident;

—B] shall be a resident of New Mexico or a corporation registered in New Mexico; and

[C] B. non-dentist owner(s) or agent of corporation shall pass the New Mexico jurisprudence examination with seventy-five percent.

[16.5.9.12 NMAC - N, 1/9/2012; A, 3/15/2017; A, 5/30/2021]

**DENTAL HEALTH, BOARD OF**

**This is an amendment to 16.5.56 NMAC, Section 6, effective 5/30/2021.**

**16.5.56.6 OBJECTIVE:**

This part is intended to implement the requirements of the Parental Responsibility Act as they apply to the issuance, renewal, suspension or revocation of any license, certificate, registration or permit required for dentists, dental hygienists, dental assistants, expanded fuction dental auxiliaries, community dental health coordinators, dental therapists and non-dentist owners for dental practices.

[16.5.56.6 NMAC - N, 6/14/2012; A, 5/30/2021]

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

**TITLE 19 NATURAL RESOURCES AND WILDLIFE CHAPTER 15 OIL AND GAS PART 27 VENTING AND FLARING OF NATURAL GAS**

**19.15.27.1 ISSUING**

**AGENCY:** Oil Conservation Commission. [19.15.27.1 NMAC – N, 05/25/2021]

**19.15.27.2 SCOPE:** 19.15.27 NMAC applies to persons engaged in oil and gas exploration and production within New Mexico.

[19.15.27.2 NMAC – N, 05/25/2021]

**19.15.27.3 STATUTORY**

**AUTHORITY:** 19.15.27 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11 and Section 70-2-12 NMSA 1978. [19.15.27.3 NMAC – N, 05/25/2021]

**19.15.27.4 DURATION:**

Permanent. [19.15.27.4 NMAC – N, 05/25/2021]

**19.15.27.5 EFFECTIVE**

**DATE:** May 25, 2021, unless a later date is cited at the end of a section. [19.15.27.5 NMAC – N, 05/25/2021]

**19.15.27.6 OBJECTIVE:**

To regulate the venting and flaring of natural gas from wells and production equipment and facilities to prevent waste and protect correlative rights, public health, and the environment. [19.15.27.6 NMAC – N, 05/25/2021]

**19.15.27.7 DEFINITIONS:**

Terms shall have the meaning specified in 19.15.2 NMAC except as specified below.

A. “ALARM” means advanced leak and repair monitoring technology for detecting natural gas leaks or releases that is not required by applicable state or federal law, rule, or regulation, and which the division has approved as eligible to earn a credit against the reported volume of lost natural gas pursuant to Paragraph (4) of Subsection B of 19.15.27.9 NMAC.

B. “Average daily well production” means the number derived by dividing the total volume of natural gas produced from a single well in the preceding 12 months by the number of days that natural gas was produced from the well during the same period.

C. “Average daily facility production” means, for a facility receiving production from two or more wells, the number derived by dividing the total volume of natural gas produced from all wells at the facility during the preceding 12 months by the number of days, not to exceed 365, that natural gas was produced from one or more wells during the same period.

**D. “AVO”** means audio, visual and olfactory.

**E. “Completion operations”** means the period that begins with the initial perforation of the well in the completed interval and concludes at the end of separation flowback.

**F. “Drilling operations”** means the period that begins when a well is spud and concludes when casing and cementing has been completed and casing slips have been set to install the tubing head.

**G. “Exploratory well”** means a well located in a spacing unit the closest boundary of which is two miles or more from:

- (1) the outer boundary of a defined pool that has produced oil or gas from the formation to which the well is or will be completed; and
- (2) an existing gathering pipeline as defined in 19.15.28 NMAC.

**H. “Emergency”** means a temporary, infrequent, and unavoidable event in which the loss of natural gas is uncontrollable or necessary to avoid a risk of an immediate and substantial adverse impact on safety, public health, or the environment, but does not include an event arising from or related to:

- (1) the operator’s failure to install appropriate equipment of sufficient capacity to accommodate the anticipated or actual rate and pressure of production;
- (2) except as provided in Subparagraph (4), the operator’s failure to limit production when the production rate exceeds the capacity of the related equipment or natural gas gathering system as defined in 19.15.28 NMAC, or exceeds the sales contract volume of natural gas;
- (3) scheduled maintenance;
- (4) venting or flaring of natural gas for more than eight hours after notification that is caused by an emergency, unscheduled maintenance, or malfunction of a natural gas gathering system;

- (5) the operator’s negligence;
- (6) recurring equipment failure 4 or more times within a single reporting area pursuant to Subsection A of 19.15.27.9 experienced by the operator within the preceding 30 days; or
- (7) Four or more emergencies within a single reporting area, pursuant to Subsection A of 19.15.27.9 NMAC, experienced by the operator within the preceding 30 days, unless the division determines the operator could not have reasonably anticipated the current event and it was beyond the operator’s control.

**I. “Flare” or “Flaring”** means the controlled combustion of natural gas in a device designed for that purpose.

**J. “Flare stack”** means a device equipped with a burner used to flare natural gas.

**K. “Gas-to-oil ratio (GOR)”** for purposes of 19.15.27 NMAC means the ratio of natural gas to oil in the production stream expressed in standard cubic feet of natural gas per barrel of oil.

**L. “Initial flowback”** means the period during completion operations that begins with the onset of flowback and concludes when it is technically feasible for a separator to function.

**M. “Malfunction”** means a sudden, unavoidable failure or breakdown of equipment beyond the reasonable control of the operator that substantially disrupts operations, but does not include a failure or breakdown that is caused entirely or in part by poor maintenance, careless operation, or other preventable equipment failure or breakdown.

**N. “N<sub>2</sub>”** means nitrogen gas.

**O. “Natural gas”** means a gaseous mixture of hydrocarbon compounds, primarily composed of methane, and includes both casinghead gas and gas as those terms are defined in 19.15.2 NMAC.

**P. “Production operations”** means the period that begins on the earlier of 31 days

following the commencement of initial flowback or following completion of separation flowback and concludes when the well is plugged and abandoned.

**Q. “Producing in paying quantities”** mean the production of a quantity of oil and gas that yields revenue in excess of operating expenses.

**R. “Separation flowback”** means the period during completion operations that begins when it is technically feasible for a separator to function and concludes no later than 30 days after the commencement of initial flowback.

**S. “Vent” or “Venting”** means the release of uncombusted natural gas to the atmosphere.  
[19.15.27.7 NMAC – N, 05/25/2021]

**19.15.27.8 VENTING AND FLARING OF NATURAL GAS:**

**A.** Venting or flaring of natural gas during drilling, completion, or production operations that constitutes waste as defined in 19.15.2 NMAC is prohibited. The operator has a general duty to maximize the recovery of natural gas by minimizing the waste of natural gas through venting and flaring. During drilling, completion and production operations, the operator may vent or flare natural gas only as authorized in Subsections B, C and D of 19.15.27.8 NMAC. In all circumstances, the operator shall flare rather than vent natural gas except when flaring is technically infeasible or would pose a risk to safe operations or personnel safety, and venting is a safer alternative than flaring.

**B. Venting and flaring during drilling operations.**

- (1) The operator shall capture or combust natural gas if technically feasible using best industry practices and control technologies.
- (2) A properly-sized flare stack shall be located at a minimum of 100 feet from the nearest surface hole location unless otherwise approved by the division.



(3) In an emergency or malfunction, the operator may vent natural gas to avoid a risk of an immediate and substantial adverse impact on safety, public health, or the environment. The operator shall report natural gas vented or flared during an emergency or malfunction to the division pursuant to Paragraph (1) of Subsection G of 19.15.27.8 NMAC.

**C. Venting and flaring during completion or recompletion operations.**

(1) During initial flowback, the operator shall route flowback fluids into a completion or storage tank and, if technically feasible under the applicable well conditions, flare rather than vent and commence operation of a separator as soon as it is technically feasible for a separator to function.

(2) During separation flowback, the operator shall capture and route natural gas from the separation equipment:

(a) to a gas flowline or collection system, reinject into the well, or use on-site as a fuel source or other purpose that a purchased fuel or raw material would serve; or

(b) to a flare if routing the natural gas to a gas flowline or collection system, reinjecting it into the well, or using it on-site as a fuel source or other purpose that a purchased fuel or raw material would serve would pose a risk to safe operation or personnel safety.

(3) If natural gas does not meet gathering pipeline quality specifications, the operator may flare the natural gas for 60 days or until the natural gas meets the pipeline quality specifications, whichever is sooner, provided that:

(a) a properly-sized flare stack is equipped with an automatic igniter or continuous pilot;

(b) the operator analyzes natural gas samples twice per week;

(c) the operator routes the natural gas into

a gathering pipeline as soon as the pipeline specifications are met; and

(d) the operator provides the pipeline specifications and natural gas analyses to the division upon request.

**D. Venting and flaring during production operations.** The operator shall not vent or flare natural gas except:

(1) during an emergency or malfunction;

(2) to unload or clean-up liquid holdup in a well to atmospheric pressure, provided

(a) the operator does not vent after the well achieves a stabilized rate and pressure;

(b) for liquids unloading by manual purging, the operator remains present on-site until the end of unloading or posts at the well site the contact information of the personnel conducting the liquids unloading operation and ensures that personnel remains within 30 minutes' drive time

of the well being unloaded until the end of unloading, takes all reasonable actions to achieve a stabilized rate and pressure at the earliest practical time and takes reasonable actions to minimize venting to the maximum extent practicable;

(c) for a well equipped with a plunger lift system or an automated control system, the operator optimizes the system to minimize the venting of natural gas; or

(d) during downhole well maintenance, only when the operator uses a workover rig, swabbing rig, coiled tubing unit or similar specialty equipment and minimizes the venting of natural gas to the extent that it does not pose a risk to safe operations and personnel safety and is consistent with best management practices;

(3) during the first 12 months of production from an exploratory well, or as extended by the division for good cause shown, provided:

(a) the operator proposes and the division

approves the well as an exploratory well;

(b) the operator is in compliance with its statewide gas capture requirements; and

(c) within 15 days of determining an exploratory well is capable of producing in paying quantities, the operator submits an updated form C-129 to the division, including a natural gas management plan and timeline for connecting the well to a natural gas gathering system or as otherwise approved by the division; or

(4) during the following activities unless prohibited by applicable state or federal law, rule, or regulation for the emission of hydrocarbons and volatile organic compounds:

(a) gauging or sampling a storage tank or other low-pressure production vessel;

(b) loading out liquids from a storage tank or other low-pressure production vessel to a transport vehicle;

(c) repair and maintenance, including blowing down and depressurizing production equipment to perform repair and maintenance;

(d) normal operation of a gas-activated pneumatic controller or pump;

(e) normal operation of a storage tank or other low-pressure production vessel, but not including venting from a thief hatch that is not properly closed or maintained on an established schedule;

(f) normal operation of dehydration units and amine treatment units;

(g) normal operations of compressors, compressor engines, and turbines;

(h) normal operations of valves, flanges and connectors that is not the result of inadequate equipment design or maintenance;

(i) a bradenhead test;

(j) a packer leakage test;

(k) a production test lasting less than 24 hours unless the division requires or approves a longer test period;

(l) when natural gas does not meet the gathering pipeline specifications, provided the operator analyzes natural gas samples twice per week to determine whether the specifications have been achieved, routes the natural gas into a gathering pipeline as soon as the pipeline specifications are met and provides the pipeline specifications and natural gas analyses to the division upon request; or

(m) Commissioning of pipelines, equipment, or facilities only for as long as necessary to purge introduced impurities from the pipeline or equipment.

**E. Performance standards**

(1) The operator shall design completion and production separation equipment and storage tanks for maximum anticipated throughput and pressure to minimize waste.

(2) The operator of a permanent storage tank associated with production operations that is routed to a flare or control device installed after May 25, 2021, shall equip the storage tank with an automatic gauging system that reduces the venting of natural gas.

(3) The operator shall combust natural gas in a flare stack that is properly sized and designed to ensure proper combustion efficiency.

(a) A flare stack installed or replaced after May 25, 2021, shall be equipped with an automatic ignitor or continuous pilot.

(b) A flare stack installed before May 25, 2021, shall be retrofitted with an automatic ignitor, continuous pilot, or technology that alerts the operator that the flare may have malfunctioned no later than 18 months after May 25, 2021.

(c) A flare stack located at a well or facility, with an average daily production of equal to or less than 60,000 cubic feet of natural gas shall be equipped with an automatic ignitor or continuous pilot if the flare stack is replaced after May 25, 2021.

(4) A flare stack constructed after May 25, 2021, shall be securely anchored and located at least 100 feet from the well and storage tanks unless otherwise approved by the division.

(5) The operator shall conduct an AVO inspection on the frequency specified below to confirm that all production equipment is operating properly and there are no leaks or releases except as allowed in Subsection D of 19.15.27.8 NMAC.

(a) During an AVO inspection the operator shall inspect all components, including flare stacks, thief hatches, closed vent systems, pumps, compressors, pressure relief devices, valves, lines, flanges, connectors, and associated piping to identify defects, leaks, and releases by:

- (i) a comprehensive external visual inspection;
- (ii) listening for pressure and liquid leaks; and
- (iii) smelling for unusual and strong odors.

(b) The operator shall conduct an AVO inspection weekly:

- (i) during the first year of production; and
- (ii) on a well or facility with an average daily production greater than 60,000 cubic feet of natural gas.

(c) The operator shall conduct an AVO inspection weekly if the operator is on site, and in no case less than once per calendar month with at least 20 calendar days between inspections:

- (i) on a well or facility with an average daily production equal to or less than 60,000 cubic feet of natural gas; and
- (ii) on shut-in, temporarily abandoned, or inactive wells.

(d) The operator shall make and keep a record of an AVO inspection for not less than five years and make such record available for inspection by the division upon request.

(6) Subject to the division's prior written approval, the operator may use a remote or automated monitoring technology to detect leaks and releases in lieu of an AVO inspection.

(7) for facilities constructed after May 25, 2021, facilities shall be designed to minimize waste;

(8) Operators have an obligation to minimize waste and shall resolve emergencies as quickly and safely as is feasible.

**F. Measurement or estimation of vented and flared natural gas.**

(1) The operator shall measure or estimate the volume of natural gas that it vents, flares, or beneficially uses during drilling, completion, and production operations regardless of the reason or authorization for such venting or flaring.

(2) The operator shall install equipment to measure the volume of natural gas flared from existing process piping or a flowline piped from equipment such as high pressure separators, heater treaters, or vapor recovery units associated with a well or facility associated with a well authorized by an APD issued after May 25, 2021, that has an average daily production greater than 60,000 cubic feet of natural gas.

(3) Measuring equipment shall conform to an industry standard such as American Petroleum Institute (API) Manual of Petroleum Measurement Standards (MPMS) Chapter 14.10 Measurement of Flow to Flares.

(4) Measuring equipment shall not be designed or equipped with a manifold that allows the diversion of natural gas around the metering element except for the sole purpose of inspecting and servicing the measurement equipment.

(5) If metering is not practicable due to circumstances such as low flow rate or low pressure venting and flaring, the operator may estimate the volume of vented or flared natural gas using a methodology that can be independently verified.

(6) For a well that does not require measuring equipment, the operator shall estimate the volume of vented and flared natural gas based on the result of an annual GOR test for that well reported on form C-116 to allow the division to independently verify the volume and rate of the flared natural gas.

(7) The operator shall install measuring equipment whenever the division determines that metering is practicable or the existing measuring equipment or GOR test is not sufficient to measure the volume of vented and flared natural gas.

**G. Reporting of vented or flared natural gas.**

(1) Venting or flaring caused by an emergency, a malfunction or of long duration.

(a) The operator shall notify the division of venting or flaring that exceeds 50 MCF in volume and either results from an emergency or malfunction, or lasts eight hours or more cumulatively within any 24-hour period from a single event by filing a form C-129 in lieu of a C-141, except as provided by Subparagraph (d) of Paragraph (1) of Subsection G of 19.15.27.8 NMAC, with the division as follows:

(i) for venting or flaring that equals or exceeds 50 MCF but less than 500 MCF from a single event, notify the division in writing by filing a form C-129 no later than 15 days following discovery or commencement of venting or flaring;

(ii) for venting or flaring that equals or exceeds 500 MCF or otherwise qualifies as a major release as defined in 19.15.29.7 NMAC from a single event, notify the division verbally or by e-mail as soon as possible and no later than 24 hours following

discovery or commencement of venting or flaring and provide the information required in form C-129. No later than 15 days following the discovery or commencement of venting or flaring, the operator shall file a form C-129 that verifies, updates, or corrects the verbal or e-mail notification; and

(iii) no later than 15 days following the termination of venting or flaring, notify the division by filing a form C-129.

(b) The operator shall provide and certify the accuracy of the following information in the form C-129:

(i) operator's name;

(ii) name and type of facility;

(iii) equipment involved;

(iv) compositional analysis of vented or flared natural gas that is representative of the well or facility;

(v) date(s) and time(s) that venting or flaring was discovered or commenced and terminated;

(vi) measured or estimated volume of vented or flared natural gas;

(vii) cause and nature of venting or flaring;

(viii) steps taken to limit the duration and magnitude of venting or flaring; and

(ix) corrective actions taken to eliminate the cause and recurrence of venting or flaring.

(c) At the division's request, the operator shall provide and certify additional information by the specified date.

(d) The operator shall file a form C-141 instead of a form C-129 for a release that includes liquid during venting or flaring that is or may be a major or minor release under 19.15.29.7 NMAC.

(2) Monthly reporting of vented and flared natural gas. For each well or facility at

which venting or flaring occurred, the operator shall separately report the volume of vented natural gas and volume of flared natural gas for each month in each category listed below. Beginning October 1, 2021, the operator shall gather data for quarterly reports in a format specified by the division and submit by February 15, 2022 for the fourth quarter and May 15, 2022 for the first quarter. Beginning April 2022, the operator shall submit a form C-115B monthly on or before the 15th day of the second month following the month in which it vented or flared natural gas. The operator shall specify whether it estimated or measured each reported volume. In filing the initial report, the operator shall provide the methodology (measured or estimated using calculations and industry standard factors) used to report the volumes and shall report changes in the methodology on future forms. The operator shall make and keep records of the measurements and estimates, including records showing how it calculated the estimates, for no less than five years and make such records available for inspection by the division upon request. The categories are:

(a) emergency;

(b) non-scheduled maintenance or malfunction, including the abnormal operation of equipment;

(c) routine repair and maintenance, including blowdown and depressurization;

(d) routine downhole maintenance, including operation of workover rigs, swabbing rigs, coiled tubing units and similar specialty equipment;

(e) manual liquid unloading;

(f) storage tanks;

(g) insufficient availability or capacity in a natural gas gathering system during the separation phase of completion operations or production operations;

(h) natural gas that is not suitable for transportation or processing because:

(i) N<sub>2</sub>, H<sub>2</sub>S, or CO<sub>2</sub> concentrations do not meet gathering pipeline quality specifications; or

(ii) O<sub>2</sub> concentrations do not meet gathering pipeline quality specifications except during commissioning of pipelines, equipment, or facilities pursuant to Subparagraph (l) of Paragraph (4) of Subsection D of 19.15.27.8 NMAC, except as otherwise approved by the division;

(i) venting as a result of normal operation of pneumatic controllers and pumps, unless the operator vents or flares less than 500,000 cubic feet per year of natural gas;

(j) improperly closed or maintained thief hatches;

(k) venting or flaring in excess of eight hours that is caused by an emergency, unscheduled maintenance or malfunction of a natural gas gathering system as defined in 19.15.28 NMAC;

(l) venting and flaring from an exploratory well; and

(m) other surface waste as defined in Subparagraph (b) of Paragraph (1) of Subsection W of 19.15.2.7 NMAC that is not described above.

(3) Upon submittal of the C-115B report, the division will compile and publish on the division’s website an operator’s vented and flared natural gas information for each month on a volumetric and gas capture percentage basis.

(a) To calculate the lost natural gas on a volumetric basis, the operator shall deduct the volume of natural gas sold, used for beneficial use, vented or flared during an emergency, and vented or flared because it was not suitable for transportation or processing due to N<sub>2</sub>, H<sub>2</sub>S, or CO<sub>2</sub> concentrations, vented as a result

of normal operation of pneumatic controllers and pumps if reported pursuant to Subparagraph (i) of Paragraph (2) of Subsection G of 19.15.27.8 NMAC, or vented or flared from an exploratory well with division approval from the natural gas produced.

(b) To calculate the natural gas captured on a percentage basis, the operator shall deduct the volume of lost gas calculated in Subparagraph (a) of Paragraph (3) of Subsection G of 19.15.27.8 NMAC from the total volume of natural gas produced and divide by the total volume of natural gas produced.

(4) Beginning June 2022, the operator shall provide a copy of the C-115B to the New Mexico State Land Office for a well or facility in which the state owns a royalty interest, and the operator shall notify all royalty interest owners of their ability to obtain the information from the division’s website at the time the initial C-115B is filed.

(5) Upon the New Mexico environment department’s request, the operator shall promptly provide a copy of any form filed pursuant to 19.15.27 NMAC.

[19.15.27.8 NMAC – N, 05/25/2021]

**19.15.27.9 STATEWIDE NATURAL GAS CAPTURE REQUIREMENTS:**

**A. Statewide natural gas capture requirements.** Commencing April 1, 2022, the operator shall reduce the annual volume of vented and flared natural gas in order to capture no less than ninety-eight percent of the natural gas produced from its wells in each of two reporting areas, one north and one south of the Township 10 North line, by December 31, 2026. The division shall calculate and publish on the division’s website each operator’s baseline natural gas capture rate based on the operator’s fourth quarter 2021 and first quarter 2022 quarterly reports as per Paragraph (2) of Subsection G of 19.15.27.8 NMAC. In each calendar year between January 1, 2022 and December 31, 2026, the operator shall increase its annual percentage of natural gas captured in each reporting area in which it operates based on the following formula: (baseline loss rate minus two percent) divided by five, except that for 2022 only, an operator’s percentage of natural gas captured shall not be less than seventy-five percent of the annual gas capture percentage increase (2022 baseline loss rate minus two percent divided by five times 0.75), and the balance shall be captured in 2023.

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(1) The following table provides examples of the formula based on a range of baseline natural gas capture rates.

Baseline Natural Gas Capture Rate	Minimum Required Annual Natural Gas Capture Percentage Increase
90-98%	0-1.6%
80-89%	>1.6-3.6%
70-79%	>3.6-5.6%
0-69%	>5.6-19.6%

(2) If the operator’s baseline capture rate is less than sixty percent, the operator shall submit by the specified date to the division for approval a plan to meet the minimum required annual capture percentage increase.

(3) An operator’s acquisition or sale of one or more wells from another operator shall not affect its annual natural gas capture requirements. No later 60 days following the acquisition or sale, the operator may file a written request to the division requesting to modify its gas capture percentage requirements for good cause based on its acquisition or sale. The

division may approve, approve with conditions, or deny the request in its sole discretion.

(4) No later than March 30 following the reporting year, an operator that has not met its annual natural gas capture requirement for the previous year shall submit to the division a compliance plan demonstrating its ability to comply with its annual gas capture requirement for the current year. If the division determines, after a reasonable opportunity to meet with the operator, that the compliance plan does not demonstrate the operator's ability to comply with its annual gas capture requirement for the current year the operator's approved APDs for wells that have not been spud shall be suspended pending a division hearing to be held no later than 30 days after the determination. Nothing in this subparagraph shall prevent the division from taking any other action authorized by law for the operator's failure to comply with its annual gas capture requirement, including shutting in wells and assessing civil penalties.

**B. Accounting.** No later than February 28 of each year beginning in 2023, the operator shall submit a report certifying compliance with its statewide gas capture requirements. The operator shall determine compliance with its statewide gas capture requirements by deducting any ALARM credits approved pursuant to this subsection from the aggregated volume of lost gas calculated for each month during the preceding year pursuant to Subparagraph (a) of Paragraph (3) of Subsection G of 19.15.27.8 NMAC, deducting that aggregated volume of lost gas from the aggregated volume of natural gas produced for each month during the preceding year, and dividing that volume by the aggregated volume of natural gas produced for each month during the preceding year.

(1) An operator that used a division-approved ALARM technology to monitor for leaks and releases may obtain a credit against the volume of lost natural gas

if it discovered the leak or release using the ALARM technology and the operator:

(a) isolated the leak or release within 48 hours following field verification;

(b) repaired the leak or release within 15 days following field verification or another date approved by the division;

(c) timely notified the division by filing a form C-129 or form C-141; and

(d) used ALARM monitoring technology as a routine and on-going aspect of its waste-reduction practices.

(i) For discrete waste-reduction practices such as aerial methane monitoring, the operator must use the technology at least twice per year; and

(ii) for waste-reduction practices such as automated emissions monitoring systems that operate routinely or continuously, the division will determine the required frequency of use.

(e) The division shall publish a list of division-approved ALARM technologies on the division's website.

(2) An operator may file an application with the division for a credit against its volume of lost natural gas that identifies:

(a) the ALARM technology used to discover the leak or release;

(b) the dates on which the leak or release was discovered, field-verified, isolated and repaired;

(c) the method used to measure or estimate the volume of natural gas leaked or released which method shall be consistent with Subsection F of 19.15.27.8 NMAC;

(d) a description and the date of each action taken to isolate and repair the leak or release;

(e) visual documentation or other

verification of discovery, isolation and repair of the leak or release;

(f) a certification that the operator did not know or have reason to know of the leak or release before discovery using ALARM technology; and

(g) a description of how the operator used ALARM technology as a routine and on-going aspect of its waste-reduction practices.

(3) For each leak or release reported by an operator that meets the requirements of Paragraphs (3) and (4) of Subsection B of 29.15.28.10 NMAC, the division, in its sole discretion, may approve a credit that the operator can apply against its reported volume of lost natural gas as follows:

(a) a credit of forty percent of the volume of natural gas discovered and isolated within 48 hours of discovery and timely repaired;

(b) an additional credit of twenty percent if the operator used ALARM technology no less than once per calendar quarter as a routine and on-going aspect of its waste-reduction practices.

(4) A division-approved ALARM credit shall:

(a) be used only by the operator who submitted the application pursuant to Paragraph (4) of Subsection B of 29.15.27.10 NMAC;

(b) not be transferred to or used by another operator, including a parent, subsidiary, related entity, or person acquiring the well;

(c) be used only once; and

(d) expire 24 months after division approval.

(5) The division will publish a list of approved ALARM technology.

**C. Third-party verification.** The division may request that an operator retain a third party to verify any data or information collected or reported pursuant to

this Part, make recommendations to correct or improve the collection and reporting of data and information, submit a report of the verification and recommendations to the division by the specified date, and implement the recommendations in the manner approved by the division. If the division and the operator cannot reach agreement on the division’s request, the operator may file an application for hearing before the division. The operator, at its own expense, shall retain a third party approved by the division to conduct the activities agreed to by the division and the operator or ordered by the division following a hearing.

**D. Natural gas management plan.**

(1) After May 25, 2021, the operator shall file a natural gas management plan with each APD for a new or recompleted well. The operator may file a single natural gas management plan for multiple wells drilled or recompleted from a single well pad or that will be connected to a central delivery point. The natural gas management plan shall describe the actions that the operator will take at each proposed well to meet its statewide natural gas capture requirements and to comply with the requirements of Subsections A through F of 19.15.27.8 NMAC, including for each well:

- (a) the operator’s name and OGRID number;
- (b) the name, API number, location and footage;
- (c) the anticipated dates of drilling, completion and first production;
- (d) a description of operational best practices that will be used to minimize venting during active and planned maintenance; and
- (e) the anticipated volumes of liquids and gas production and a description of how separation equipment will be sized to optimize gas capture.

(2) Beginning April 1, 2022, an operator that, at the

time it submits an APD for a new or recompleted well is, cumulatively for the year, not in compliance with its baseline natural gas capture rate for the applicable reporting area if the APD is submitted on or after April 1, 2022 or its natural gas capture requirement for the previous year if the APD is submitted in 2023 or after shall also include the following information in the natural gas management plan:

- (a) the anticipated volume of produced natural gas in units of MCFD for the first year of production;
- (b) the existing natural gas gathering system the operator has contracted or anticipates contracting with to gather the natural gas, including:
  - (i) the name of the natural gas gathering system operator;
  - (ii) the name and location of the natural gas gathering system;
  - (iii) a map of the well location and the anticipated pipeline route connecting the production operations to the existing or planned interconnect of the natural gas gathering system.; and
  - (iv) the maximum daily capacity of the segment or portion of the natural gas gathering system to which the well will be connected; and
- (c) the operator’s plans for connecting the well to the natural gas gathering system, including:
  - (i) the anticipated date on which the natural gas gathering system will be available to gather the natural gas produced from the well;
  - (ii) whether the natural gas gathering system has or will have capacity to gather the anticipated natural gas production volume from the well prior to the date of first production; and
  - (iii) whether the operator anticipates the operator’s existing well(s) connected to the same segment or portion of the natural gas gathering

system, referenced in Item (iv) of Subparagraph (b) of Paragraph (2) of Subsection D or 19.15.27.9 NMAC will continue to be able to meet anticipated increases in line pressure caused by the well and the operator’s plan to manage production in response to the increased line pressure.

(3) The operator may assert confidentiality for information specified in Paragraph (2) of Subsection D of 19.15.27.9 NMAC pursuant to Section 71-2-8 NMSA 1978.

(4) The operator shall certify that it has determined based on the available information at the time of submitting the natural gas management plan either:

(a) it will be able to connect the well to a natural gas gathering system in the general area with sufficient capacity to transport one hundred percent of the volume of natural gas the operator anticipates the well will produce commencing on the date of first production, taking into account the current and anticipated volumes of produced natural gas from other wells connected to the pipeline gathering system; or

(b) it will not be able to connect to a natural gas gathering system in the general area with sufficient capacity to transport one hundred percent of the volume of natural gas the operator anticipates the well will produce commencing on the date of first production, taking into account the current and anticipated volumes of produced natural gas from other wells connected to the pipeline gathering system.

(5) If the operator determines it will not be able to connect a natural gas gathering system in the general area with sufficient capacity to transport one hundred percent of the anticipated volume of natural gas produced on the date of first production from the well, the operator shall either shut-in the well until the operator submits the certification required by Paragraph

(4) of Subsection D of 19.15.27.9 NMAC or submit a venting and flaring plan to the division that evaluates and selects one or more of the potential alternative beneficial uses for the natural gas until a natural gas gathering system is available, including:

- (a) power generation on lease;
- (b) power generation for grid;
- (c) compression on lease;
- (d) liquids removal on lease;
- (e) reinjection for underground storage;
- (f) reinjection for temporary storage;
- (g) reinjection for enhanced oil recovery;
- (h) fuel cell production; and
- (i) other alternative beneficial uses approved by the division.

(6) If, at any time after the operator submits the natural gas management plan and before the well is spud:

(a) the operator becomes aware that the natural gas gathering system it planned to connect the well to has become unavailable or will not have capacity to transport one hundred percent of the production from the well, no later than 20 days after becoming aware of such information, the operator shall submit for the division's approval a new or revised venting and flaring plan containing the information specified in Paragraph (5) of Subsection D of 19.15.27.9 NMAC; and

(b) the operator becomes aware that it has, cumulatively for the year, become out of compliance with its baseline natural gas capture rate or natural gas capture requirement, no later than 20 days after becoming aware of such information, the operator shall submit for the division's approval a new or revised natural gas management plan for each well it plans to spud during

the next 90 days containing the information specified in Paragraph (2) of Subsection D of 19.15.27.9 NMAC, and shall file an update for each plan until the operator is back in compliance with its baseline natural gas capture rate or natural gas capture requirement.

(7) The division may deny the APD or conditionally approve the APD if the operator does not make a certification, fails to submit an adequate venting and flaring plan, which includes alternative beneficial uses for the anticipated volume of natural gas produced, or if the division determines that the operator will not have adequate natural gas takeaway capacity at the time a well will be spud.

[19.15.27.9 NMAC – N, 05/25/2021]

**History of 19.15.27 NMAC:**  
[RESERVED]

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

**TITLE 19 NATURAL  
RESOURCES AND WILDLIFE  
CHAPTER 15 OIL AND GAS  
PART 28 NATURAL GAS  
GATHERING SYSTEMS**

**19.15.28.1 ISSUING AGENCY:** Oil Conservation Commission.  
[19.15.28.1 NMAC – N, 05/25/2021]

**19.15.28.2 SCOPE:** 19.15.28 NMAC applies to persons engaged in natural gas gathering and processing within New Mexico.  
[19.15.28.2 NMAC – N, 05/25/2021]

**19.15.28.3 STATUTORY AUTHORITY:** 19.15.28 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11 and Section 70-2-12 NMSA 1978.  
[19.15.27.3 NMAC – N, 05/25/2021]

**19.15.28.4 DURATION:**  
Permanent.  
[19.15.27.4 NMAC – N, 05/25/2021]

**19.15.28.5 EFFECTIVE DATE:** May 25, 2021, unless a later date is cited at the end of a section.  
[19.15.28.5 NMAC – N, 05/25/2021]

**19.15.28.6 OBJECTIVE:** To regulate the venting and flaring of natural gas from natural gas gathering systems to prevent waste and protect public health and the environment.  
[19.15.28.6 NMAC – N, 05/25/2021]

**19.15.28.7 DEFINITIONS:**  
Terms shall have the meaning specified in 19.15.2 NMAC except as specified below.

**A. "ALARM"** means advanced leak and repair monitoring technology for detecting natural gas leaks or releases that is not required by applicable state or federal law, rule, or regulation and which the division has approved as eligible to earn a credit against the reported volume of lost natural gas pursuant to Paragraph (3) of Subsection B of 19.15.28.10 NMAC.

**B. "AVO"** means audio, visual and olfactory.

**C. "Custody transfer point"** means the transfer of natural gas from upstream separation, processing, treatment, or in-field gathering to a pipeline or any other form of transportation occurring at sales metering equipment.

**D. "Emergency"** means a temporary, infrequent, and unavoidable event in which the loss of natural gas is uncontrollable or necessary to avoid a risk of an immediate and substantial adverse impact on safety, public health or the environment, but does not include an event arising from or related to:

(1) the operator's failure to install appropriate equipment of sufficient capacity to accommodate the anticipated or actual rate and pressure of the natural gas gathering system;

(2) the operator's failure to limit the gathering of natural gas when the

volume of natural gas exceeds the capacity of the natural gas gathering system;

(3) scheduled maintenance;

(4) unscheduled maintenance or a malfunction that results in venting or flaring of natural gas by an upstream operator for which the operator fails to comply with Paragraph (2) of Subsection D of 19.15.28.8 NMAC;

(5) the operator’s negligence;

(6) recurring equipment failure; 4 or more times within a single reporting area within the preceding 30 days pursuant to Subsection A of 19.15.28.10 NMAC; or

(7) Four or more emergencies within a single reporting area pursuant to Subsection A of 19.15.28.10 NMAC experienced by the operator within the preceding 30 days, unless the division determines the operator could not have reasonably anticipated the current event and it was beyond the operator’s control.

**E. “Flare” or “Flaring”** means the controlled combustion of natural gas in a device designed for that purpose.

**F. “Flare stack”** means a device equipped with a burner used to flare natural gas.

**G. “Gathering pipeline”** means a pipeline that gathers natural gas within a natural gas gathering system.

**H. “GIS”** means geographic information system.

**I. “GPS”** means global positioning system.

**J. “Malfunction”** means a sudden, unavoidable failure or breakdown of equipment beyond the reasonable control of the operator that substantially disrupts operations, but does not include a failure or breakdown that is caused entirely or in part by poor maintenance, careless operation, or other preventable equipment failure or breakdown.

**K. “Natural gas”** means a gaseous mixture of hydrocarbon compounds, primarily

composed of methane, and includes both casinghead gas and gas as those terms are defined in 19.15.2 NMAC.

**L. “Natural gas gathering system”** means the gathering pipelines and associated facilities that compress, dehydrate or treat natural gas after the custody transfer point and ending at the connection point with a natural gas processing plant or transmission or distribution system.

**M. “New gathering pipeline”** means a gathering pipeline placed into service after May 25, 2021.

**N. “Vent” or “Venting”** means the release of uncombusted natural gas to the atmosphere.  
[19.15.28.7 NMAC – N, 05/25/2021]

**19.15.28.8 VENTING AND FLARING OF NATURAL GAS:**

**A.** Venting or flaring of natural gas from a natural gas gathering system that constitutes waste as defined in 19.15.2 NMAC and is prohibited. The operator has a general duty to maximize the gathering of natural gas by minimizing the waste of natural gas through venting and flaring. The operator may vent or flare natural gas only as authorized in Subsection B of 19.15.28.8 NMAC. In all circumstances, the operator shall flare rather than vent natural gas except when flaring is technically infeasible or would pose a risk to safe operations or personnel safety and venting is a safer alternative than flaring.

**B.** The operator shall not flare or vent natural gas except:

- (1) during an emergency or malfunction; or
- (2) during the following activities unless prohibited by applicable state and federal law, rule, or regulation for the emission of hydrocarbons and volatile organic compounds:

(a) repair and maintenance, including blowing down and depressurizing equipment to perform repair or maintenance;

(b) normal operation of a gas-activated pneumatic controller or pump;

(c) normal operation of dehydration units and amine treatment units;

(d) normal operation of compressors, compressor engines, and turbines;

(e) normal operation of valves, flanges, and connectors that are not the result of inadequate equipment design or maintenance;

(f) normal operation of a storage tank or other low-pressure production vessel, but not including venting from a thief hatch that is not properly closed or maintained on an established schedule;

(g) gauging or sampling a storage tank or other low-pressure vessel;

(h) loading out liquids from a storage tank or other low-pressure vessel to a transport vehicle;

(i) normal operations of valves, flanges or connectors that are not the result of inadequate equipment design or maintenance;

(j) blow down to repair a gathering pipeline;

(k) pigging a gathering pipeline;

(l) purging a gathering pipeline; or

(m) commissioning of pipelines, equipment, or facilities only for as long as necessary to purge introduced impurities from the pipeline or equipment.

**C. Performance standards.**

(1) The operator shall take all reasonable actions to prevent and minimize leaks and releases of natural gas from a natural gas gathering system and shall implement an operations plan to minimize the waste of natural gas for each non-contiguous natural gas gathering system. The plan should include procedures to



reduce leaks and releases, such as a routine maintenance program, cathodic protection, corrosion control, liquids management and integrity management. The operator shall file its operations plan with the division:

(a)

for a natural gas gathering system placed into service after May 25, 2021, within 60 days following the date the natural gas gathering system is placed into service;

(b)

for a natural gas gathering system in place on or before May 25, 2021, within 90 days following May 25, 2021; and

(c)

for a natural gas gathering system to which the operator added a new gathering pipeline during the calendar year or changed the operations plan, an updated operations plan no later than March 31 of the following year.

(2)

During scheduled maintenance, replacement, or repair of a new or existing natural gas gathering system, the operator shall not vent natural gas during blowdown and shall route natural gas to a portable flare stack which complies with the flare stack standards, inspection, and recordkeeping requirements in Subsection E of 19.15.27.8 NMAC.

(3)

During unscheduled maintenance, replacement or repair of a new or existing natural gas gathering system, to the extent that it is technically feasible and would not pose a risk to safe operations or personnel safety, the operator shall not vent natural gas during blowdown and shall route natural gas to a portable flare stack which complies with the flare stack standards, inspection and recordkeeping in Subsection E of 19.15.27.8 NMAC.

(4)

The operator shall conduct a weekly AVO inspection of the compressors, dehydrators and treatment facilities associated with a natural gas gathering system to confirm those components are operating properly and there are no leaks or releases except as allowed in Subsection B of 19.15.28.8 NMAC.

(a)

During an AVO inspection the operator shall inspect all components, including flare stacks, thief hatches, closed vent systems, pumps, compressors, pressure relief devices, valves, lines, flanges, connectors, and associated piping to identify defects, leaks, and releases by:

(i)

comprehensive external visual inspection;

(ii)

listening for pressure and liquid leaks; and

(iii)

smelling for unusual and strong odors.

(b)

The operator shall make and keep a record of an AVO inspection for no less than five years and make such records available for inspection by the division upon request.

(c)

Subject to the division's prior written approval, the operator may use a remote or automated monitoring technology to detect leaks and releases in lieu of an AVO inspection.

(5)

The operator shall perform an annual monitoring of the entire length of a gathering pipeline using an AVO technique, ALARM technology, aerial visual inspections, or other valid method to detect leaks and releases.

The operator shall record and, upon the division's request, report the date and time of the monitoring, the method and technology used.

The operator shall retain records of monitoring for at least five years. Personnel conducting inspections shall be knowledgeable on the methods and technology being used.

(6)

For facilities constructed after May 25, 2021, facilities shall be designed to minimize waste.

(7)

Operators have an obligation to minimize waste and shall resolve emergencies as quickly and safely as is feasible.

#### **D. Reporting to affected upstream operators.**

(1)

No less than 14 days prior to the date of scheduled maintenance, replacement

or repair of a natural gas gathering system, the operator shall provide written notification to each upstream operator whose natural gas is gathered by the system of the date and expected duration that the system will not gather natural gas.

(2)

As soon as possible but no more than 12 hours after discovery of an emergency or malfunction, or the need for unscheduled maintenance of a natural gas gathering system, the operator shall provide verbal notification to each upstream operator whose natural gas is gathered by the system of the date and expected duration that the system will not gather natural gas, and shall provide written confirmation of the verbal notification, including the date, time, person, and telephone number to whom verbal notification was given no later than 24 hours after discovery.

(3)

The operator shall make and keep a record of each notification for no less than five years and make such records available for inspection by the division upon request.

#### **E. Measurement or estimation of vented and flared natural gas.**

(1)

The operator shall measure or estimate the volume of natural gas that it vents, flares or beneficially uses regardless of the reason or authorization for such venting or flaring.

(2)

The operator shall install equipment to measure the volume of natural gas flared from a natural gas gathering system.

(3)

Measuring equipment shall conform to an industry standard such as American Petroleum Institute (API) Manual of Petroleum Measurement Standards (MPMS) Chapter 14.10 Measurement of Flow to Flares.

(4)

Measuring equipment shall not be designed or equipped with a manifold that allows the diversion of natural gas around the metering element except for the sole purpose of inspecting and servicing the measuring equipment.

(5) If metering is not practicable due to circumstances such as low flow rate or low pressure venting and flaring, the operator shall estimate the volume of vented or flared natural gas using a methodology that can be independently verified.

**F. Reporting of vented or flared natural gas.**

(1) Venting or flaring caused by an emergency, a malfunction, or of long duration.

(a) The operator shall notify the division of venting or flaring that exceeds 50 MCF in volume and either results from an emergency or malfunction or lasts eight hours or more cumulatively within any 24-hour period from a single event by filing a form C-129 in lieu of a C-141, except as provided by Subparagraph (d) of Paragraph (1) of Subsection G of 19.15.27.8 NMAC, with the division as follows:

(i) for venting or flaring that equals or exceeds 50 MCF but is less than 500 MCF from a single event, notify the division in writing by filing a form C-129 no later than 15 days following discovery or commencement of venting or flaring; or

(ii) for venting or flaring that equals or exceeds 500 MCF or otherwise qualifies as a major release as defined in 19.15.29.7 NMAC from a single event, notify the division verbally or by e-mail as soon as possible and no later than 24 hours following discovery or commencement of venting or flaring and provide the information required in form C-129. No later than 15 days following the discovery or commencement of venting or flaring, the operator shall file a form C-129 that verifies, updates, or corrects the verbal or e-mail notification; and

(iii) no later than 15 days following the termination of venting or flaring, notify the division by filing a form C-129.

(b) The operator shall provide and certify the accuracy of the following

- information in the form C-129:
  - (i) operator’s name;
  - (ii) name and type of facility;
  - (iii) equipment involved;
  - (iv) compositional analysis of vented or flared natural gas that is representative of the natural gas gathering system;
  - (v) date(s) and time(s) that venting or flaring was discovered or commenced and terminated;
  - (vi) measured or estimated volume of vented or flared natural gas;
  - (vii) cause and nature of venting or flaring;
  - (viii) steps taken to limit the duration and magnitude of venting or flaring; and
  - (ix) corrective actions taken to eliminate the cause and recurrence of venting or flaring.

(c) At the division’s request, the operator shall provide and certify additional information by the specified date.

(d) The operator shall file a form C-141 instead of a form C-129 for a release which includes liquid during venting or flaring that is or may be a major or minor release under 19.15.29.7 NMAC.

(2) **Monthly reporting of vented and flared natural gas.** For each natural gas gathering system at which venting or flaring occurred, the operator shall separately report the volume of vented natural gas and the volume of flared natural gas for each month in each category listed below. Beginning October 1, 2021, the operator shall gather data for quarterly reports in a format specified by the division and submit by February 15, 2022 for the fourth quarter of 2021 and May 15, 2022 for the first quarter of 2022. Beginning April 2022, the operator shall submit a form C-115B monthly on or before the 15th day of the second month following the month in which it vented or flared natural

gas. The operator shall specify whether it estimated or measured each reported volume. In filing the initial report, the operator shall provide the methodology (measured or estimated using calculations and industry standard factors) used to report the volumes on the form, and shall report changes in the methodology on future forms. The operator shall make and keep records of the measurements and estimates, including records showing how it calculated the estimates, for no less than five years and make such records available for inspection by the division upon request. The categories are:

- (a) emergency;
- (b) non-scheduled maintenance or malfunction, including the abnormal operation of equipment;
- (c) routine repair and maintenance, including blowdown and depressurization;
- (d) beneficial use, including pilot and purge gas, fired equipment and engines;
- (e) gathering pipeline blowdown and purging;
- (f) gathering pipeline pigging;
- (g) storage tanks;
- (h) venting as a result of normal operation of pneumatic controllers and pumps;
- (i) improperly closed or maintained thief hatches; and
- (j) other surface waste as defined in Subparagraph (1) of Paragraph (b) of Subsection W of 19.15.2.7 NMAC that is not described above.

(3) Upon submittal of the C-115B report, the division will compile and publish on the division’s website an operator’s vented and flared natural gas information for each month on a volumetric and gas capture percentage basis.

(a)

To calculate the lost natural gas on a volumetric basis, the operator shall deduct the volume of natural gas used for beneficial use and vented or flared during an emergency, or vented as a result of normal operation of pneumatic controllers and pumps from the volume of natural gas gathered reported on its form C-115B.

(b)

To calculate the natural gas captured on a percentage basis, the operator shall deduct the volume of lost gas calculated in Subparagraph (a) of Paragraph (3) of Subsection F of 19.15.28.8 NMAC from the total volume of natural gas gathered and divide by the total volume of natural gas gathered.

(4) Upon

the New Mexico environment department's request, the operator shall promptly provide a copy of any form filed pursuant to 19.15.28 NMAC.

[19.15.28.8 NMAC – N, 05/25/2021]

**19.15.28.9 LOCATION REQUIREMENTS:**

**A.** The operator shall file with the division a GIS digitally formatted as-built map:

(1) for a

new gathering pipeline or natural gas gathering system, no later than 90 days after placing the gathering pipeline or system into service;

(2) for an

existing gathering pipeline or natural gas gathering system no later than 90 days after May 25, 2021; and

(3) for an

addition to an existing gathering pipeline or natural gas gathering system, no later than 90 days after placing the addition into service.

**B.** To ensure proper field identification of a gathering pipeline in an emergency, the as-built map shall include a layer which identifies the pipeline size and construction material type.

**C.** No later than July 1<sup>st</sup> of each year, the operator shall file with the division an updated GIS digitally formatted as-built map of its gathering pipeline or natural

gas gathering system, which shall include a GIS layer that identifies the date, location and volume of vented or flared natural gas of each emergency, malfunction and release reported to the division since 19.15.28 NMAC became applicable to the pipeline or system.

**D.** The operator may assert confidentiality for the GIS digitally formatted as-built map and GIS layer pursuant to Section 71-2-8 NMSA 1978. [19.15.28.9 NMAC – N, 05/25/2021]

**19.15.28.10 STATEWIDE NATURAL GAS CAPTURE REQUIREMENTS:**

**A. Statewide natural gas capture requirements.** Commencing April 1, 2022, the operator of a natural gas gathering system shall reduce the annual volume of vented and flared natural gas in order to capture no less than ninety-eight percent of the natural gas gathered in each of two reporting areas, one north and one south of the Township 10 North line, by December 31, 2026. The division shall calculate and publish on the division's website each operator's baseline natural gas capture rate based on the operator's fourth quarter 2021 and first quarter 2022 quarterly reports as per Paragraph (2) of Subsection G of 19.15.28.8 NMAC. In each calendar year between January 1, 2022 and December 31, 2026, the operator shall increase its annual percentage of natural gas captured in each reporting area in which it operates based on the following formula: (baseline loss rate minus two percent) divided by five, except that for 2022 only, an operator's percentage of natural gas captured shall not be less than seventy-five percent of the annual gas capture percentage increase (2022 baseline loss rate minus two percent divided by five times 0.75), and the balance shall be captured in 2023.

(1) The following table provides examples of the formula based on a range of baseline natural gas capture rates.

Baseline Natural Gas Capture Rate	Minimum Required Annual Natural Gas Capture Percentage Increase
90-98%	0-1.6%
80-89%	>1.6-3.6%
70-79%	>3.6-5.6%
0-69%	>5.6-19.6%

(2) If the operator's baseline capture rate is less than sixty percent, the operator shall submit by the specified date to the division for approval, a plan to meet the minimum required annual capture percentage increase.

(3) An operator's acquisition or sale of a natural gas gathering system from another operator shall not affect its annual natural gas capture requirements. No later 60 days following the acquisition or sale, the operator may file a written request to the division requesting to modify its annual gas capture percentage requirements for good cause based on its acquisition or sale. The division may approve, approve with conditions, or deny the request in its sole discretion.

(4) Operators that are affiliated shall consolidate their natural gas capture reporting and compliance obligations.

**B. Accounting.** No later than February 28 of each year beginning in 2023, the operator shall submit a report certifying compliance with its statewide gas capture requirements. The operator shall determine compliance with its statewide gas capture requirements by deducting any ALARM credits approved pursuant to this subsection from the aggregated volume of lost gas calculated for each month during the preceding year pursuant to Subparagraph (a) of Paragraph (3) of Subsection F of 19.15.27.8 NMAC, deducting that aggregated volume of lost gas from the aggregated

volume of natural gas produced for each month during the preceding year, and dividing that volume by the aggregated volume of natural gas produced for each month during the preceding year.

(1) An operator that used a division-approved ALARM technology to monitor for leaks and releases may obtain a credit against the volume of lost natural gas if it discovered the leak or release using the ALARM technology, and the operator:

(a) isolated the leak or release within 48 hours following field verification;

(b) repaired the leak or release within 15 days following field verification or another date approved by the division;

(c) timely notified the division by filing a form C-129 or form C-141; and

(d) used ALARM monitoring technology as a routine and on-going aspect of its waste-reduction practices.

(i) For discrete waste-reduction practices such as aerial methane monitoring, the operator must use the technology at least twice per year; and

(ii) for waste-reduction practices such as automated emissions monitoring systems that operate routinely or continuously, the division will determine the required frequency of use.

(e) The division shall publish a list of division-approved ALARM technologies on the division's website.

(2) An operator may file an application with the division for a credit against its volume of lost natural gas that identifies:

(a) the ALARM technology used to discover the leak or release;

(b) the dates on which the leak or release was discovered, field-verified, isolated, and repaired;

(c) the method used to measure or estimate the volume of natural gas leaked or released;

(d) a description and the date of each action taken to isolate and repair the leak or release;

(e) visual documentation or other verification of discovery, isolation, and repair of the leak or release;

(f) a certification that the operator did not know or have reason to know of the leak or release before discovery using ALARM technology; and

(g) a description of how the operator used ALARM technology as a routine and on-going aspect of its waste-reduction practices.

(3) For each leak or release reported by an operator that meets the requirements of Paragraphs (3) and (4) of Subsection B of 29.15.28.10 NMAC, the division, in its sole discretion, may approve a credit that the operator can apply against its reported volume of lost natural gas as follows:

(a) a credit of forty percent of the volume of natural gas discovered and isolated within 48 hours of discovery and timely repaired; and

(b) an additional credit of twenty percent if the operator used ALARM technology no less than once per calendar quarter as a routine and on-going aspect of its waste-reduction practices.

(4) A division-approved ALARM credit shall:

(a) be used only by the operator who submitted the application pursuant to Paragraph (2) of Subsection B of 29.15.28.10 NMAC;

(b) not be transferred to or used by another operator, including a parent, subsidiary, related entity or person acquiring the natural gas gathering system;

(c) be used only once; and

(d) expire 24 months after division approval.

(5) The division will publish a list of approved ALARM technology.

**C. Third-party verification.** The division may request that an operator verify any data or information collected or reported pursuant to this part, make recommendations to correct or improve the collection and reporting of data and information, submit a report of the verification and recommendations to the division by the specified date, and implement the recommendations in the manner approved by the division. If the division and the operator cannot reach agreement on the division's request, the operator may file an application for hearing before the division. The operator, at its own expense, shall retain a third party approved by the division to conduct the activities agreed to by the division and the operator or ordered by the division following a hearing.

[19.15.28.10 NMAC – N, 05/25/2021]

**History of 19.15.28 NMAC:**  
[RESERVED]

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

This is an amendment to 19.15.7 NMAC, adding a new Section 25 and amending Sections 1, 8, 24, and 26 through 44, effective May 25, 2021.

**19.15.7.1 ISSUING AGENCY:** [~~Energy, Minerals and Natural Resources Department, Oil Conservation Division~~] Oil Conservation Commission.

[19.15.7.1 NMAC - Rp, 19.15.13.1 NMAC, 12/1/2008; A, 05/25/2021]

**19.15.7.8 GENERAL:**

**A. Where to file reports.** Unless otherwise specifically provided for in a division rule or order, the operator shall file forms and reports 19.15.7 NMAC requires with the appropriate

division district office as provided in 19.15.2.17 NMAC and 19.15.7.10 NMAC.

**B. Additional**

**data.** 19.15.7 NMAC does not limit or restrict the division's authority to require the furnishing of additional reports, data or other information relative to the production, transportation, storing, refining, processing or handling of oil, gas or products in the state as may appear to the division to be necessary or desirable, either generally or specifically, for the prevention of waste and the conservation of the state's natural resources.

**C. Books and records.**

A producer, injector, transporter, storer, refiner, gasoline or extraction plant operator, treating plant operator and initial purchaser of gas within the state shall make and keep appropriate books and records for a period of not less than five years, covering operations in New Mexico, in order to make and substantiate the reports the division requires.

**D. Written notices, requests, permits and reports.**

A person required to file notices, requests, permits or reports shall use the forms listed below for the purpose shown in accordance with the instructions printed on the form and the rule covering the form's use or special order pertaining to its use:

- (1) form  
C-101 - application for permit to drill, deepen or plug back;
- (2) form  
C-102 - well location and acreage dedication plat;
- (3) form  
C-103 - sundry notices and reports on wells;
- (4) form  
C-104 - request for allowable and authorization to transport oil and gas;
- (5)  
form C-105 - well completion or recompletion report and log;
- (6) form  
C-106 - notice of intention to utilize automatic custody transfer equipment;
- (7) form  
C-107 - application for multiple completion;

- (8) form  
C-107-A - application for downhole commingling;
- (9) form  
C-107-B - application for surface commingling (diverse ownership);
- (10) form  
C-108 - application to dispose of [salt] produced water by injection into a porous formation;
- (11) form  
C-109 - application for discovery allowable and creation of a new pool;
- (12) form C-111  
- gas transporter's monthly report (sheet 1 and sheet 2);
- (13) form  
C-112 - transporter's and storer's monthly report;
- (14) form  
C-112-A - receipts continuation sheet;
- (15) form  
C-112-B - deliveries continuation sheet;
- (16) form  
C-113 - refiner's monthly report (sheet 1 and sheet 2);
- (17) form  
C-115 - operator's monthly report;
- (18) form  
C-115B - volume of vented and flared natural gas;
- (19)  
form C-115-EDP - operator's monthly report (electronic data processing);
- (20)  
form C-116 - gas-oil ratio tests;
- (21)  
form C-117-A - tank cleaning, sediment oil removal, transportation of miscellaneous hydrocarbons and disposal permit;
- (22)  
form C-117-B - monthly sediment oil disposal statement;
- (23)  
form C-118 - treating plant operator's monthly report (sheet 1 and sheet 2);
- (24)  
form C-120-A - monthly water disposal report;
- (25)  
form C-121 - oil purchaser's nomination;
- (26)  
form C-121-A - purchaser's gas nomination;

- (27)  
form C-122 - multi-point and one point back pressure test for gas wells;
- (28)  
form C-122-A - gas well test data sheet-San Juan basin (initial deliverability test, blue paper; annual deliverability test, white);
- (29)  
form C-122-B - initial potential test data sheet;
- (30)  
form C-122-C - deliverability test report;
- (31)  
form C-122-D - worksheet for calculation of static column wellhead pressure ( $P_w$ );
- (32)  
form C-122-E - worksheet for stepwise calculation of (surface) (subsurface) pressure ( $P_c$  and  $P_w$ );
- (33)  
form C-122-F - worksheet for calculation of wellhead pressures ( $P_c$  or  $P_w$ ) from known bottom hole pressure ( $P_f$  or  $P_s$ );
- (34)  
form C-122-G - worksheet for calculation of static column pressure at gas liquid interface;
- (35)  
form C-123 - request for the creation of a new pool;
- (36)  
form C-124 - reservoir pressure report;
- (37)  
form C-125 - gas well shut-in pressure report;
- (38)  
form C-126 - permit to transport recovered load oil;
- (39)  
form C-127 - request for allowable change;
- (40)  
form C-129 - [application for exception to no-flare] report of vented or flared natural gas;
- (41)  
form C-130 - notice of disconnection;
- (42)  
form C-131-A - monthly gas storage report;
- (43)  
form C-131-B - annual LPG storage report;

~~(43)~~ (44) form C-133 - authorization to move produced water exhibit "A";

~~(44)~~ (45) form C-134 - application for exception to division order R-8952, 19.15.18.18 NMAC or 19.15.36 NMAC;

~~(45)~~ (46) form C-135 - gas well connection, reconnection or disconnection notice;

~~(46)~~ (47) form C-136 - application for approval to use an alternate gas measurement method;

~~(47)~~ (48) form C-137 - application for waste management facility;

~~(48)~~ (49) form C-137-EZ - registration/final closure report for small landfarm;

~~(49)~~ (50) form C-138 - request for approval to accept solid waste;

~~(50)~~ (51) form C-139 - application for qualification of production restoration project and certification of approval;

~~(51)~~ (52) form C-140 - application for qualification of well workover project and certification of approval;

~~(52)~~ (53) form C-141 - release notification and corrective action;

~~(53)~~ (54) form C-144 - pit, closed-loop system, below-grade tank or proposed alternative method permit or closure plan application;

~~(54)~~ (55) form C-145 - change of operator; [and]

~~(55)~~ (56) form C-146 - change of operator name;

(57) form C-147 - permit or registration for recycling and re-use of produced water, drilling fluids and liquid oil field waste; and

(58) form C-148 - reporting for recycling and re-use of produced water, drilling fluids and liquid oil field waste.  
[19.15.7.8 NMAC - Rp, 19.15.13.1100 NMAC, 12/1/2008; A, 05/25/2021]

**19.15.7.24 OPERATOR'S MONTHLY REPORT (Form C-115):**

**A.** An operator shall file a form C-115 for each non-plugged well completion for which the division has approved a form C-104 and for each secondary or other enhanced recovery project or pressure maintenance project injection well or other injection well within the state, setting forth complete information and data indicated on the forms in the order, format and style the director prescribes. The operator shall estimate oil production from wells producing into common storage as accurately as possible on the basis of periodic tests.

**B.** An operator shall file ~~the reports 19.15.7.24 NMAC requires~~ form C-115 using the division's web-based online application on or before the 15<sup>th</sup> day of the second month following the month of production ~~[-or if such day falls on a weekend or holiday, the first workday following the 15th].~~ An operator may apply to the division for exemption from the electronic filing requirement based upon a demonstration that such requirement would ~~operate as~~ be an economic or other hardship.

**C.** If an operator fails to file a form C-115 that the division accepts, the division shall, within 30 days of the appropriate filing date, notify the operator by electronic mail or letter of its intent to cancel the operator's authorization to transport or inject if the operator does not file an acceptable and complete form C-115. The notice shall inform the operator of the right to request a hearing pursuant to 19.15.4.8 NMAC. If the operator does not either file an acceptable and complete form C-115 or request a hearing on the proposed cancellation within 60 days of the original due date of the form C-115, the division may cancel the operator's authority to transport from or inject into all wells it operates.  
[19.15.7.24 NMAC - Rp, 19.15.13.1115 NMAC, 12/1/2008; A, 11/14/2017; A, 05/25/2021]

**19.15.7.25 VENTED AND FLARED NATURAL GAS (Form C-115B):**

**A.** An operator shall file form C-115B in accordance with 19.15.27 NMAC and 19.15.28 NMAC.

**B.** An operator shall file form C-115B using the division's web-based online application on or before the 15<sup>th</sup> day of the second month following the month in which venting or flaring occurred. An operator may apply to the division for exemption from the electronic filing requirement based upon a demonstration that such requirement would be an economic or other hardship.  
[19.15.7 NMAC - N, 05/25/2021]

**~~19.15.7.25~~ 19.15.7.26 GAS-OIL RATIO TESTS (Form C-116):**

An operator shall make and report gas-oil ratio tests on form C-116 as prescribed in 19.15.18.8 NMAC and applicable special pool orders. The operator shall file the form C-116.  
[19.15.7.26 NMAC - Rn, 19.15.7.25 NMAC, 05/25/2021]

**~~19.15.7.26~~ 19.15.7.27 TANK CLEANING, SEDIMENT OIL REMOVAL, TRANSPORTATION OF MISCELLANEOUS HYDROCARBONS AND DISPOSAL PERMIT (Form C-117-A) AND MONTHLY SEDIMENT OIL DISPOSAL STATEMENT (Form C-117-B):**

**A.** An operator shall file form C-117-A with the appropriate division district office in accordance with Subsections B, C and H of 19.15.18.17 NMAC.

**B.** An operator shall file form C-117-B with the division's Santa Fe office and the appropriate division district office in accordance with Subsection D of 19.15.18.17 NMAC.  
[19.15.7.27 NMAC - Rn, 19.15.7.26 NMAC, 05/25/2021]

**~~19.15.7.27~~ 19.15.7.28 TREATING PLANT OPERATOR'S MONTHLY REPORT (Form**

**C-118):** A treating plant operator shall file on a monthly basis form C-118 with the appropriate division district office. The form C-118 shall contain all the information the form requires. Column 1 of sheet 1-A of form C-118 entitled permit number, references form C-117-A, for each lot of oil the operator picked up for processing.

[19.15.7.28 NMAC – Rn, 19.15.7.27 NMAC, 05/25/2021]

**[19.15.7.28] 19.15.7.29  
MONTHLY WATER DISPOSAL  
REPORT (Form C-120-A):** An

operator of a [salt] produced water disposal system shall report its operations on form C-120-A. The operator shall file form C-120-A in duplicate, with one copy to the division's Santa Fe office and one copy to the appropriate division district office, and shall postmark the form no later than the 15th day of the second succeeding month.

[19.15.7.29 NMAC – Rn & A, 19.15.7.28 NMAC, 05/25/2021]

**[19.15.7.29] 19.15.7.30  
PURCHASER'S NOMINATION  
FORMS (Form C-121 and Form  
C-121-A):**

**A.** Unless the director requests otherwise, a person expecting to purchase oil from producing wells in New Mexico during the second and third succeeding two months shall file form C-121 with the division's Santa Fe office not later than the 20th day of each odd-numbered month. As an example, nominations submitted by the 20th day of July shall indicate the amount of oil the purchaser desires to purchase daily during September and October.

**B.** The person shall file form C-121-A with the division's Santa Fe office by the first day of the month during which the division will consider at the gas allowable hearing the nominations for the purchase of gas from producing wells in New Mexico during the succeeding month. As an example, purchaser's nominations to take gas from a pool during the month of August would be considered by the division at a

hearing during July, and should be submitted to the Santa Fe office of the division by July 1.

**C.** In addition to the monthly gas nominations, the purchaser shall file 12-month nominations in accordance with the appropriate special pool orders.

[19.15.7.30 NMAC – Rn, 19.15.7.31 NMAC, 05/25/2021]

**[19.15.7.30] 19.15.7.31  
MULTIPOINT AND ONE POINT  
BACK PRESSURE TEST FOR  
GAS WELL (Form C-122):**

**A.** Gas well test data sheet - San Juan basin (form C-122-A)

**B.** Initial potential test data sheet (form C-122-B)

**C.** Deliverability test report (form C-122-C)

**D.** Worksheet for calculation of static column wellhead pressure ( $P_w$ ) (form C-122-D)

**E.** Worksheet for stepwise calculation of (surface) (subsurface) pressure ( $P_c$  &  $P_w$ ) ( $P_f$  &  $P_s$ ) (form C-122-E)

**F.** Worksheet for calculation of wellhead pressures ( $P_c$  or  $P_w$ ) from known bottom hole pressure ( $P_f$  or  $P_s$ ) (form C-122-F)

**G.** Worksheet for calculation of status column pressure at gas liquid interface (form C-122-G). The operator shall file the forms listed in Subsections A through F of 19.15.7.30 NMAC with the appropriate division district office in accordance with the provisions of the *manual for back-pressure testing of natural gas wells or gas well testing manual for northwest New Mexico*, 19.15.19.8 NMAC and applicable special pool orders and proration orders.

[19.15.7.31 NMAC – Rn, 19.15.7.30 NMAC, 05/25/2021]

**[19.15.7.31] 19.15.7.32  
REQUEST FOR THE CREATION  
OF A NEW POOL (Form C-123):**

The appropriate division district office shall provide the operator of a well that requires the creation of a pool written instructions regarding the filing of form C-123.

[19.15.7.32 NMAC – Rn, 19.15.7.31 NMAC, 05/25/2021]

**[19.15.7.32] 19.15.7.33  
RESERVOIR PRESSURE  
REPORT (Form C-124):**

**A.** An operator shall file form C-124 to report bottom hole pressures as required under the provisions of 19.15.18.9 NMAC and applicable special pool orders.

**B.** An operator shall state the name of the pool; the pool datum, if established; the name of the operator and lease; the well number; the wellhead elevation above sea level; the date of the test; the total time the well was shut in prior to the test, the subsurface temperature in degrees fahrenheit at the test depth; the depth in feet at which the operator made the subsurface pressure test; the observed pressure in psi gauge corrected for calibration and temperature; the corrected pressure computed from applying to the observed pressure the appropriate correction for difference in test depth and reservoir datum plane; and any other information required on form C-124.

[19.15.7.33 NMAC – Rn, 19.15.7.32 NMAC, 05/25/2021]

**[19.15.7.33] 19.15.7.34  
GAS WELL SHUT-IN PRESSURE**

**TESTS (Form C-125):** An operator shall file form C-125 to report shut-in pressure tests on gas wells as required under the provisions of special pool orders.

[19.15.7.34 NMAC – Rn, 19.15.7.33 NMAC, 05/25/2021]

**[19.15.7.34] 19.15.7.35  
PERMIT TO TRANSPORT RECOVERED**

**LOAD OIL (Form C-126):** An applicant to transport recovered load oil shall file form C-126 with the appropriate division district office in conformance with 19.15.20.15 NMAC.

[19.15.7.35 NMAC – Rn, 19.15.7.34 NMAC, 05/25/2021]

**[19.15.7.35] 19.15.7.36  
REQUEST FOR ALLOWABLE  
CHANGE (Form C-127):** An oil

producer shall file form C-127 with the appropriate division district office not later than the 10th day of the month preceding the month for which an oil producer is requesting oil well allowable changes.  
[19.15.7.36 NMAC – Rn, 19.15.7.35 NMAC, 05/25/2021]

**[19.15.7.36] 19.15.7.37 FORMS REQUIRED ON FEDERAL LAND:**

**A.** An operator shall use federal forms in lieu of state forms when filing application for permit to drill, deepen or plug back and sundry notices and reports on wells and well completion or recompletion report and log for wells on federal lands in New Mexico. However, the operator shall submit two extra copies of each of the forms to the BLM, which, upon approval, will transmit the forms to the division. An operator of a well on federal land shall use the following BLM forms in lieu of division forms:

<u>BLM Form No.</u>	<u>Title of Form</u> (Same for both agencies)	<u>Form No.</u>
3160-3 (Nov. 1993)	Application for Permit to Drill, Deepen or Plug Back	C-101
3160-5 (Nov. 1983)	Sundry Notices and Reports on Wells	C-103
3160-4 (Nov. 1983)	Well Completion or Recompletion Report and Log	C-105

**B.** The above forms as the BLM may revise are the only forms that an operator may file in place of division forms.

**C.** After a well is completed and ready for pipeline connection, the operator shall file form C-104 along with a copy of form C-105 or BLM form No. 3160-4, whichever is applicable, with the division on wells drilled in the state, regardless of land status. Further, the operator shall file production reports using division forms; the division will not accept federal forms for reporting production.

**D.** An operator’s failure to comply with 19.15.7.36 NMAC shall result in the division’s cancellation of form C-104 for the affected well or wells.  
[19.15.7.37 NMAC – Rn, 19.15.7.36 NMAC, 05/25/2021]

**~~[19.15.7.37] APPLICATION FOR EXCEPTION TO NO-FLARE (Form C-129):~~ 19.15.7.38 REPORT OF VENTED OR FLARED NATURAL GAS**

**(Form C-129):** An operator shall file form C-129 when applicable, in accordance with ~~[19.15.18.12]~~ 19.15.27 NMAC and 19.15.28 NMAC.

[19.15.7.38 NMAC – Rn & A, 19.15.7.37 NMAC, 05/25/2021]

**~~[19.15.7.38] 19.15.7.39 NOTICE OF DISCONNECTION (Form C-130):~~**

**A.** An operator shall file form C-130 with the division as provided in 19.15.19.13 NMAC.

**B.** An operator shall state to the best of its knowledge the reasons for disconnecting a gas well from gas transportation facilities.

**C.** The division shall furnish the New Mexico public regulation commission with a form C-130 indicating that a disconnected gas well may or will be reconnected to a gas transportation facility for ultimate distribution to consumers outside of the state.

[19.15.7.39 NMAC – Rn, 19.15.7.38 NMAC, 05/25/2021]

**[19.15.7.39] 19.15.7.40 MONTHLY GAS STORAGE REPORT (Form C-131-A); ANNUAL LPG STORAGE REPORT (Form C-131-B):**

**A.** An operator of an underground gas storage project shall report its operation monthly on form C-131-A. The operator shall file form C-131-A with the division’s Santa Fe office with a copy to the appropriate division district office and shall postmark it not later than the 24th day of the next succeeding month.

**B.** An operator of underground liquefied petroleum gas storage projects approved by the division shall report its operations annually on form C-131-B.

[19.15.7.40 NMAC – Rn, 19.15.7.39 NMAC, 05/25/2021]

**[19.15.7.40] 19.15.7.41 AUTHORIZATION TO MOVE PRODUCED WATER:**

**A.** A transporter of produced water shall obtain the division’s approval of form C-133 in accordance with 19.15.34 NMAC prior to transportation.

**B.** Approval of a single form C-133 is valid for leases the transporter serves.

[19.15.7.41 NMAC – Rn, 19.15.7.40 NMAC, 05/25/2021]

**~~[19.15.7.41] 19.15.7.42 GAS WELL CONNECTION, RECONNECTION OR DISCONNECTION NOTICE:~~**

**A gas transporter accepting gas for delivery from a wellhead or central point of delivery shall notify the division within 30 days of a new connection or reconnection to or disconnection from the gathering or transportation system by filing form C-135 with the appropriate division district office.**

[19.15.7.42 NMAC – Rn, 19.15.7.41 NMAC, 05/25/2021]

**~~[19.15.7.42] 19.15.7.43 APPLICATION FOR APPROVAL TO USE AN ALTERNATE GAS MEASUREMENT METHOD (Form C-136):~~**

**A.** An operator shall use form C-136 to request and obtain division approval for use of an alternate procedure for measuring gas production from a well that is not



capable of producing more than 15 MCFD (Paragraph (1) of Subsection B of 19.15.19.9 NMAC) or for a well that has a producing capacity of 100 MCFD or less and is on a multi-well lease (Paragraph (2) of Subsection B of 19.15.19.9 NMAC).

**B.** An operator shall fill out the applicable information required on form C-136 with the required supplemental information attached, and file it with the appropriate division district office. [19.15.7.43 NMAC – Rn, 19.15.7.42 NMAC, 05/25/2021]

[19.15.7.43]

**19.15.7.44 APPLICATION FOR PRODUCTION RESTORATION PROJECT (C-139):**

**A.** An operator shall use the division's web-based online application to apply for the production restoration tax incentive.

**B.** An operator shall enter a user identification number and password that it has obtained from the division and select the well for which the operator is requesting the production restoration tax incentive. The operator shall then enter the date it began the production restoration, the date the well returned to production and the process the operator used to return the well to production. The operator shall certify that the information is complete and correct.

[19.15.7.44 NMAC – Rn, 19.15.7.43 NMAC, 05/25/2021]

[19.15.7.44] **19.15.7.45 APPLICATION FOR WELL WORKOVER PROJECT (C-140):**

**A.** An operator shall use the division's web-based online application to apply for the well workover tax incentive.

**B.** An operator shall enter a user identification number and password that it has obtained from the division and select the well for which the operator is requesting the well workover tax incentive. The operator shall enter the date that it commenced the well workover and the date it completed the well

workover. The operator shall attach a description of the workover procedure it performed to increase production and a production curve or data tabulation showing at least 12 months of production prior to the well workover and at least three months of production following the well workover to reflect a positive production increase.

[19.15.7.45 NMAC – Rn, 19.15.7.44 NMAC, 05/25/2021]

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

**This is an amendment to 19.15.18 NMAC, Sections 1, 3, 8, 11, 12, 14, and 16, effective May 25, 2021.**

**19.15.18.1 ISSUING**

**AGENCY:** [~~Energy, Minerals and Natural Resources Department, Oil Conservation Division~~] Oil Conservation Commission.

[19.15.18.1 NMAC - N, 12/1/2008; A, 05/25/2021]

**19.15.18.3 STATUTORY**

**AUTHORITY:** 19.15.18 NMAC is adopted pursuant to the Oil and Gas Act, [~~NMSA 1978,~~] Section 70-2-6, Section 70-2-11 and Section 70-2-12 NMSA 1978.

[19.15.18.3 NMAC - N, 12/1/2008; A, 05/25/2021]

**19.15.18.8 GAS-OIL RATIO AND PRODUCTION TESTS:**

**A.** An operator shall take a gas-oil ratio test no sooner than 20 days nor later than 30 days following the completion or recompletion of each oil well, if:

(1) the well is a wildcat, or

(2) the well is located in a pool that is not exempt from 19.15.18.8 NMAC's requirements.

**B.** Provisions of 19.15.18.8 NMAC that are applicable to the pool shall govern wells completed within one mile of the outer boundary of a defined

oil pool producing from the same formation. The operator shall report the test results to the division on form C-116 within 10 days following the test's completion. The gas-oil ratio the operator reports shall become effective for proration purposes on the first day of the calendar month following the date they are reported.

**C.** Each operator shall take an annual gas-oil ratio test of each producing oil well, located within a pool not exempted from the requirements of 19.15.18.8 NMAC, during a period the division prescribes. The division shall establish a gas-oil ratio survey schedule setting forth the period in which operators are to take gas-oil ratio tests for each pool where the division requires a test. The gas-oil ratio test shall be a test the division designates, made by the method and in the manner the division in its discretion may prescribe from time to time.

**D.** An operator shall file the results of gas-oil ratio tests taken during survey periods with the division on form C-116 not later than the 10<sup>th</sup> of the month following the close of the survey period for the pool in which the well is located. The gas-oil ratios thus reported shall become effective for proration purposes on the first day of the second month following the survey period's close. Unless the operator files form C-116 within the required time limit, the division shall not assign a further allowable to the affected well until the operator file form C-116.

**E.** In the case of special tests taken between regular gas-oil ratio surveys, the gas-oil ratio becomes effective for proration purposes upon the date the division receives form C-116 reporting the test results. A special test does not exempt a well from the regular survey.

**F.** During a gas-oil ratio test, an operator shall not produce a well at a rate exceeding the top proration unit allowable for the pool in which it is located by more than [25] twenty-five percent.

**G.** The director may exempt such pools as the director deems proper from the gas-oil ratio test requirements of 19.15.18.8 NMAC. The exemption shall be by division order directed to the operators in the pool being exempted.

**H.** The director may require annual productivity tests of oil wells in pools exempt from gas-oil ratio tests, during a period the division prescribes. The division shall establish an oil well productivity survey schedule setting forth the period in which productivity tests are to be taken for each pool where the division requires the tests.

**I.** An operator shall file the results of productivity tests taken during survey periods with the division on form C-116 (with the word "exempt" inserted in the column normally used for reporting gas production) not later than the 10th of the month following the close of the survey period for the pool in which the well is located. Unless the operator files form C-116 within the required time limit, the division shall not assign further allowables to the affected well until the operator files form C-116.

**J.** In the case of special productivity tests taken between regular test survey periods, which result in a change of allowable assigned to the well, the allowable change shall become effective upon the date the division receives form C-116. A special test does not exempt a well from the regular survey.

**K.** During the productivity test, an operator shall not produce a well at a rate exceeding the top proration unit allowable for the pool in which it is located by more than [25] twenty-five percent. [19.15.18.8 NMAC - Rp, 19.15.5.301 NMAC, 12/1/2008; A, 05/25/2021]

**19.15.18.11** [~~METERED CASINGHEAD GAS~~]: The owner of a lease is not required to measure the exact amount of casinghead gas the owner produces and uses for fuel purposes in the lease's development and normal operation. The owner of the lease shall meter and report

casinghead gas produced and sold or transported away from a lease, except small amounts of flare gas, in cubic feet monthly to the division. The owner of the lease may calculate the amount of casinghead gas sold in small quantities for use in the field upon a basis generally acceptable in the industry, or upon a basis approved by the division in lieu of meter measurements.] [~~RESERVED~~] [19.15.18.11 NMAC - Rp, 19.15.5.305 NMAC, 12/1/2008; Repealed, 05/25/2021]

**19.15.18.12** [~~CASINGHEAD GAS~~]:

~~**A.** An operator shall not flare or vent casinghead gas produced from a well after 60 days following the well's completion.~~

~~**B.** An operator seeking an exception to Subsection A of 19.15.18.12 NMAC shall file an application for an exception on form C-129 with the appropriate division district office. The district supervisor may grant an exception when the flaring or venting casinghead gas appears reasonably necessary to protect correlative rights, prevent waste or prevent undue hardships on the applicant. The district supervisor shall either grant the exception within 10 days after the application's receipt or refer it to the director who shall advertise the matter for public hearing if the applicant desires a hearing.~~

~~**C.** The division shall suspend the allowable assigned to the well if the operator flares or vents gas from a well in violation of 19.15.18.12 NMAC.~~

~~**D.** No extraction plant processing gas in the state shall flare or vent casinghead gas unless flaring or venting is made necessary by mechanical difficulty of a very limited temporary nature or unless the gas flared or vented is of no commercial value.~~

~~**E.** In the event of a more prolonged mechanical difficulty or in the event of plant shut-downs or curtailment because of scheduled or non-scheduled maintenance or testing operations or other reasons, or in the event a plant is unable to~~

accept, process and market all of the casinghead gas produced by wells connected to its system, the plant operator shall notify the division as soon as possible of the full details of the shut-down or curtailment, following which the division shall take such action as is necessary to reduce the total flow of gas to the plant.

~~**F.** Pending connection of a well to a gas-gathering facility, or when a well has been excepted from the provisions of Subsection A of 19.15.18.12 NMAC, the operator shall burn all gas produced and not used, and report the estimated volume on form C-115.~~

~~**G.** The provisions of Subsection A of 19.15.18.12 NMAC do not apply to wells completed prior to January 1, 1971, in pools that had no gas-gathering facilities on that date, provided however the provisions shall apply to all wells in such a pool 60 days after the date of first casinghead gas connection in the pool.] [~~RESERVED~~] [19.15.18.12 NMAC - Rp, 19.15.5.306 NMAC, 12/1/2008; Repealed, 05/25/2021]~~

**19.15.18.14** [~~SALT OR SULPHUR~~] **PRODUCED WATER**:

An operator shall report monthly on form C-115 the amount of water produced with the oil and gas from each well.

[19.15.18.14 NMAC - Rp, 19.15.5.308 NMAC, 12/1/2008; A, 05/25/2021]

**19.15.18.16** **TANKS, OIL TANKS, FIRE WALLS AND TANK IDENTIFICATION**:

**A.** No person shall store or retain oil in earthen reservoirs or in open receptacles. Dikes or fire walls are not required except an operator shall erect and maintain fire walls around permanent oil tanks or tank batteries that are within the corporate limits of a city, town or village, or where such tanks are closer than 150 feet to a producing oil or gas well or 500 feet to a highway or inhabited dwelling or closer than 1000 feet to a school or church, or

where the tanks are so located that the division deems them an objectional hazard. Where fire walls are required, fire walls shall form a reservoir having a capacity one-third larger than the capacity of the enclosed tank or tanks.

**B.** The operator shall identify oil tanks, tank batteries, ACT systems, tanks used for ~~[salt]~~ produced water collection or disposal and tanks used for sediment oil treatment or storage by a sign posted on or not more than 50 feet from the tank, tank battery or system. The sign shall be of durable construction and the operator shall keep the lettering on the sign in a legible condition; the lettering shall be large enough to be legible under normal conditions at a distance of 50 feet and the sign shall identify the operator's name, the name of the lease being served by the tank or system, if any, and the location of the tank or system by unit letter, section, township and range.  
[19.15.18.16 NMAC - Rp, 19.15.5.310 NMAC, 12/1/2008; A, 05/25/2021]

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

**This is an amendment to 19.15.19 NMAC, Sections 1, 3, and 10, effective May 25, 2021**

**19.15.19.1 ISSUING**  
**AGENCY:** ~~[Energy, Minerals and Natural Resources Department, Oil Conservation Division]~~ Oil Conservation Commission.  
[19.15.19.1 NMAC - Rp, 19.15.6.1 NMAC, 12/1/2008; A, 05/25/2021]

**19.15.19.3 STATUTORY**  
**AUTHORITY:** 19.15.19 NMAC is adopted pursuant to the Oil and Gas Act, ~~[NMSA 1978,]~~ Section 70-2-6, Section 70-2-11 and Section 70-2-12 NMSA 1978.  
[19.15.19.3 NMAC - Rp, 19.15.6.3 NMAC, 12/1/2008; A, 05/25/2021]

**19.15.19.10** ~~[GAS~~

~~UTILIZATION: After the completion of a gas well, the operator shall not permit gas from the well to escape to the air, use the gas expansively in engines or pumps and then vent or use the gas to gas-lift wells unless all gas produced is processed in a gasoline plant or beneficially used thereafter without waste-:]~~ **[RESERVED]**  
[19.15.19.10 NMAC – Rp, 19.15.6.404 NMAC, 12/1/2008; Repealed, 05/25/2021]

**PRIVATE  
INVESTIGATIONS  
ADVISORY BOARD**

**This is an amendment to 16.48.5 NMAC, Sections 1 and 8, effective 5/25/2021.**

**16.48.5.1 ISSUING**  
**AGENCY:** Regulation and Licensing Department ~~[Private Investigations-Advisory Board].~~  
[16.48.5.1 NMAC - Re-pr, 16.48.5.1 NMAC, 9/24/2008; A, 5/25/2021]

**16.48.5.8 FEE SCHEDULE:**

- A.** All fees payable to the ~~[board]~~ department are non-refundable.
- B.** Application fees:
  - (1) private investigator \$100.00
  - (2) private investigation company \$100.00
  - (3) private investigations manager \$100.00
  - (4) private investigations employee \$ 25.00
  - (5) private patrol operator \$100.00
  - (6) private patrol company \$100.00
  - (7) private patrol operations manager \$100.00
  - (8) polygraph examiner \$100.00

- C.** Registration or registration renewal fees:
  - (1) security guard level one \$50.00
  - (2) security guard level two \$50.00
  - (3) security guard level three \$75.00
  - (4) private investigations employee \$50.00

- D.** Initial license or license renewal fees:
  - (1) private investigator \$300.00
  - (2) private investigations manager \$200.00
  - (3) private patrol operator \$300.00
  - (4) private patrol operations manager \$200.00
  - (5) polygraph examiner \$400.00
  - (6) late fee on license renewals \$100.00

- E.** Other fees applying to private investigators, private patrol operators and polygraph examiners:
  - (1) special event permit \$100.00
  - (2) private patrol branch office certificate \$100.00

**F.** Background fees shall be the amount established by the department of public safety for the processing of criminal history background checks.  
[16.48.5.8 NMAC - Re-pr & A, 16.48.5.8 NMAC, 9/24/2008; A, 5/1/2010; A, 5/12/2016; A, 5/25/2021]

**REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF**

**This is an amendment to 16.19.26 NMAC, Sections 1, 3, 7, 9 and renumbered 11, repealing Section 10, Renumbering Sections 11 through 13 and adding a new, renumbered Section 14, effective 5/31/2021.**

**16.19.26.1 ISSUING AGENCY:** [~~Regulation and Licensing Department-~~] Board of Pharmacy [~~, Albuquerque, NM~~]. [16.19.26.1 NMAC - N, 12/15/2002; A, 3/7/2011; A, 5/31/2021]

**16.19.26.3 STATUTORY AUTHORITY:** [~~Section 61-11-6.A(1)~~] Paragraph (1) of Subsection A of Section 61-11-6 NMSA 1978 authorizes the board of Pharmacy to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act. [~~Section 61-11-6.A(7)~~] Paragraph (7) of Subsection A of Section 61-11-6 NMSA 1978 gives the board authority to enforce the provisions of all laws of the state pertaining to the distribution of drugs. Under the Pharmacist Prescriptive Authority Act, Sections 61-11B-1 to 61-11B-3 NMSA 1978, the board is required to establish regulations governing certification as a pharmacist clinician. [~~Section 61-11-6.A(19)~~] Paragraph (19) of Subsection A of Section 61-11-6 NMSA 1978 authorizes the board to adopt rules and protocols for the prescribing of dangerous drug therapy. [16.19.26.3 NMAC - N, 12/15/2002; A, 5/31/2021]

**16.19.26.7 DEFINITIONS:**  
**A. “Antigen”** means a substance recognized by the body as being foreign; it results in the production of specific antibodies directed against it.

**B. “Antibody”** means a protein in the blood that is produced in response to stimulation by a specific antigen.

**C. “Immunization”** means the act of inducing antibody formation, thus leading to immunity.

**D. “Vaccine”** means a specially prepared antigen, which upon administration to a person, will result in immunity.

**E. “Vaccination”** means the administration of any antigen in order to induce immunity; is not synonymous with immunization since vaccination does not imply success.

**F. “Written protocol”** means a physician’s order, standing delegation order, or other order or protocol as defined by rule of the New Mexico board of pharmacy.

**G. “Emergency contraception drug therapy”** means the use of a drug to prevent pregnancy after intercourse.

**H. “Tobacco cessation drug therapy”** means the use of therapies, which may include drugs to assist in quitting any form of tobacco use.

**I. “Hormonal contraception drug therapy”** means the use of hormonal therapies to prevent pregnancy, and formulary products delineated in the written contraception protocol approved by the board (e.g. progestin receptor modulator approved by the United States food and drug administration for emergency contraception). [16.19.26.7 NMAC - N, 12/15/2002; A, 7/15/2004; A, 6/9/2017; A, 5/31/2021]

**16.19.26.9 VACCINES:**

**A. Protocol:**  
**(1)** Prescriptive authority for vaccines shall be exercised solely in accordance with the written protocol for vaccine prescriptive authority approved by the board.

**(2)** Any pharmacist exercising prescriptive authority for vaccines must maintain a current copy of the protocol for vaccine prescriptive authority approved by the board.

**B. Education and training:**

**(1)** The pharmacist must successfully complete a course of training, accredited by the accreditation council for pharmacy education (ACPE), provided by:

- (a)** the centers for disease control and prevention (CDC); or
- (b)** a similar health authority or professional body approved by the board.

**(2)** Training must include study materials, hands-on training and techniques for administering vaccines, comply with current CDC guidelines, and provide instruction and experiential training in the following content areas:

- (a)** mechanisms of action for vaccines, contraindication, drug interaction, and monitoring after vaccine administration;
- (b)** standards for pediatric, adolescent, and adult immunization practices;
- (c)** basic immunology and vaccine protection;
- (d)** vaccine-preventable diseases;
- (e)** recommended pediatric, adolescent, and adult immunization schedule;
- (f)** vaccine storage management;
- (g)** biohazard waste disposal and sterile techniques;
- (h)** informed consent;
- (i)** physiology and techniques for vaccine administration;
- (j)** pre and post-vaccine assessment and counseling;
- (k)** immunization record management;
- (l)** management of adverse events, including identification, appropriate response, documentation and reporting;
- (m)** reimbursement procedures and

vaccine coverage by federal, state and local entities.

(3) Continuing education: Any pharmacist exercising prescriptive authority for vaccines shall complete a minimum of 0.2 CEU of live ACPE approved vaccine related continuing education every two years. Such continuing education shall be in addition to requirements in 16.19.4.10 NMAC.

(4) Basic life support/cardiopulmonary resuscitation (BLS/CPR): Any pharmacist exercising prescriptive authority for vaccines shall complete and have current live BLS/CPR certification.

**C. Authorized drugs:**  
**(1)**

Prescriptive authority shall be limited to those drugs and vaccines delineated in the written protocol for vaccine prescriptive authority approved by the board, and;

(2) Other vaccines as determined by the CDC, the advisory committee on immunization practices (ACIP) or New Mexico department of health that may be required to protect the public health and safety

**D. Records:**

(1) The prescribing pharmacist must generate a written or electronic prescription for any dangerous drug authorized.

(2) Informed consent must be documented in accordance with the written protocol for vaccine prescriptive authority approved by the board and a record of such consent maintained in the pharmacy for a period of at least three years.

**E. Notification:** Upon signed consent of the patient or guardian the pharmacist shall [:

(1) notify the New Mexico department of health immunization program and the patient's designated physician or primary care provider and;

(2) update the New Mexico department of health immunization program's electronic database (NMSIIS) of any vaccine administered.

[16.19.26.9 NMAC - N, 12/15/2002;

16.19.26.9 NMAC - Rn, 16.19.26.8 NMAC & A, 7/15/2004; A, 1/31/2007; A, 9/6/2015; A, 5/31/2021]

~~[16.19.26.10 — EMERGENCY-  
CONTRACEPTION DRUG-  
THERAPY:~~

~~\_\_\_\_\_ **A. Protocol:**  
\_\_\_\_\_ **(1)**~~

~~Prescriptive authority for emergency-contraception drug therapy shall be exercised solely in accordance with the written protocol for emergency-contraception drug therapy approved by the board.~~

~~\_\_\_\_\_ **(2)** Any pharmacist exercising prescriptive authority for emergency-contraception drug therapy must maintain a current copy of the written protocol for emergency-contraception drug therapy approved by the board.~~

~~\_\_\_\_\_ **B. Education and training:**~~

~~\_\_\_\_\_ **(1)** The pharmacist must successfully complete a course of training, accredited by the accreditation council for pharmacy education (ACPE), in the subject area of emergency-contraception drug therapy provided by: a) the department of health; or b) planned parenthood or c) a similar health authority or professional body approved by the board.~~

~~\_\_\_\_\_ **(2)** Training must include study materials and instruction in the following content areas:~~

~~\_\_\_\_\_ **(a)** mechanisms of action, contraindication, drug interaction, and monitoring of emergency-contraception drug therapy;~~

~~\_\_\_\_\_ **(b)** current standards for prescribing emergency-contraception drug therapy;~~

~~\_\_\_\_\_ **(c)** identifying indications for the use of emergency-contraception drug therapy;~~

~~\_\_\_\_\_ **(d)** interviewing patient to establish need for emergency-contraception drug therapy;~~

~~\_\_\_\_\_ **(e)** counseling patient regarding the~~

~~safety, efficacy and potential adverse effects of drug products for emergency-contraception;~~

~~\_\_\_\_\_ **(f)** evaluating patient's medical profile for drug interaction;~~

~~\_\_\_\_\_ **(g)** referring patient follow-up care with primary healthcare provider;~~

~~\_\_\_\_\_ **(h)** informed consent;~~

~~\_\_\_\_\_ **(i)** record management;~~

~~\_\_\_\_\_ **(j)** management of adverse events, including identification, appropriate response, documentation and reporting.~~

~~\_\_\_\_\_ **(3)** Continuing education: Any pharmacist exercising prescriptive authority for emergency-contraception drug therapy shall complete a minimum of 0.2 CEU of ACPE approved emergency-contraception drug therapy related continuing education every two years. Such continuing education shall be in addition to requirements in 16.19.4.10 NMAC.~~

~~\_\_\_\_\_ **C. Authorized drugs:**  
\_\_\_\_\_ **(1)**~~

~~Prescriptive authority shall be limited to emergency-contraception drug therapy and shall exclude any device intended to prevent pregnancy after intercourse.~~

~~\_\_\_\_\_ **(2)** Prescriptive authority for emergency-contraception drug therapy shall be limited to those drugs delineated in the written protocol for emergency-contraception drug therapy approved by the board.~~

~~\_\_\_\_\_ **D. Records:**  
\_\_\_\_\_ **(1)** The prescribing pharmacist must generate a written or electronic prescription for any dangerous drug authorized.~~

~~\_\_\_\_\_ **(2)** Informed consent must be documented in accordance with the approved protocol for emergency-contraception drug therapy and a record of such consent maintained in the pharmacy for a period of at least three years.~~

~~\_\_\_\_\_ **E. Notification:**  
Upon signed consent of the patient or guardian, the pharmacist shall~~

notify the patient's designated physician or primary care provider of emergency contraception drug therapy prescribed.]

[16.19.26.10 NMAC - N, 12/15/2002; 16.19.26.10 NMAC - Rn, 16.19.26.9 NMAC & A, 7/15/2004; A, 9/6/2015; Repealed, 5/31/2021]

~~[16.19.26.11]~~ **16.19.11.10 TOBACCO CESSATION DRUG THERAPY:**

**A. Protocol:**  
**(1)**

Prescriptive authority for tobacco cessation drug therapy shall be exercised solely in accordance with the written protocol for tobacco cessation drug therapy approved by the board.

**(2)** Any pharmacist exercising prescriptive authority for tobacco cessation drug therapy must maintain a current copy of the written protocol for tobacco cessation drug therapy approved by the board.

**B. Education and training:**

**(1)** The pharmacist must successfully complete a course of training, accredited by the accreditation council for pharmacy education (ACPE), in the subject area of tobacco cessation drug therapy provided by:

- (a)** the department of health;
- (b)** health and human services; or
- (c)** a similar health authority or professional body approved by the board.

**(2)** Training must include study materials and instruction in the following content areas:

- (a)** mechanisms of action for contraindications, drug interactions, and monitoring cessation;
- (b)** current standards for prescribing tobacco cessation drug therapy;
- (c)** identifying indications for the use of tobacco cessation drug therapy;

**(d)** interviewing patient to establish need for tobacco cessation drug therapy;

**(e)** counseling patient regarding the safety, efficacy and potential adverse effects of drug products for tobacco cessation;

**(f)** evaluating patient's medical profile for drug interaction;

**(g)** referring patient follow-up care with primary healthcare provider;

**(h)** informed consent;

**(i)** record management;

**(j)** management of adverse events, including identification, appropriate response, documentation and reporting;

**(k)** reimbursement procedures and tobacco cessation drug therapy and education coverage by federal, state and local entities.

**(3)** Continuing education: Any pharmacist exercising prescriptive authority for tobacco cessation drug therapy shall complete a minimum of 0.2 CEU of ACPE approved tobacco cessation drug therapy related continuing education every two years. Such continuing education shall be in addition to requirements in 16.19.4.10 NMAC.

**C. Authorized drugs:**  
**(1)**

Prescriptive authority shall be limited to tobacco cessation drug therapy including prescription and non-prescription therapies.

**(2)** Prescriptive authority for tobacco cessation drug therapy shall be limited to those drugs delineated in the written protocol approved by the board.

**D. Records:**

**(1)** The prescribing pharmacist must generate a written or electronic prescription for any dangerous drug authorized.

**(2)** Informed consent must be documented in accordance with the approved

protocol for tobacco cessation drug therapy and a record of such consent maintained in the pharmacy for a period of at least three years.

**E. Notification:** Upon signed consent of the patient, the pharmacist shall notify the patient's designated physician or primary care provider of tobacco cessation drug therapy prescribed.

[16.19.26.11 NMAC - N, 7/15/2004; A, 9/6/2015; Rn, 16.19.26.10 NMAC, 5/31/2021]

~~[16.19.26.12]~~ **16.19.26.11 TB TESTING:**

**A. Protocol:**  
**(1)**

Prescriptive authority for Tuberculosis (TB) testing shall be exercised solely in accordance with the written protocol for TB testing drug therapy approved by the board.

**(2)** Any pharmacist exercising prescriptive authority for TB testing must maintain a current copy of the written protocol for TB testing approved by the board.

**B. Education and training:**

**(1)** The pharmacist must successfully complete training as specified by the New Mexico department of health tuberculosis department provided by:

- (a)** the department of health or
- (b)** a similar health authority or professional body approved by the board.

**(2)** Continuing education: Any pharmacist exercising prescriptive authority for TB testing shall complete continuing education as specified by the centers for disease control.

**C. Authorized drugs:**

**(1)** TB skin antigen serum(s).

**(2)** Prescriptive authority for TB testing shall be limited to those drugs delineated in the written protocol approved by the board.

**D. Records:**

**(1)** The prescribing pharmacist must generate

a written or electronic prescription for any TB test administered.

(2) Informed consent must be documented in accordance with the approved protocol for TB testing and a record of such consent maintained in the pharmacy for a period of at least three years.

**E. Notification:** Upon signed consent of the patient, the pharmacist shall notify the patient's designated physician or primary care provider and the department of health of any positive TB test.

[16.19.26.12 NMAC - N, 3/7/2011; A, 9/6/2015; Rn. & A 16.19.26.11 NMAC, 5/31/2021]

~~[16.19.26.13]~~ 16.19.26.12  
**NALOXONE FOR OPIOID OVERDOSE:**

**A. Protocol:**  
**(1)**

Prescriptive authority for naloxone drug therapy shall be exercised solely in accordance with the written protocol for naloxone drug therapy approved by the board.

(2) Any pharmacist exercising prescriptive authority for naloxone drug therapy must maintain a current copy of the written protocol for naloxone drug therapy approved by the board.

**B. Education and training:**

(1) The pharmacist must successfully complete a course of training, accredited by the accreditation council for pharmacy education (ACPE), in the subject area of naloxone for opioid overdose drug therapy provided by:

(a) the New Mexico pharmacists association; or

(b) a similar health authority or professional body approved by the board.

(2) Training must include study materials and instruction in the following content areas:

(a) mechanisms of action;

(b) contraindications;

(c) identifying indications for the use of naloxone drug therapy;

(d) patient screening criteria;

(e) counseling and training patient and care-giver regarding the safety, efficacy and potential adverse effects of naloxone;

(f) evaluating patient's medical profile for drug interactions;

(g) referring patient for follow-up care with primary healthcare provider;

(h) informed consent;

(i) record management;

(j) management of adverse events.

(3) Continuing education: Any pharmacist exercising prescriptive authority for naloxone drug therapy shall complete a minimum of 0.2 CEU of live ACPE approved naloxone drug therapy related continuing education every two years. Such continuing education shall be in addition to requirements in 16.19.4.10 NMAC.

**C. Authorized drug(s):**

(1) Prescriptive authority shall be limited to naloxone and shall include any device(s) approved for the administration of naloxone.

(2) Prescriptive authority for naloxone drug therapy shall be limited to naloxone as delineated in the written protocol for naloxone drug therapy approved by the board.

**D. Records:**

(1) The prescribing pharmacist must generate a written or electronic prescription for any naloxone dispensed.

(2) Informed consent must be documented in accordance with the approved protocol for naloxone drug therapy and a record of such consent maintained in the pharmacy for a period of at least three years.

**E. Notification:** Upon signed consent of the patient, the pharmacist shall notify the patient's designated physician or primary care provider within 15 days of naloxone dispensing.

[16.19.26.13 NMAC - N, 3/14/2014; Rn., 16.19.26.12 NMAC, 5/31/2021]

~~[16.19.26.14]~~ 16.19.26.13  
**HORMONAL CONTRACEPTION DRUG THERAPY:**

**A. Protocol:**  
**(1)**

Prescriptive authority for hormonal contraception drug therapy shall be exercised solely in accordance with the written protocol for hormonal contraception drug therapy approved by the board.

(2) Any pharmacist exercising prescriptive authority for hormonal contraception drug therapy must maintain a current copy of the written protocol for hormonal contraception drug therapy approved by the board.

**B. Education and training:**

(1) The pharmacist must successfully complete a course of training, accredited by the accreditation council for pharmacy education (ACPE), in the subject of hormonal contraception drug therapy provided by:

(a) the New Mexico pharmacists association or;

(b) a similar health authority or professional body approved by the board.

(2) Training must include study materials and instruction in the following content areas:

(a) mechanisms of action, contraindication, drug interaction and monitoring of hormonal contraception drug therapy;

(b) current standards for prescribing hormonal contraception drug therapy;

(c) identifying indications for use of hormonal contraception drug therapy;

(d) interviewing patient to establish need for hormonal contraception drug therapy;

(e) counseling patient regarding the safety, efficacy and potential adverse effects of drug products for hormonal contraception;

(f) evaluating patient’s medical profile for drug interaction;

(g) referring patient follow-up care with primary healthcare provider;

(h) informed consent;

(i) management of adverse events, including identification, appropriate response, documentation and reporting.

(3) Continuing education: any pharmacist exercising prescriptive authority for [emergency] hormonal contraception drug therapy shall complete a minimum of 0.2 CEU of live ACPE approved hormonal contraception drug therapy related continuing education every two years. Such continuing education shall be in addition to requirements in 16.19.4.10 NMAC.

**C. Authorized drugs:**

(1) Prescriptive authority shall be limited to hormonal contraception drug therapy and shall exclude [and] any device intended to prevent pregnancy after intercourse.

(2) Prescriptive authority for hormonal contraception drug therapy shall be limited to those drugs delineated in the written protocol for hormonal contraception drug therapy approved by the board.

**D. Records:**

(1) The prescribing pharmacist must generate a written or electronic prescription for any dangerous drug authorized.

(2) Informed consent must be documented in accordance with the approved protocol for hormonal contraception drug therapy and a record of such consent maintained in the pharmacy for a period of at least three years.

**E. Notification:** Upon signed consent of the patient or guardian, the pharmacist shall notify the patient’s designated physician or primary care provider of hormonal contraception drug therapy prescribed. [16.19.26.14 NMAC - N, 6/9/2017; Rn, 16.19.26.13 NMAC, 5/31/2021]

**16.19.26.14 PRESCRIBING DANGEROUS DRUGS IN CONJUNCTION WITH POINT-OF-CARE TESTING**

**A. Protocol:**

(1) Prescriptive authority shall be exercised solely in accordance with the written protocol for prescribing of dangerous drugs in conjunction with point-of-care testing (POCT) approved by the board.

(2) Any pharmacist exercising prescriptive authority for prescribing of dangerous drugs in conjunction with POCT must maintain a current copy of the written protocol approved by the board.

**B. Education and training:**

(1) The pharmacist must successfully complete a course of training, accredited by the accreditation council for pharmacy education (ACPE), for each category of POCT for which the pharmacist exercises prescriptive authority, provided by:

(a) the New Mexico pharmacists association; or

(b) a similar health authority or professional body approved by the board.

(2) Training must include study materials and instruction in the following content areas:

(a) mechanisms of action;

(b) contraindications;

(c) identifying indications for the use of protocol formulary drug therapy;

(d) patient screening, history and assessment criteria;

(e) counseling and training patient and care-giver regarding the safety, efficacy and potential adverse effects of prescribed protocol formulary dangerous drug(s);

(f) evaluating patient’s medical profile for drug interactions;

(g) patient referrals;

(h) informed consent;

(i) record management;

(j) management of adverse events.

(3) Continuing education: Any pharmacist exercising prescriptive authority for POCT formulary drug therapy shall complete a minimum of 0.2 CEU of live ACPE approved formulary drug therapy related continuing education every two years, for each category of POCT for which the pharmacist exercises prescriptive authority. Such continuing education shall be in addition to requirements in 16.19.4.10 NMAC.

**C. Authorized drug(s):** Prescriptive authority shall be limited to those drugs in the Board-approved protocol.

**D. Records:**

(1) The prescribing pharmacist must generate a written or electronic prescription for any medication dispensed under the protocol.

(2) Informed consent must be documented in accordance with the approved protocol and a record of such consent maintained in the pharmacy for a period of at least three years.

**E. Notification:** Upon signed consent of the patient, the pharmacist shall notify the patient’s designated physician or primary care provider within 15 days of dispensing. [16.19.26.14 NMAC - N, 5/31/2021]

**HISTORY OF 16.19.26 NMAC: [RESERVED]**



**VETERINARY MEDICINE,  
BOARD OF**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 24 SHELTERING  
PROVIDERS  
PART 7 MINIMUM  
STANDARDS - ANIMAL  
SHELTERS**

**16.24.7.1 ISSUING**

**AGENCY:** New Mexico Board of Veterinary Medicine.

[16.24.7.1 NMAC – N, 5/25/2021]

**16.24.7.2 SCOPE:** This part applies to all county or municipal facilities and private humane societies or private animal shelters operating in the state of New Mexico.

[16.24.7.2 NMAC - N, 5/25/2021]

**16.24.7.3 STATUTORY**

**AUTHORITY:** Veterinary Practice Act, Section 61-14-5 NMSA 1978.

[16.24.7.3 NMAC - N, 5/25/2021]

**16.24.7.4 DURATION:**

Permanent.

[16.24.7.4 NMAC - N, 5/25/2021]

**16.24.7.5 EFFECTIVE**

**DATE:** April 1, 2020 unless a later date is cited at the end of a section.

[16.24.7.5 NMAC - N, 5/25/2021]

**16.24.7.6 OBJECTIVE:**

To establish minimum standards for animal sheltering providers.

[16.24.7.6 NMAC - N, 5/25/2021]

**16.24.7.7 DEFINITIONS:**

**A. Words starting with the letter A:**

(1) **“Act”** means the Veterinary Practice Act, Section 77-1-1 through 77-1-12 NMSA 1978.

(2) **“Animal”** means any animal, except humans, not defined as “livestock” in Subsection L of this section.

(3) **“Animal shelter”** means:

(a) a county or municipal facility that

provides shelter to animals on a regular basis; and

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

(c) does not include a municipal zoological park.

**B. Words starting with the letter B: “Board”** means the board of veterinary medicine.

**C. Words starting with the letter C:**

(1) **“Capacity for Care”** means the overall ability of an animal shelter to provide humane care of animals.

(2) **“Colony housing”** means housing two or more animals in the same primary enclosure or playgroups.

(3) **“Companion animal”** means any vertebrates commonly kept as domestic pets, excluding man, and those under the jurisdiction of the New Mexico department of game and fish and those under the jurisdiction of the New Mexico livestock board.

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

**D. Words starting with the letter D:**

(1) **“Dangerous drug”** means a drug, other than a controlled substance enumerated in Schedule I of the Controlled Substances Act, that because of a potentiality for harmful effect or the method of its use or the collateral measures necessary to its use is not safe, except under the supervision of a practitioner licensed by law to direct the use of such drug and hence for which adequate directions for use cannot be prepared. “Adequate directions for use” means directions under which the layperson

can use a drug or device safely and for the purposes for which it is intended.

(2) **“DEA”** means United States drug enforcement administration.

(3) **“Disposition”** means the adoption of an animal; return of an animal to the owner; return to field; release of an animal to a rescue organization; release of an animal to another animal shelter or to a rehabilitator licensed by the department of game and fish or the United States fish and wildlife service; or euthanasia of an animal.

**E. Words starting with E:**

(1) **“Emergency field euthanasia”** means the process defined by rule of the board to cause the death of an animal in an emergency situation when the safe and humane transport of the animal is not possible.

(2) **“Enrichment”** means improving the environment and behavioral care for confined animals.

(3) **“Euthanasia”** means to produce the humane death of an animal by standards deemed acceptable to the board as set forth in its rules.

(4) **“Euthanasia agency”** means a facility licensed by the board that provides shelter to animals on a regular basis, including a humane society or a public or private shelter facility that temporarily houses stray, unwanted or injured animals, and that performs euthanasia.

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

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

(7) **“Euthanasia technician”** means

a person licensed by the board to euthanize animals for a euthanasia agency.

**(8) “Exotic”**

means any vertebrate animals, excluding man, wild animals, livestock and companion animals.

**F. Words starting**

**with F: “FDA”** means United States food and drug administration.

**G. Words starting**

**with G: “Group Housing”** means housing two or more animals in the same primary enclosure or playgroups.

**H. Words starting**

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

**I. Words starting**

**with I: “Isolation”** means to separate apart from others.

**J. Words starting**

**with J: [RESERVED]**

**K. Words starting**

**with K: [RESERVED]**

**L. Words starting**

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

**M. Words starting**

**with M: [RESERVED]**

**N. Words starting**

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

**O. Words starting**

**with O: [RESERVED]**

**P. Words starting**

**with P:**

**(1) “Personal protective equipment”**

means items such as gloves, eye protection, gowns, and boots that protect a person from exposure to chemical or biological agents.

**(2)**

**“Population management”** means a proactive process of planning,

ongoing daily evaluations and responses to changing conditions as an organization cares for multiple animals, based on that organization’s capacity for care and statistical data.

**(3) “Potable water”**

means clean, fresh water that is suitable for drinking.

**(4) “Primary enclosure”**

means an animal enclosure in which the animal normally eats, eliminates, rests, and sleeps.

**Q. Words starting**

**with Q: “Quarantine”** means restriction of activity, enforced isolation. As defined by Subsection Q of Section 7.4.2.7 NMAC quarantine means the strict containment of all animals specified in the order of the district health officer upon the private premises of the owner, or under restraint by leash, or within a closed cage or paddock and shall include other measures ordered by the district health officer to control the spread of rabies.

**R. Words starting**

**with R: “Rescue organization”** means an organization that rescues animals and is not involved in the breeding of animals.

**S. Words starting**

**with S:**

**(1) “Sharps”**

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

**(2) “Spot-cleaning”**

means using cleaning solution and a paper towel or rag to remove any smudges or contaminants in lieu of total disinfection.

**(3)**

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

**T. Words starting**

**with T: [RESERVED]**

**U. Words starting**

**with U: [RESERVED]**

**V. Words starting**

**with V:**

**(1)**

**“Ventilation”** means the circulation of air; a system or means of providing fresh air.

**(2)**

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

**(3)**

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

**W. Words starting**

**with W: “Wild animal”** means any vertebrate animals under the jurisdiction of the New Mexico game and fish department.

**X. Words starting**

**with X: [RESERVED]**

**Y. Words starting**

**with Y: [RESERVED]**

**Z. Words starting**

**with Z: [RESERVED]**

[16.24.7.7 NMAC - N, 5/25/2021]

**16.24.7.8 SHELTERING CAPACITY STANDARDS:**

**A.** The delivery of sheltering services shall be provided in a competent and humane matter.

**B.** Sheltering services shall be performed in a manner ensuring the health and well-being of animals while in the care of sheltering providers. The recommended standard of care is a minimum of 15 minutes per animal per day.

**C.** Sheltering providers shall practice active population management within the balance of decisions and practices that support the overall population of the shelter. [16.24.7.8 NMAC - N, 5/25/2021]

**16.24.7.9 PREMISES**

**- STRUCTURAL:** All exterior structures and fencing may:

**A.** be constructed of building materials that will ensure a sound physical structure;

**B.** be maintained in good repair;

**C.** protect animals from injury and ensure containment within shelter;

**D.** prevent the entry of outside animals and unauthorized persons;

**E.** include four solid walls for animal weather protection

**F.** include fencing sufficiently constructed to prevent animals from jumping, climbing or digging to escape.

[16.24.7.9 NMAC - N, 5/25/2021]

#### **16.24.7.10 FACILITY STANDARDS:**

**A.** Animal housing areas may be physically apart from areas where food and drink for human consumption are prepared, served or stored.

**B.** Interior building surfaces may be constructed and maintained to be water resistant to moisture and easily cleaned.

**C.** Animal food storage and equipment cleaning areas may be physically apart from animal housing.

**D.** Reliable, adequate electric power or gas may be provided for lighting, air circulation, heating, and cooling.

**E.** Reliable and adequate potable water shall be provided. Back flow preventers may be installed on any threaded faucets with attached hoses for the purpose of cleaning the facility, or on the main water line serving the facility.

**F.** Noise control may be considered for the well being of animals as well as visitors, volunteers and staff. Noise mitigation may include:

(1) Housing cats away from the sound of dogs.

(2) Facility modifications to minimize or contain barking.

(3) Training staff to minimize slamming doors.

(4) Using music to reduce animal stress.

**G.** Readily accessible washrooms or sinks may be provided to maintain personal hygiene of animal caretakers.

(1) A two-compartment sink in good repair may be provided for washing and sanitizing equipment used for animal care and feeding.

(2) A tub or low-pressure hose may be available to wash any animal that becomes soiled to avoid the use of high-pressure hoses for cleaning animals.

**H.** Indoor housing for animals shall be sufficiently heated or cooled to protect animals from extreme temperatures. The ambient temperature shall be consistent with the requirements of the specific species.

**I.** Indoor housing for animals may be adequately ventilated with fresh air to minimize odors and moisture and to provide for the health of the animals.

**J.** Water supply may allow for hose hook up to readily reach all parts of animal housing. Water pressure shall be adequate for cleaning of animal housing areas.

**K.** A suitable method to rapidly eliminate excess water from animal housing areas may be provided. Drains shall be properly constructed and maintained in good repair. If closed drainage systems are used, wastewater shall be disposed of by connection to a sanitary sewer or approved sewage disposal system.

[16.24.7.10 NMAC - N, 5/25/2021]

#### **16.24.7.11 ANIMAL ENCLOSURE AND HOUSING STANDARDS:**

**A.** General indoor enclosures.

(1) Primary enclosures shall provide sufficient space to allow each animal to make normal postural adjustments to:

(a) Turn freely.

(b) Easily stand.

(c) Sit.

(d) Stretch.

(e) Move their head without touching the top or sides of the enclosure.

(f) Lie in a comfortable position with limbs extended.

(g) Move about and assume a comfortable posture for feeding, drinking, urinating, and defecating.

(h) Dogs and cats shall be able to hold their tails erect when in a normal standing position.

(2) Primary enclosures may allow animals to be able to see out while avoiding visual contact with other animals.

(3) Animals housed shall be confined to a primary enclosure at all times unless under the direct supervision of shelter personnel or a designee.

(4) Primary enclosures shall be structurally sound and maintained in good repair and sanitary condition to protect the animals from injury and disease.

(a) Primary enclosures shall be constructed and maintained to enable the animals to remain dry and clean and to provide convenient access to food and clean water.

(b) Latches shall be secure and in good working order so that animals cannot escape.

(5) Floors of primary enclosures shall be constructed to prevent injury to animals, ensure adequate draining and prevent pooling of fluids. Wire mesh or slatted floors in cages shall not be used.

(6) Guillotine or doors separating two enclosure section shall be in working order.

(7) Animals shall not be able to escape from their primary enclosure.

(8) When housing aggressive, under quarantine or protective custody animals, condition of all enclosures shall be monitored daily with various types of locks considered.

(9) Primary enclosures may house one animal; if compatible, two altered animals per enclosure with the exceptions

of litters housed with their dams or colony housing. Animals shall not be randomly housed in groups. Animals that fight shall not be grouped with other animals.

(10) Isolation areas shall be provided for animals with infectious diseases. Ten percent of the total housing may be designated for this purpose. The isolation housing may be double-sided to facilitate cleaning without removing the animal. Handwashing stations may be available at all isolation areas. Isolation areas may have separate cleaning tools and personal protective equipment.

(11) Dogs shall not be tethered except in the short term to facilitate cleaning primary enclosure or in the event of a fire or flood emergency. In emergency situations, short term tethering of dogs shall be used only until transport to another facility can be made. The safety of the dog shall be ensured while tethered. Cats shall not be tethered.

(12) Animals placed in crates or carriers, even for a short time, shall have ample space to stand up, turn around and lie down. Crates and carriers shall be disinfected and dried after each use and before another animal is placed in the crate or carrier. Crates and carriers may not be used as primary enclosures.

**B. Outdoor primary enclosures.** It is not recommended that primary enclosures be exclusively outdoors and not for very young, old, sick, or injured animals.

(1) Structurally sound, weatherproof enclosures may be made accessible to animals housed exclusively outdoors. Water resistant and windproof structure of suitable size shall be provided so animals stay warm and dry during cold weather; shaded and cool during hot weather. The structure may have a water-resistant door covering or offset doorway to minimize drafts, provide proper ventilation and made of durable materials with the floor raised off the ground to prevent water entry.

(2) A shaded area may be provided to all animals housed in an outdoor primary enclosure. An animal shall be able to rest in the shade, outside of the interior structure, but within the fencing or run.

(3) Sufficient clean, absorbent bedding material in addition to other means of protection from weather may be provided for the health and safety of the animals and may prevent strong odors from forming if replaced regularly.

(4) Floors of outdoor enclosures may be constructed of gravel, sand or soil; a solid material such as concrete is preferable. It is not possible to sanitize or disinfect gravel, sand or soil.

**C. Enclosure Requirements for Cats**

(1) Cats shall be able to assume normal postures in primary enclosures. Space may be large enough to accommodate bedding, food and water dishes and a litter box. When there is more than one cat occupying a cage, additional floor and vertical space may be provided.

(2) Primary enclosures may be made of stainless steel, fiberglass, or other impervious material that is water-resistant and can be cleaned and sanitized. Chicken wire, barbed wire and wood shall not be used.

(3) Feral cat boxes, which allow for hiding places within the cage, reduce stress for all cats.

(4) Cats may be housed in a separate building or in a separate room far removed from rooms containing dog runs.

**D. Enclosure requirements for dogs.** Dogs shall be able to assume normal postures and engage in normal behaviors playing and moving freely without encountering another dog. Space may be large enough to accommodate bedding, food and water bowls.

(1) Enclosure height may be a minimum of one and one-half times the height of the dog at the shoulder.

(2) Floors in dog runs may slope to drain liquid out of runs to prevent pooling or puddling in runs or walkways. Slope may be one-quarter to one-half inch per linear foot.

(3) To prevent water and waste material from flowing from run to run, there may be solid walls between dog runs. Height of walls may be sufficient to prevent nose-to-nose contact of dogs between runs.

(4) Fencing or other materials that allow for airflow may be used, horizontally and vertically, above the solid walls providing a protective barrier at least six feet high between runs to prevent dogs from jumping over.

(5) All solid surfaces of dog runs may be constructed of water-resistant concrete, stone, cement block, brick, metal, or non-porous synthetic material which can be cleaned and sanitized. Sealed floors can be cleaned and disinfected most effectively. Fencing materials may be water resistant which can be easily cleaned and sanitized. Fencing materials shall be gauged and spaced to avoid escape by or injury to dogs. Chicken wire, barbed wire and wood shall not be used.

(6) If more than one dog occupies the same primary enclosure, additional floor and vertical space may be provided.

**E. Enclosure requirements for other species.** Species other than dogs and cats shall have special requirements for housing and care.

(1) Stray livestock. The New Mexico livestock board shall be contacted to help facilitate the identification and ownership.

(2) Exotic animals. A veterinarian or someone with expertise in handling and caring for the species may be contacted for guidance.

(3) Wild animals. The appropriate agency shall be contacted to take possession of the animal.

(a) Wild birds. The U.S. fish and wildlife service shall be contacted.

(b) For any other wild animals, N.M. department of game and fish shall be contacted.

F. Foster housing standards.

(1) Potential foster homes may go through an application process with background checks and home inspections.

(2) Guidelines addressing the following may be established:

(a) Vaccination and altered status of foster home animals.

(b) Maximum number of animals allowed.

(c) Housing and care standards.

(d) Maximum length of foster stay.

(3) Foster parents may be trained or educated on standards of care and potential health and wellness issues; emergency contact information may be provided.

(4) Care capacity within foster home ay be considered before sending animals into the homes.

(5) Foster animals may be altered and have current vaccinations unless under the care of a veterinarian.

(6) Tag or microchip identification for foster animals may be provided to foster homes.

G. Colony/group housing standards - Dogs. Dogs housed in the same primary enclosure may be maintained in compatible groups with the following restrictions:

(1) Primary enclosures may house one, or two, altered compatible dogs per enclosure. Litters may be housed with their dams.

(2) A female dog in season shall not be housed in the same primary enclosure with a male dog.

(3) An unaltered male dog shall not be housed in the same primary enclosure with an unaltered female other than under breeding age litter mates.

(4) An aggressive dog shall be housed individually in a primary enclosure; for protection of shelter personnel the enclosure shall be marked accordingly.

(5) Nursing mothers and their puppies may be removed from other animals. Removal will allow privacy, protection from unwanted intrusion and noise, alleviates fear/aggression, and to promote general well-being.

(6) Dogs shall not be housed in the same primary enclosure as cats.

(7) Dogs shall not be housed in the same primary enclosure with any other species of animals.

H. Colony/group housing standards – Cats. When housing cats in colony rooms, the following guidelines may be followed:

(1) Cats may have at least 18 square feet of floor space per cat to maintain a distance of three to ten feet between cats; non-inclusive of perches or walkways. In temperate climates, can include outdoor access with 24-hour access to indoors.

(2) Cats with unknown vaccination history may be evaluated for health and behavior, vaccinated, isolated, and observed for at least 24 hours before being placed in cat colony rooms.

(3) Unsterilized males shall be separated from females. A female in season shall not be housed in the same primary enclosure as a male.

(4) Nursing mothers and their kittens may not be housed with other cats.

(5) One 12 inch by eight inch cat litter pan for every three cats or five kittens may be provided.

(6) Water and dry food may be available at all times.

(7) Colony rooms may be equipped with shelves, resting boxes and hiding boxes.

(8) Stainless steel, fiberglass or other materials that are water resistant and can be cleaned and sanitized may be used. Wood shall not be used.

(9) Any cat exhibiting aggressive behavior shall be housed individually in its primary enclosure; for the protection of shelter personnel the enclosure shall be marked accordingly.

[16.24.7.11 NMAC - N, 5/25/2021]

#### 16.24.7.12 SANITATION STANDARDS:

A. Written sanitation protocols shall be developed to provide consistent and thorough sanitation of the facilities. Protocols may be reviewed periodically in consultation with a veterinarian. Protocols may be updated for best practices. During an outbreak, sanitation protocols may be revised as needed to address specific pathogens.

B. Animal housing units or kennels shall be cleaned once daily at minimum and shall be thoroughly cleaned and disinfected once an animal no longer occupies the unit or kennel.

C. Animal waste shall be removed from primary enclosures daily or more often to prevent contamination of animals and to reduce disease hazards and odors. Waste shall be disposed of in accordance with local ordinance.

D. Cages, kennels, containers, equipment, and other items shall be cleaned at least once daily to maintain sanitary conditions.

E. Kennels and cages shall not be hosed down while animals are inside the kennels and cages.

F. To minimize stress for an animal remaining in an enclosure, spot cleaning may be used as appropriate. The enclosure shall be thoroughly cleaned and disinfected once an animal leaves an enclosure.

G. Cleaning may be carried out in the following order:

from first to last to minimize the spread of disease.

(1) Healthy puppies and kittens; healthy, nursing bitches and queens.

(2) Healthy adult or quarantined animals.

(3) Unhealthy isolated animals.

**H.** To minimize the spread of disease, water and food containers and all other utensils shall be cleaned and sanitized using generally accepted methods such as the use of heat and chemical sanitizing solution. Containers shall be cleaned and sanitized as often as necessary to maintain sanitary conditions; food pans and bowls shall be cleaned between each use. If sinks are the method for cleaning, water and food pans or bowls shall be soaked and washed separately from litter pans with water and disinfectant changed between water and food pans or bowls and litter pans.

**I.** Product manufacturer instructions shall be followed precisely when cleaning, sanitizing and disinfecting. Chemicals shall not be mixed. Pine products and fumes are extremely toxic to cats and birds and shall not be used near them or to clean cat enclosures, pans, bowls etc.

**J.** Mopping may be avoided to reduce the spread of pathogens. If hosing is not possible and mopping must be used, disinfectant solution shall not be used from one housing area to another.

**K.** Water and food pans or bowls may be made of metal or be disposable. Plastic should not be used because it may be chewed and ingested and may retain contaminants.

**L.** Litter boxes shall be provided for cats in their primary enclosures with soiled litter disposed of on an as needed basis, a minimum of once a day. Litter boxes may be disposable or reusable if they are cleaned daily and sanitized before use by another cat. The use of plastic litter boxes is not recommended because they cannot be sufficiently disinfected and may be a source of disease.

**M.** Animal and food waste, soiled bedding, debris, and other organic waste may be stored in closed containers and disposed of on an as needed basis to avoid vermin infestation, odors, disease, and nuisances. Waste may be removed at least weekly from the facility. All reusable trash containers may be regularly sanitized and disinfected. All clothing and bedding shall be laundered and thoroughly dried before reuse.

**N.** To maintain sanitary conditions, pens and runs with absorbent or loose flooring i.e., sand, gravel or soil soiled with urine and/or fecal matter shall have such materials replaced as necessary. These types of organic materials cannot be sanitized or disinfected when the surface is muddy, water puddled or when odors and vermin are present.

**O.** Buildings and grounds shall be kept clean, in good repair and free of trash.

**P.** Weeds may be mowed or cut down where animals are kept or exercised.

**Q.** An effective program shall be maintained for the control of insects, fleas, avian, and mammalian pests.

**R.** Opened food supplies may be stored separately in closed waterproof containers. Unopened supplies of food may be stored off of the floor and adequately protected against contamination or infestation by vermin.

**S.** Animal bedding may be stored off of the floor and adequately protected against contamination or infestation.

**T.** Dead animals shall be stored and disposed of in strict compliance with state laws and local ordinances to avoid disease hazard or nuisance.

[16.24.7.12 NMAC - N, 5/25/2021]

**16.24.7.13 ANIMAL CARE AND HANDLING STANDARDS:**

**A.** Food and water  
(1) Animals may be fed twice daily except in cases of veterinary treatment or malnutrition. The food shall be free

of contamination, palatable and of sufficient quality and nutritive value to meet normal daily requirements for the condition, size and age of the animal. Refrigeration may be provided for perishable food.

(2) Uneaten food shall be discarded after 24 hours. Food offered to an animal remaining uneaten shall not be fed to other animals.

(3) Care shall be taken not to underfeed or overfeed animals.

(4) Special consideration regarding types of food and frequency of feeding shall be given to puppies, kittens, older animals, and nursing dams.

(5) Malnourished or emaciated animals may need an increased food intake; introduction of food shall be regulated and increased gradually preferably with veterinary guidance.

(6) Animals shall be provided potable water at all times.

(7) Food and water containers shall be accessible and located to minimize contamination by excrement or other material. Food and water containers shall be cleaned daily; disposable food containers may be used only if discarded after each use.

(8) Food and water containers may be of a size to ensure accessibility based on the size of the animal.

(9) Spoiled, moldy food or food contaminated with feces, droppings or insects shall never be used. Food left in food bowls from the previous day shall be disposed of, disposable bowls discarded and non-disposable bowls cleaned.

**B. Enrichment**

(1) Enrichment means improving the environment and behavioral care for confined animals. Enrichment reduces stress and improves well-being by providing physical and mental stimulation and encouraging species-typical behaviors. Enrichment shall not be considered optional.

(2) If the recommended space requirements for dogs cannot be met due to shelter configuration, dogs may be exercised twice daily. For dogs requiring an opportunity to exercise, a written plan may be on file with each exercise session noted.

(3) Behavioral health and care of each animal as well as the conditions experienced by the entire population shall be a consideration of the shelter.

**C. Quarantine and isolation**

(1) Animals that have bitten a human shall be quarantined pursuant to New Mexico state law, local municipal or county ordinances.

(2) A veterinarian may be consulted.

(3) Animals under quarantine for observation of rabies symptoms after a bite incident shall be physically separated from all other animals and shall never be housed with animals under treatment for a communicable disease.

(4) Quarantine areas may have a separate ventilation system and may only be accessible to shelter personnel or owners accompanied by shelter personnel.

(5) Animals diagnosed and/or under treatment for a communicable disease may be isolated from healthy animals to minimize spread of disease. If isolation is impossible or inadequate to control the spread of pathogens, the shelter shall weigh consequences of exposure to general population and the alternatives of euthanasia or transfer to an appropriate separate facility.

**D. Other care considerations**

(1) Shelter animals shall always be handled safely and humanely to prevent injury, distress and spread of disease both to animals and personnel.

(2) Adequate animal handling equipment such as transfer cages, nets, catch poles, syringe poles shall be available, kept clean and in good repair to ensure the safety of personnel and animals.

(3) Shelter personnel may be trained in current humane and sanitary animal handling techniques.

(4) Long term confinement, including feral and aggressive animals, who cannot be provided with basic care, daily enrichment and exercise without inducing stress shall be euthanized or transferred to a separate facility.

(5) The minimal amount of physical restraint needed without injury to people or animals shall be used.

(6) The use of catch poles for routine restraint of cats, including carrying or lifting, is inhumane and poses significant risk of injury to the animal and shall not be used. Humane traps, boxes or nets designed for restraint shall be used for handling fractious cats or cats who appear to be unaccustomed to handling.

(7) When cats are moved from one location to another, it is recommended to cover the carrier with a towel or sheet to reduce stress and susceptibility to disease.

(8) Cats may be provided with clean bedding in each cage. Bedding shall be replaced when soiled or wet and when a new animal is introduced to the enclosure.

(9) Bedding or platforms may be provided to dogs on an as needed basis. Clean bedding may be provided to old, young, ill, or injured dogs. Bedding shall be replaced when soiled or wet and when a new animal is introduced to the enclosure. Only single layer bedding may be used for puppies and kittens to prevent accidental suffocation. Bedding may be withheld if it poses a danger to the animal.

(10) Nursing dams may be provided with a whelping box. If a shelter is unable to provide a whelping box, the shelter shall ensure nursing dams have adequate bedding, warmth and cleanliness. Bedding shall be provided in the whelping box and replaced when soiled or wet.

(11) Nursing mothers and their babies may be removed from other animals to allow for privacy, protect them from unwanted intrusion and noise, to alleviate fear/aggression, and to promote their general well-being.

(12) Animals may be cleaned and groomed on an as needed basis.

(13) Medical issues may be treated; matted coats can cause pain, skin or eye irritation, or trap fecal matter. Bathing may be necessary to prevent or treat parasites and/or insects.

(14) No animal shall be allowed to suffer while in the care of the shelter.

(15) Care shall be taken to ensure that animals are not squirted or hosed with water, not put in contact with chemicals and not placed back in a wet or damp enclosures.

[16.24.7.13 NMAC - N, 5/25/2021]

**16.24.7.14 DISEASE CONTROL, HEALTH AND VETERINARY CARE STANDARDS:**

**A.** No animal shall be allowed to suffer due to lack of veterinary care.

**B.** Shelters shall not fail to provide treatment for pain.

**C.** Shelters shall ensure compliance with all federal, state and local laws concerning reportable diseases.

**D.** Animals may be examined for injury and signs of disease at the time of impound under the guidance of a veterinarian, if possible, and treated immediately if animal is in pain or distress. If injured or sick animals cannot be provided veterinary care in a timely manner to stop their pain and suffering, the animal shall be humanely euthanized or immediately transferred to another facility where veterinary care can be timely provided.

**E.** Common signs of illness, injury or parasitic infestation in dogs and cats that warrant veterinary care:

(1) Eyes are watery, appear swollen or show discharge.

(2) Ears are red or inflamed, show discharge or have a foul odor.

(3) Nose shows mucous, blood or pus discharge, or is crusty, congested or blocked.

(4) Gums are swollen or inflamed, teeth are loose or brown, or mouth has a foul odor.

(5) Animal is sneezing, coughing or wheezing.

(6) Animal has fleas or ticks, skin shows swelling or lesions.

(7) Animal limps or does not place weight on a limb.

(8) Animal is thin or obese.

(9) Animal has wounds, abscesses, cuts, or abrasions.

(10) Body temperature is abnormal.

(11) Animal is vomiting or has diarrhea.

**F.** Shelter may have a trained and experienced staff member, a veterinary technician or a veterinarian available to check animals and to provide care. Symptoms of possible illness shall be noted, recorded and brought to a supervisor's attention immediately.

**G.** Animals may be observed daily for signs of disease or distress. An animal suspected of having an infectious disease may be physically separated from other susceptible animals until the animal is determined to be non-infectious.

**H.** A system may be in place to care for injured and sick animals brought to the shelter after normal working hours. Shelters may enter into a written contract with a local veterinarian to be available on call for treatment after hours.

**I.** Animals with obvious signs of serious disease, injury or distress that cannot be addressed or be immediately transferred to another facility where veterinary care can be timely provided shall be humanely euthanized.

**J.** For humane reasons, it may be necessary to euthanize an animal despite the holding time requirements not having been met. An animal shall not be allowed to suffer while in the shelter's care.

**K.** Dogs and cats may be dipped or sprayed, top spotted or given oral treatment for fleas, ticks or internal parasites, as necessary. Methods shall be used according to the season, region of state and according to manufacturer's instructions concerning treatment strengths depending on size, age or health of animal.  
[16.24.7.14 NMAC - N, 5/25/2021]

**16.24.7.15 VACCINATIONS STANDARDS:**

**A.** All dogs and cats may be vaccinated upon initial impound. A veterinarian or trained staff member may administer the following core vaccines:

(1) Dogs:  
(a) DA2PP or DHPP vaccine to provide protection against distemper, adenovirus-2, parvovirus, parainfluenza. Adult dogs may be vaccinated upon intake. Puppies may be vaccinated starting at 4-6 weeks of age and re-vaccinated every 2-4 weeks until 16-18 weeks of age.

(b) Bordetella bronchiseptica vaccine to protect against kennel cough for puppies and adult dogs.  
(2) Cats: FVRCP vaccine to provide protection against feline herpesvirus, feline viral rhinotracheitis, feline calicivirus, and feline panleukopenia. Adult cats may be vaccinated once upon intake. Kittens may be vaccinated starting at 4-6 weeks of age and re-vaccinated every 2-4 weeks until 18 weeks of age. A modified live vaccine is recommended.

**B.** All animals shall be considered unvaccinated unless a documented medical record exists. Special consideration shall be given to animals with medical conditions, pregnant animals and animals less than 4 weeks old.

**C.** Core vaccines may be administered at the time of intake for optimum disease control.

**D.** Rabies vaccinations may be given at the time of adoption or by the adopter's veterinarian depending on local municipal or county ordinance.

**E.** Rabies vaccinations shall be administered pursuant to Section 77-1-3 NMSA 1978.  
[16.24.7.15 NMAC - N, 5/25/2021]

**16.24.7.16 RECORD KEEPING STANDARDS:**

**A.** Records shall be kept for each animal impounded, for each animal accepted as an owner-surrender, for each animal brought to the shelter by a member of the public as a stray, and for each animal that is otherwise acquired.

**B.** Records shall include:

(1) Date of acquisition and manner of acquisition: animal control officer, public intake, owner surrender etc.

(2) Description and identifying characteristics including: species, breed, color, age, weight, gender, and any background information.

(3) Tag and/or microchip information.

(4) Reason for impoundment or relinquishment.

(5) Veterinary care.

(6) Disposition of the animal.

(7) Date of redemption of adoption, transfer of ownership or euthanasia.

(8) Name, address and telephone number of receiving person or entity.

**C.** Statistics may include monthly intake and outcomes by type for each species.

**D.** Collars, tags or other potential identification may be kept on the animal or in the animal's file during the impound time.

**E.** Each animal shall be identifiable by use of cage/run cards and/or identifying collars.



**F.** Photographs may be taken of each animal, maintained with the animal's records and posted on its cage to minimize the possibility of a mistaken euthanasia.

**G.** Shelters shall maintain records for a minimum of two years from the date of an animal's final disposition.

[16.24.7.16 NMAC - N, 5/25/2021]

**16.24.7.17 COMMUNITY ACCESS AND SERVICE STANDARDS:**

**A.** Shelters may be accessible to the public seeking to reclaim their animal or adopt an animal.

**(1)** Hours open to the public shall be clearly marked on the facility.

**(2)** The shelter's telephone number and address shall be listed in local telephone directories.

**(3)** The shelter may have internet presence with all pertinent information as well as listings of lost or found animals and animals available for adoption.

**(4)** Shelters may be open to the public at least one weekend day or two days until 6:00 p.m.

**B.** Shelters may have provisions for animals dropped off after hours. Care shall be taken so that animals are protected from injury, theft and the elements. Unattended drop boxes are not recommended. Provisions may be made for after hours entry, impoundment and treatment procedures for animal control officers to follow. Sick or injured animals shall be attended to by trained personnel immediately due to potential for unalleviated suffering of the animal as well as liability to the shelter.

**C.** When an animal has visible identification or a microchip upon impound, shelter personnel shall make every attempt to contact the owner. Each animal shall be scanned for a microchip and the number entered into the animal's record. If the owner surrenders a microchipped animal, the shelter shall

determine if the surrendering owner matches the name on the microchip to ensure the animal is not stolen. In the case of stray animals, the shelter shall promptly attempt to contact the owner to whom the microchip is registered by telephone. In the event no contact can be made via telephone, then the shelter may send a letter to the address listed on the microchip registration. Attempts to trace microchip information and contact attempts with the registered owner shall be documented.

**D.** In addition to being scanned at intake, animals shall be re-scanned prior to final disposition. If the final disposition is by euthanasia, scanning shall be done pursuant to board of veterinary medicine rule Subsection B of Section 16.24.3.8 NMAC, Duties of Licensee and Certificate Holders.

**E.** Shelters shall refer to local, municipal or county ordinance which address the minimum stray holding time. Stray animals without identification should be held long enough to give owner sufficient time to reclaim the animal. Stray animals with identification i.e. tag, tattoo, and/or microchip may be held long enough to allow the shelter sufficient time for notification and owner reclaim.

**F.** Animals in law enforcement protective custody shall be in locked areas with appropriate signage that meet standards and are inaccessible to the public. Depending on the case type, owner may be allowed to visit the animal or animals. [16.24.7.17 NMAC - N, 5/25/2021]

**16.24.7.18 SHELTER PERSONNEL STANDARDS:**

**A.** The shelter shall maintain compliance with federal and state occupational safety regulations for chemical, biological and physical hazards in the workplace.

**B.** All shelter personnel may be trained in all aspects of their responsibilities. Training topics may be, at minimum:

**(1)** Animal health and disease control.

**(2)** Humane care and treatment of animals.

**(3)** Control of animals in an animal shelter.

**(4)** Transportation of animals.

**(5)** Disease recognition.

**(6)** Animal breed identification and behavior.

**(7)** Pre-adoption evaluation and temperament testing.

**(8)** Adoption policies and procedures.

**(9)** Handling, capture and restraint techniques.

**(10)** Personnel safety and use of equipment.

**(11)** Euthanasia.

**(12)** Compassion fatigue and self-care.

**C.** A shelter shall create and maintain a comprehensive procedures manual (SOP). Shelter personnel may be provided with a comprehensive standard operating procedures (SOP) manual. The SOP may outline all shelter policies and procedures and the duties for each position.

**D.** Shelter personnel shall adhere to New Mexico's anti-cruelty law at all times. See Section 30-18-1 *et seq.* NMSA 1978.

**E.** Personal protective equipment and appropriate animal handling equipment shall be readily available to personnel.

**F.** Shelter personnel may wash their hands frequently to protect themselves and the animals. Hand sanitizers, first aid kits and eye wash stations may be made available to all employees, volunteers and visitors.

[16.24.7.18 NMAC - N, 5/25/2021]

**16.24.7.19 ADOPTION STANDARDS:**

**A.** Shelters may establish adoption fees. An adoption program may be developed and implemented. If the shelter waives specific adoption fees, the shelter guidelines shall not be waived.

**B.** Shelters may develop criteria for potential adopters

and unsuitable adopters. Adopters may sign a contract under which they agree to provide a specified level of care.

**C.** Shelters may learn temperament testing procedures to ensure that animals are fit for adoption and to facilitate the best possible match between adopters and animals.

**D.** An adoption screening program may include discussion of a suitable match between an adopter and animal.

**E.** When adopting out a known sick animal or animal that is receiving medical treatment, full disclosure shall be made to the person or organization receiving the animal.

**F.** In the event shelters offer animals for adoption that have not been sterilized, the shelter shall comply with Subsection A through F of Section 77-1-20 NMSA 1978.

**G.** Policies may be developed to avoid adopting out or releasing unaltered animals.

**H.** Shelters may consider a program to microchip all adopted animals.

**I.** Reasonable care shall be taken to adopt out or transfer only those animals free of disease and untreatable injury.

**J.** Animals believed to be dangerous, potentially dangerous in accordance with Section 77-1A-1 NMSA 1978 or have caused a serious injury resulting in same species or human death shall not be re-homed.

**K.** Shelters, in their due diligence, shall make every effort to place animals with recognized rescue organizations and responsible sanctuaries. Shelters may thoroughly research rescue organizations and sanctuaries prior to placement to avoid possible hoarding situations.

[16.24.7.19 NMAC - N, 5/25/2021]

**16.24.7.20 SHELTER  
TRANSPORT STANDARD:**

**A.** Transport vehicles and equipment shall be cleaned and sanitized prior to transport.

**B.** Animals shall not to be transported unrestrained in open beds of trucks.

**C.** Temperature extremes, below 45 degrees and above 80 degrees, during transport shall be avoided.

**D.** Compliance with state and local laws shall be followed for source and destination shelters.

**E.** Health certificates shall accompany animals crossing state lines as required.

**F.** Unfamiliar animals shall not be transported together in same enclosure.

**G.** Animals may be vaccinated and treated for internal and external parasites prior to transport.

**H.** Transport space may be adequate to allow the animal to turn around and lie down.

**I.** Transports anticipated longer than eight hours in duration may accommodate safe animal exercise and relief.

[16.24.7.20 NMAC - N, 5/25/2021]

**HISTORY OF 16.24.7 NMAC:  
[RESERVED]**

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**End of Adopted Rules**

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**Other Material Related to Administrative Law**


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**GOVERNOR,  
OFFICE OF THE**
**EXECUTIVE ORDER 2021-012**
**RENEWING THE STATE  
OF PUBLIC HEALTH  
EMERGENCY INITIALLY  
DECLARED IN EXECUTIVE  
ORDER 2020-004, OTHER  
POWERS INVOKED IN  
THAT ORDER, AND ALL  
OTHER ORDERS AND  
DIRECTIVES CONTAINED IN  
EXECUTIVE ORDERS TIED  
TO THE ONGOING PUBLIC  
HEALTH EMERGENCY**

On December 31, 2019, several cases of pneumonia with an unknown cause were detected in Wuhan City, Hubei Province, China, and reported to the World Health Organization (“WHO”). The underlying virus giving rise to those reported instances of respiratory illness was later identified as a novel coronavirus disease which has been referred to as “COVID-19.”

By the time the first COVID-19 cases had been confirmed in New Mexico, on March 11, 2020, COVID-19 had already spread globally and throughout the United States. At that time, more than 100,000 people had been infected globally and there were more than 1,000 cases in the United States, spread out over 39 states. The President of the United States declared a national state of emergency for COVID-19 on March 13, 2020. As of April 29, 2021 the Centers for Disease Control and Prevention (“CDC”) reported over 31 million people have been infected in the United States, with over 570,000 related deaths, and the New Mexico Department of Health has reported 197,447 positive COVID-19 cases and 4,058 related deaths in New Mexico.

Public health organizations have implemented emergency measures intended to slow the

spread of COVID-19. For example, on January 20, 2020, the CDC activated its Emergency Operations Center in response to the COVID-19 outbreak. The WHO declared a Public Health Emergency of International Concern shortly thereafter. All of our sister states have declared a state of emergency and implemented significant measures and deployed substantial resources to fight the spread of COVID-19; many, if not most, have kept such states of emergency in place.

New Mexico has taken aggressive measures to reduce the spread of COVID-19 and to mitigate its impacts. I have been in frequent contact with federal and state agencies and officials who are coordinating their efforts and resources to fight COVID-19. Various state agencies have been at the forefront of our State’s response to COVID-19, particularly the New Mexico Department of Health. The hard work of a variety of state employees has made a difference in our fight against COVID-19. Due to the continued spread of COVID-19, it is necessary for all branches of State government to continue taking actions to minimize transmission of COVID-19 and to reduce its attendant physical and economic harms.

Therefore, for the reasons above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and laws of the State of New Mexico, hereby ORDER and DIRECT:

1. In consultation with the New Mexico Department of Health, I have determined that the statewide public health emergency proclaimed in Executive Order 2020-004, and renewed in Executive Orders 2020-022, 2020-026, 2020-030, 2020-036, 2020-053, 2020-055, 2020-059, 2020-064, 2020-073, 2020-080, 2020-085, 2021-001, 2020-004 2021-010 and 2021-011 shall be renewed and extended

through May 28, 2021.

2. All other powers, directives, and orders invoked in Executive Order 2020-004 remain in effect.

3. All other Executive Orders with a duration that was tied to the COVID-19 public health emergency or that was not explicitly stated shall continue with the same effect, including any orders appropriating emergency funding as well as Executive Orders 2020-016, 2020-020, 2020-021, 2020-025, and 2020-039.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Executive Order shall take effect on April 30, 2021 and shall remain in effect until May 28, 2021 unless renewed, modified, or rescinded.

**DONE AT THE EXECUTIVE  
OFFICE THIS 30TH DAY OF  
APRIL 2021**

**ATTEST:  
/S/MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE**

**WITNESS MY HAND AND THE  
GREAT SEAL OF THE STATE OF  
NEW MEXICO**

**/S/MICHELLE LUJAN  
GRISHAM  
GOVERNOR**

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**HEALTH,  
DEPARTMENT OF**

**PUBLIC HEALTH ORDER  
NEW MEXICO DEPARTMENT  
OF HEALTH  
SECRETARY TRACIE C.  
COLLINS, M.D.**

**MAY 14, 2021**

**Public Health Emergency Order  
Clarifying that Current Guidance  
Documents, Advisories, and  
Emergency Public Health Orders**

**Remain  
in Effect; and Amending Prior  
Public Health Emergency Orders  
to  
Impose County-by-County  
Restrictions Due to COVID-19**

**PREFACE**

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 (“COVID-19”). Continued social distancing and self-isolation measures are necessary to protect public health given the devastating effects that are now resulting from the rapid increase in COVID-19 cases in New Mexico. It remains the core purpose of this Order to emphasize that all New Mexicans should be staying in their homes for all but the most essential activities and services. When New Mexicans are not in their homes, they must strictly adhere to social distancing protocols and wear face coverings to minimize risks. These sacrifices are the best contribution that each of us can individually make to protect the health and wellbeing of our fellow citizens and the State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans to stay in their homes for all but the most essential activities.

It is hereby **ORDERED** that

1. All current guidance documents and advisories issued by the Department of Health remain in effect.
2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:

A. March 24, 2020 Public Health Emergency

Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19;

B. December 15, 2020 Amended Public Health Emergency Order Implementing Additional Contact Tracing Information Requirements for All Laboratories and Submitters Submitting Notifiable Condition COVID-19 Test Results to the New Mexico Epidemiology and Response Division;

C. January 8, 2021 Emergency Order Implementing Administration and Reporting Requirements for All COVID-19 Vaccine Providers;

D. April 5, 2021 Amended Public Health Emergency Order Temporarily Limiting Long-Term Care Facilities Visitation Due to COVID-19; and

E. February 26, 2021 Public Health Emergency Order Implementing Administration Requirements for all COVID-19 Vaccine Providers and Requiring Accurate Information be Provided by Individuals Registering to Receive the COVID-19 Vaccine.

3. The April 28, 2021 Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders to Impose County-by-County Restrictions Due to COVID-19 is hereby amended as follows:

**ORDER**

**WHEREAS**, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

**WHEREAS**, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through May 28, 2021;

**WHEREAS**, confirmed cases in the United States have risen to more than 32.8 million and confirmed COVID-19 infections in New Mexico have risen to over 200,000;

**WHEREAS**, COVID-19 is a deadly virus and has taken the lives of over 583,000 Americans and over 4,113 New Mexicans;

**WHEREAS**, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

**WHEREAS**, vaccination, social distancing and the consistent and proper use of face coverings in public spaces are the most effective ways New Mexicans can minimize the spread of COVID-19 and mitigate the potentially devastating impact of this pandemic in New Mexico; and

**WHEREAS**, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

**NOW, THEREFORE, I,** Tracie C. Collins, M.D., Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance, as defined in NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

**DEFINITIONS**

As used in this Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) “Bars and clubs” means any business, other than those specifically defined as a “food and drink establishment,” that typically or actually generates more than half of its revenue from the sale of alcohol for on-premises consumption, as well as adult entertainment venues, nightclubs, and dance clubs, regardless of the source of their revenue.

(2) “Close-contact businesses” include barbershops, hair salons, tattoo parlors, nail salons, spas, massage therapy services, esthetician clinics, and tanning salons.

(3) “COVID-Safe Practices” (“CSPs”) are those directives, guidelines, and recommendations for businesses and other public operations that are set out and memorialized in the document titled “All Together New Mexico: COVID-Safe Practices for Individuals and Employers.” This document may be obtained at the following link <https://cv.nmhealth.org/covidsafe-practices/>.

(4) “Essential business” means any business or non-profit entity falling within one or more of the following categories:

a. Health care operations including hospitals, walk-in-care health facilities, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, drug and alcohol recovery support services, and medical supplies and equipment manufacturers and providers;

b. Homeless shelters, food banks, and other services providing care to indigent or needy populations;

c. Childcare facilities;

d. Grocery stores, supermarkets, food banks, farmers’ markets and vendors who sell food, convenience stores, and other businesses that generate more than one-third of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, animal feed or supplies, fresh meats, fish, and poultry, and any other consumable food and drink products;

e. Farms, ranches, and other food cultivation, processing, or packaging operations;

f. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, self-storage facilities, airport operations, public transportation, airlines, taxis, private transportation providers, transportation network companies, water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and

construction of roads and highways, gas stations, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;

g. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;

h. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades;

i. Veterinary and livestock services, animal shelters and facilities providing pet adoption, daycare, or boarding services;

j. Media services;

k. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bike repair products;

l. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;

m. Hardware stores;

n. Laundromats and dry cleaner services;

o. Crematoriums, funeral homes, and cemeteries;

p. Banks, credit unions, insurance providers, licensed check cashing businesses, payroll services, brokerage services, and investment management firms;

q. Businesses providing mailing and shipping services;

r. Laboratories and defense and national security-related operations supporting the United States government, a contractor to the United States government, or any federal entity;

s. Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and

t. Logistics, and also businesses that store, transport, or deliver groceries, food, materials, goods, or services directly to residences, retailers, government institutions, or essential businesses.

(5) “Food and drink establishments” include restaurants, breweries, wineries, distillers, cafes, coffee shops, or other similar establishments that offer food or drink. For purposes of this section, “breweries” are those businesses licensed pursuant to NMSA 1978, Section 60-6A-26.1; “distillers” are those businesses licensed pursuant to NMSA 1978, Section 60-6A-1; and “wineries” are those businesses licensed pursuant to NMSA 1978, Section 60-A-11.

(6) “Houses of worship” means any church, synagogue, mosque, or other gathering space where persons congregate to exercise their religious beliefs.

(7) “Large entertainment venues” mean any publicly or privately owned venue typically or actually used to host large audiences for the purposes of entertainment or amusement, including, but not limited to: convention centers, concert venues, movie theaters, performance venues, professional or semi-professional sports venues, racetracks, and theaters.

(8) “Mass gathering” means any public gathering, private gathering, organized event, ceremony, parade, funeral, or any

other grouping that brings together a specified number of individuals in a single room or connected space, confined outdoor space, or open outdoor space. “Mass gathering” does not include the presence of any number of individuals where those individuals regularly reside or individuals who are public officials or public employees in the course and scope of their employment.

(9) “Maximum capacity” means the maximum number of individuals allowed within a specified location, as determined by the relevant fire marshal or fire department. If the relevant fire marshal or fire department does not make such a determination, maximum capacity shall be determined by dividing the total square footage of floor space unoccupied by obstructions such as equipment and displays by thirty-six (36).

(10) “Places of lodging” means hotels, motels, RV parks, and short-term vacation rentals.

(11) “Recreational facilities” means any publicly or privately owned facility typically or actually used for recreational activities capable of bringing persons within close proximity of one another, including, but not limited to: aquariums, amusement parks, arcades, basketball courts, baseball fields, bowling alleys, botanical gardens, family entertainment centers, football fields, gokart courses, golf courses, guided raft and balloon tours, ice-skating rinks, museums with interactive displays or exhibits, miniature golf courses, ski areas, soccer fields, swimming pools, tennis courts, trampoline parks, youth programs, and zoos.

(12) “Retail space” means any business that regularly sells goods or services directly to consumers or end-users at the business location and includes, but is not limited to, the following “essential businesses” identified in the categories above: (1)d, (1)k, (1)m, and (1)n.

## THE “RED TO GREEN” FRAMEWORK

**I DIRECT** that the State shall continue to reopen according to the following county-by-county framework:

### SUMMARY

This Order sets out the “Red to Green” framework, which includes four levels of operations that are based on a county’s ability to satisfy specified metrics: Turquoise Level, Green Level, Yellow Level, and Red Level. The Department of Health maintains the official map displaying each county’s current level at: <https://cvprovider.nmhealth.org/public-dashboard.html>. The Department of Health updates this map every other Wednesday. A county shall remain at a given operating level so long as it continues to satisfy the specified metrics for that level. If a county fails to meet the specified metrics for a given level, the county must begin operating at the lower level’s restrictions within 48 hours of the map’s update. If a county begins meeting the specified metrics for a less restrictive level, the county may begin operating at that level’s restrictions immediately upon the map’s update. Notwithstanding the foregoing, counties which have reached Turquoise Level may operate at that level’s restrictions for a minimum of four weeks, and their map status shall only be updated once every four-week period.

### REOPENING LEVEL METRICS

Counties shall be categorized according to one of the following levels:

(1) Turquoise Level – Counties seeking to operate at this level must satisfy ALL of the following metrics for the most recent 14-day reporting period or TWO of the metrics for the TWO previous 14-day reporting periods:

(a) A new COVID-19 case incidence rate of no greater than 10 cases per 100,000

inhabitants during the most recent 14-day period;

(b)

An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 7.5%; and

(c) A

percentage of total vaccine-eligible residents fully vaccinated greater than or equal to 35% beginning on the date of this Order, 40% beginning the week of May 3, 2021, and increased by 5% every other week thereafter.

(2) Green Level

-Counties seeking to operate at this level must satisfy TWO of the following metrics for the most recent 14-day reporting period:

(a) A new

COVID-19 case incidence rate of no greater than 10 cases per 100,000 inhabitants during the most recent 14-day period;

(b)

An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 7.5%; and

(c) A

percentage of total vaccine-eligible residents fully vaccinated greater than or equal to 35% beginning on the date of this Order, 40% beginning the week of May 3, 2021, and increased by 5% every other week thereafter.

(3) Yellow Level

- Counties seeking to operate at this level must meet ONE of the following metrics for the most recent 14-day reporting period:

(a) A new

COVID-19 case incidence rate of no greater than 10 cases per 100,000 inhabitants during the most recent 14-day period;

(b)

An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 7.5%; and

(c) A

percentage of total vaccine-eligible residents fully vaccinated greater than or equal to 35% beginning

on the date of this Order, 40% beginning the week of May 3, 2021, and increased by 5% every other week thereafter.

(4) Red Level -All

other counties shall operate at the Red Level.

**REQUIREMENTS FOR EACH LEVEL**

**Turquoise Level** - Turquoise Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all “mass gatherings” of more than one hundred fifty (150) individuals are prohibited.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following capacity limits and restrictions:

a. All

“essential businesses,” excluding those defined as a “retail space,” may operate without capacity limitations but must limit operations to only those absolutely necessary to carry out essential functions.

b. “Essential

businesses” identified as a “retail space” may operate up to 75% of the maximum capacity of any enclosed space on the premises and up to 100% capacity of any outdoor space on the premises.

c. “Houses

of worship” may hold religious services up to 100% of the maximum capacity of any outdoor or enclosed space on the premises but are strongly encouraged to limit indoor services to 75% capacity.

d. “Large

entertainment venues” may operate up to 33% of the maximum capacity of any enclosed space on the premises and up to 75% capacity of any outdoor space on the premises.

e.

“Recreational facilities” may operate up to 50% of the maximum capacity of any enclosed space on the premises and up to 75% capacity of any outdoor space on the premises.

f. “Bars

and clubs” may operate up to 33% of the maximum capacity of any enclosed space on the premises and up to 75% capacity of any outdoor space on the premises. “Bars and clubs” shall comply with all other requirements applicable to “food and drink establishments.”

g. “Food

and drink establishments” may not provide indoor dine-in service, except those restaurants that have completed the NM Safe Certified training program. All “food and drink establishments” that have completed the NM Safe Certified offered at <https://nmsafecertified.org>, and also comply with all NM Safe Certified requirements, including, but not limited to: screening customers and staff for symptoms of COVID-19 prior to entry, consenting to Department of Health spot-testing of symptomatic employees, requiring dine-in customers to provide limited contact information for contact tracing purposes, and retaining contact tracing information for no less than three weeks may operate at 75% of the maximum capacity of any outdoor seating area. All “food and drink establishments,” regardless of compliance with the NM Safe Certified requirements, may operate up to 75% of the maximum capacity of any outdoor seating area. In all instances, tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served food or drink unless ordering food for carryout, and no bar or counter seating is permitted. “Food and drink establishments” may provide carryout service, or delivery service if otherwise permitted by law.

h. “Places of

lodging” which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 100% of maximum occupancy. All other “places of lodging” shall not operate at more than 50% of maximum occupancy. Further, and notwithstanding any



other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed fifteen (15) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

i. Any entity not identified above may operate up to 75% of the maximum capacity of any enclosed space on the premises and up to 100% capacity of any outdoor space on the premises.

**Green Level** - Green Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all "mass gatherings" of more than twenty (20) individuals are prohibited.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following capacity limits and restrictions:

a. All "essential businesses," excluding those defined as a "retail space," may operate without capacity limitations but must limit operations to only those absolutely necessary to carry out essential functions.

b. "Essential businesses" identified as a "retail space" may operate up to 50% of the maximum capacity of any outdoor or enclosed space on the premises.

c. "Houses of worship" may hold religious services up to 100% of the maximum capacity of any outdoor or enclosed space on the premises but are strongly encouraged to limit indoor services to 50% capacity.

d. "Large entertainment venues" may operate up to 25% of the maximum capacity of any enclosed space on the

premises and up to 50% capacity of any outdoor space on the premises.

e. "Recreational facilities" may operate up to 25% of the maximum capacity of any enclosed space on the premises and up to 50% capacity of any outdoor space on the premises.

f. "Bars and clubs" may operate up to 25% capacity of any outdoor space on the premises but shall not permit patrons to enter any indoor portion of the premises except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the premises only to the extent necessary to operate the outdoor portion. "Bars and clubs" shall comply with all other requirements applicable to "food and drink establishments."

g. "Food and drink establishments" may not provide dine-in service, except those restaurants that have completed the NM Safe Certified training program. All "food and drink establishments" that have completed the NM Safe Certified offered at <https://nmsafecertified.org>, and also comply with all

NM Safe Certified requirements, including, but not limited to: screening customers and staff for symptoms of COVID-19 prior to entry, consenting to Department of Health spot-testing of symptomatic employees, requiring dine-in customers to provide limited contact information for contact tracing purposes, and retaining contact tracing information for no less than three weeks may operate at 50% of the maximum capacity of any enclosed space on the premises. All "food and drink establishments," regardless of compliance with the NM Safe Certified requirements, may operate up to 75% of the maximum capacity of any outdoor seating area. In all instances, tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served

food or drink unless ordering food for carryout, and no bar or counter seating is permitted. "Food and drink establishments" may provide carryout service, or delivery service if otherwise permitted by law.

h. "Places of lodging" which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 75% of maximum occupancy. All other "places of lodging" shall not operate at more than 40% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed ten (10) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

i. Any entity not identified above may operate up to 50% of the maximum capacity of any outdoor or enclosed space on the premises.

**Yellow Level** - Yellow Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all "mass gatherings" of more than ten (10) individuals are prohibited.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following capacity limits and restrictions:

a. All "essential businesses," excluding those defined as a "retail space," may operate without capacity limitations but must limit operations to only those absolutely necessary to carry out essential functions.

b. "Essential businesses" identified as a "retail space" may operate up to 33% of the maximum capacity of any outdoor or enclosed space on the premises.

c. “Houses of worship” may hold religious services up to 100% of the maximum capacity of any outdoor or enclosed space on the premises but are strongly encouraged to limit indoor services up to 33% capacity.

d. “Large entertainment venues” may operate up to 25% of the maximum capacity of any outdoor space on the premises but shall not permit patrons to enter any indoor portion of the venue except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the facility only to the extent necessary to operate the outdoor portion. Notwithstanding the foregoing, “large entertainment venues” may operate up to 25% of the maximum capacity of any enclosed space on the premises for the limited purposes of recording and broadcasting entertainment, but shall in no event permit any live, in-person audience.

e. “Recreational facilities” may operate up to 33% of the maximum capacity of any outdoor space on the premises but shall not permit patrons to enter any indoor portion of the facility except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the facility only to the extent necessary to operate the outdoor portion. Notwithstanding the foregoing, pools may operate up to 33% of the maximum capacity of any enclosed space on the premises so long as they are only used for physical therapy and socially distanced exercise.

f. “Bars and clubs” may not operate.

g. “Food and drink establishments” may not provide dine-in service unless they complete the NM Safe Certified training offered at <https://nmsafecertified.org>, as well as comply with all NM Safe Certified requirements, including, but not limited to: screening customers and

staff for symptoms of COVID-19 prior to entry, consenting to Department of Health spot-testing of symptomatic employees, requiring dine-in customers to provide limited contact information for contact tracing purposes, and retaining contact tracing information for no less than three weeks. Those “food and drink establishments” that complete the NM Safe Certified training and comply with all attendant requirements mandated by that program may operate up to 33% of the maximum capacity of any enclosed space on the premises. All “food and drink establishments,” regardless of compliance with the NM Safe Certified requirements, may operate up to 75% of the maximum capacity of any outdoor seating area. In all instances, tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served food or drink unless ordering food for carryout, and no bar or counter seating is permitted. Any “food and drink establishment” that is permitted to serve alcohol must close for in person service by 10:00 p.m. and must remain closed until at least 4:00 a.m., but may continue to provide delivery service so long as customers are permitted on the premises. “Food and drink establishments” may provide carryout service, or delivery service if otherwise permitted by law.

h. “Places of lodging” which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 60% of maximum occupancy. All other “places of lodging” shall not operate at more than 33% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed five (5) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary

housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

i. “Close-contact businesses” may operate but may not exceed the lesser of 33% of the maximum capacity of any outdoor or enclosed space on the premises or twenty (20) customers inside the building at any given time.

j. Any entity not identified above may operate but may operate up to 33% of the maximum capacity of any enclosed space on the premises.

**Red Level** -Red Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all “mass gatherings” of more than five (5) individuals are prohibited.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following capacity limits and restrictions:

a. All “essential businesses,” excluding those defined as a “retail space,” may operate without capacity limitations but must limit operations to only those absolutely necessary to carry out essential functions.

b. “Essential businesses” identified as a “retail space” may operate up to 25% of the maximum capacity of any outdoor or enclosed space on the premises.

c. “Houses of worship” may hold religious services up to 100% of the maximum capacity of any outdoor or enclosed space on the premises but are strongly encouraged to limit indoor services to 25% capacity.

d. “Large entertainment venues” may not operate.

e. “Recreational facilities” may operate up to 25% of the maximum capacity of any outdoor space on the premises but shall not permit

patrons to enter any indoor portion of the facility except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the facility only to the extent necessary to operate the outdoor portion. Notwithstanding the foregoing, amusement parks may not operate. Further, pools may operate up to 25% of the maximum capacity of any enclosed space on the premises so long as they are only used for physical therapy and socially distanced exercise.

f. “Bars and clubs” may not operate.

g. “Food and drink establishments” may operate up to 25% of the maximum capacity of any outdoor seating areas but shall not permit patrons to enter any indoor portion of the premises except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the premises only to the extent necessary to operate the outdoor portion. Tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served food or drink unless ordering food for carryout, and no bar or counter seating is permitted. “Food and drink establishments” may provide carryout service, or delivery service if otherwise permitted by law. Any “food and drink establishment” that is permitted to serve alcohol must close for in-person service by 9:00 p.m. and must remain closed until at least 4:00 a.m. but may continue to provide delivery service so long as no customers are permitted on the premises.

h. “Places of lodging” which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 40% of maximum occupancy. All other “places of lodging” shall not operate at more than 25% of maximum occupancy. Further, and notwithstanding any

other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed five (5) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

i. “Close-contact businesses” may operate but may not exceed 25% of the maximum capacity of any outdoor or enclosed space on the premises or ten (10) customers inside the building at any given time.

j. Any entity not identified above may operate but may not exceed 25% of the maximum capacity of any outdoor or enclosed space on the premises.

#### **BASELINE DIRECTIVES**

Regardless of a county’s level, I **DIRECT** that the following baseline directives apply at all times and in all instances:

(1) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when: eating or drinking, exercising outdoors alone or with members of the same household; attending a small, outdoor gathering of fully vaccinated individuals no larger than the applicable mass gathering limit for the county or twenty (20) individuals, whichever is less. Notwithstanding the foregoing, fully vaccinated individuals are not required to wear a mask unless otherwise recommended by the latest official guidance from the Centers for Disease Control (“CDC”). Further, fully vaccinated individuals shall not be required to socially distance from other individuals unless otherwise recommended by the latest official guidance from the CDC, in which case they must follow that guidance. Businesses, houses of worship, and

other non-profit entities shall also follow the latest official guidance from the CDC regarding mask-wearing and social distancing, provided that nothing in this Order shall be construed as prohibiting any entity from imposing more stringent requirements.

(2) Any “food and drink establishment,” “close-contact business,” “place of lodging,” “retail space,” or other business (including “essential businesses” other than those which meet the definition of a healthcare operation, utility, or indigent care services) in which members of the public regularly visit must immediately close for a period of fourteen (14) days following the occurrence of four (4) or more rapid responses within a fourteen (14) day period. For purposes of this directive, rapid responses will be counted on a rolling basis. Notwithstanding this provision, an “essential business” may be permitted to continue operating if the Department of Health, after consultation with the New Mexico Environment Department, determines that the business is a necessary provider of goods or services within the community in light of geographic considerations. Further, “essential businesses” that test each employee every two weeks and regularly provide contact tracing data to the Environment Department shall not be subject to closure under this provision; provided that fully vaccinated employees, other than those working in congregate care settings such as correctional facilities and long-term care facilities, shall not be required to be tested every two weeks.

(3) All businesses, houses of worship, and other non-profit entities must adhere to the pertinent CSP’s. In the event the pertinent CSP’s specify a reduced capacity limit, the CSP’s limit shall control.

(4) Private educational institutions serving children and young adults from pre-Kindergarten through 12th Grade,

including homeschools serving children who are not household members, shall adhere to the face covering and other COVID-Safe Practices requirements for in person instruction contained in the New Mexico’s Public Education Department’s “Reentry Guidance” and “COVID-19 Response Toolkit for New Mexico’s Public Schools”, available at <https://webnew.ped.state.nm.us/reentry-district-and-school-guidance/>, and may operate up to maximum capacity. Private schools shall report to the New Mexico Public Education Department all cases of COVID-19-positive students, staff, contractors and volunteers associated with the school within four hours of the school being notified of the positive case, pursuant to the procedures in the current COVID-19 Response Toolkit for New Mexico’s Public Elementary Schools. Private schools must immediately close for a period of fourteen (14) days following the last occurrence of four (4) or more rapid responses within a fourteen (14) day period. Private schools also are subject to inclusion on the New Mexico Environment Department’s watchlist and closure list.

(5) State museums may operate subject to the capacity level and restrictions applicable to comparable private museums located in their respective counties.

**I FURTHER DIRECT** as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the Public Health Act.

(3) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Order shall take effect immediately and remain in effect through June 11, 2021.

(5) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the New Mexico Environment Department, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(6) Any and all State officials authorized by the Department of Health may enforce this Public Health Order by issuing a citation of violation, which may result in civil administrative penalties of up to \$5,000 for each violation under Section 12-10A-19.

**I FURTHER ADVISE the public to take the following preventive precautions:**

- **New Mexico citizens should stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.**
- Avoid crowds.
- Avoid all non-essential travel including plane trips and cruise ships.

**DONE AT THE EXECUTIVE OFFICE THIS 14TH DAY OF MAY 2021**

**ATTEST:  
/S/ MAGGIE TOULOUSE  
OLIVER  
SECRETARY OF STATE**

**WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO**

**/S/ TRACIE C. COLLINS, M.D.  
SECRETARY DESIGNATE OF THE STATE OF NEW MEXICO  
DEPARTMENT OF HEALTH**

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**End of Other Material  
Related to Administrative  
Law**

# 2021 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXXII, Issues 1-24

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

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